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Notes on Legal Literature in East Africa

by Robert Martin*

I. INTRODUCTION

This essay is an analysis of an aspect of "the problem of the superstructure." Such a formulation suggests an attempt to apply a particular methodology even though it is impossible (and in my view unnecessary) to fully describe that methodology here. If legal writing is to play a role in the process of Third World liberation, this is the subject with which it must be concerned.

A. Hegemony

Marxists have tended to prefer their law crude and simple. Lenin can probably claim the credit for spawning this tradition, although Engels' contribution cannot be disregarded.¹ To Lenin, the state, and therefore, the law were simply direct instruments of coercion employed by one class to suppress another. Attempts have certainly been made to qualify this view. Pashukanis sought to explain law in terms of the economistic approach to Marxism favoured by earlier Soviet theorists, while more recently Poulantzas has essayed a mystical, albeit state-centered analysis.² Mao's theory of the correct handling of contradictions among the people can also be seen as a qualification of the pure Leninist construct.³ Still, what might be called mainstream Marxism continues to see law largely in terms of its coercive aspect.⁴

While it would be foolish to deny that the "law has force at its

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²For a lucid and original discussion of these points see Fraser, Legal Theory and Legal Practice, 44/45 Arena 123 (Greensborough, Austl. 1976).

³Mao Tse-Tung, On the Correct Handling of Contradictions Among the People, in Selected Readings from the Works of Mao Tse-Tung 492 (Peking 1971).

⁴See, e.g., the criticism of Fraser's article, supra note 2, in Boehringer, The Law and Class Struggle, 46 Arena 90 (1977).
back in every country however civilised," it must be asserted that Lenin's unvarnished restatement of classical positivism is not adequate. Indeed, such an approach militates against the development of a theoretical understanding of law which is both historical and dialectical in scope. This is not an idle academic question, nor is it one which is divorced from the concrete exigencies of class struggle. There is a need to adequately understand bourgeois legal systems and to lay a theoretical basis for the socialist legal systems which will replace them. Socialists, and more particularly socialist lawyers, must develop a theory of law and the state which will permit them to avoid the hazards of bureaucratic repression (the Soviet Union) and suicidal liberalism (Allende's Chile). 6

Lenin's theory is inadequate on two counts. First, it denies any autonomy (relative or otherwise) to law as a social phenomenon possessing its own internal logic and, second, it refuses to recognize the hegemonic functions of law. This essay will investigate aspects of the second question in the context of the legal systems of East Africa.

Marx observed that:

The ideas of the ruling class are in every epoch the ruling ideas, i.e. the class which is the ruling material force of society, is at the same time its ruling intellectual force. The class which has the means of material production at its disposal, has control at the same time over the means of mental production, so that thereby, generally speaking, the ideas of those who lack the means of mental production are subject to it. 7

Nonetheless, Marx did not develop a systematic theory of the role which ideas play in class domination. This task fell to Gramsci and it is here that Gramsci's concept of hegemony becomes important. 8

Ideas do not fall from the sky; they develop in response to specific historical conditions to serve specific purposes. Thus, to take an idea

6F. Lugard, Political Memoranda 249 (3d ed. 1970). It is noteworthy that the architect of the state throughout British colonial Africa should share Lenin's view of the nature of law.

7This allusion is borrowed from M. Steinberg, Sketch for a Marxist Theory of the State (unpublished ms., University of Western Ontario, 1977). The discussion which follows draws heavily on Steinberg's paper.


9Gramsci's concept of hegemony is outlined in State and Civil Society, in Prison Notebooks 210 (1971). Lucidity is not among the major characteristics of Gramsci's writing. For an admirable exposition, see C. Boggs, Gramsci's Marxism (1976),
which has important juristic implications, equality emerged as an abstract goal during the period of intellectual struggle which preceded the bourgeois democratic revolutions in Europe. The material ambitions of an ascendant class were formulated at the level of ideology as a demand for equality. With the political triumph of this class, equality as an idea was reified and became an ideological weapon used to mystify the true nature of capitalist relations of production. In this sense, equality as an idea functions to legitimate the continuation of bourgeois dominance. At the same time, however, equality as a component of the superstructure of the capitalist mode of production comes to take on a metahistorical character. Being divorced from its historical roots it becomes complete abstraction and forms a part of the cultural and intellectual equipment of every member of society. Each person within bourgeois society will then perceive equality as a desirable social goal in itself. Thus, one hears the trite wisdom of "radicals" that the real (reified) problem with bourgeois legal systems is that there is "one law for the rich and one law for the poor." The obvious implication is that the law is bad because it does not treat all people equally. The fact is that bourgeois legal systems do treat all people equally. Indeed, this is their most important characteristic. It is through the principle of freedom of contract, whereby people who are economically unequal are treated as formal, notional equals, that bourgeois legal systems become most oppressive. Equality is a hegemonic idea to the extent that it inhibits individuals within bourgeois society from perceiving this reality.

Gramsci saw that while ideas originate from economic conditions, they are not merely a reflection of these conditions. He recognized that ideas affect the way in which people view their own circumstances and, more important, the way in which they perceive both the possibility and the means of changing those circumstances. A class has achieved hegemony to the degree that the ideas which arose in order to serve its own class interests dominate and permeate society. These ideas are central to maintaining the rule of that class. Bourgeois ideas are the ideas of bourgeois society. They are central to

especially ch. 2. For a systematic attempt to apply Gramsci's ideas see R. Miliband, The State in Capitalist Society (1969).

9See F. Engels, Anti-Dühring 113-25 (Moscow 1975).

10See the discussion in H. Aptheker, The Nature of Democracy, Freedom, and Revolution 8-15 (1967), where the author investigates exactly what Jefferson meant when he wrote that all men are created equal.
the socialization of each individual in bourgeois society. They are hegemonic in that they are internalized throughout society. Each individual who lives under capitalism is a repository of bourgeois ideas, regardless of his objective class position. People who are objectively members of the working class acquire a bourgeois subjectivity. As a result each member of the ruled class becomes an instrument of his own oppression. Herein lies the essence of hegemony.

A legal system consists in part of normative rules which serve to protect the interests of a dominant class. These are its coercive aspect. Equally, it is made up of values, its hegemonic aspect. In a bourgeois legal system these latter will include such ideas as equality before the law, separation of powers, due process, the rule of law, fairness, and so on. The direct interests of a dominant class will not always determine the outcome of particular cases. Instances will arise where the hegemonic aspect is determinative. Thus, clear class enemies of the bourgeoisie who are charged with crimes are often acquitted in order that the law may demonstrate its continued fidelity to its own stated values. These cases appear to be contradictory or anomalous or, more crudely, tricks. In order to avoid such a conclusion it is necessary to grasp the significance of the hegemonic aspect of the law. Class struggle does not proceed solely out of the barrels of guns; it also takes place in the minds of human beings.

If its hegemony is undermined through ideological and cultural struggle, a ruling class must forfeit its legitimacy and will thenceforth be able to maintain itself in power solely through force. It is clear that the hegemony of a ruling class must be assiduously protected, which is to say that its ideas must be refined, re-expressed, and shaped to fit new eventualities. This is the task of those who work in the realm of ideas.

To the extent that the legal system plays a role in maintaining

11Engels saw this point in his later years. See Letter from Friedrich Engels to Conrad Schmidt (Aug. 5, 1890), in 3 K. MARX & F. ENGELS, SELECTED WORKS 489 (Moscow 1970). The Miranda and Escobedo decisions of the U.S. Supreme Court would seem to be illustrations of this principle.


13Marx refers to those who “make the perfecting of the illusion of the class about itself their chief source of livelihood.” THE GERMAN IDEOLOGY, supra note 7, at 65.
hegemony, it must be shaped by a similar process. It is in this context
that I propose to view legal writing.\textsuperscript{14}

Legal writing can take many forms—statutes, articles, monographs,
judgments—but regardless of form, it partakes of class struggle at the
level of hegemony. One writer seeks to maintain hegemony by causing
the language of the law to conform to changes in fashion. Another
strives toward a similar end by demonstrating how changes in social
behaviour can be accommodated within existing legal principles. Still
another seeks to undermine hegemony by revealing the objective
origins of a legal concept and elucidating its social function in class
terms. It should be added that in none of these categories is it sug-
gested that all intellectual activity is totally conscious. One of the
results of hegemony is that individuals come to accept the ideas of a
ruling class instinctively. Bourgeois intellectual domination is complete
when individuals are incapable of thought other than in the modes of
bourgeois hegemony.

B. Class Struggle in East Africa

Since this paper is an analysis of the role which legal writing plays
in the hegemonic aspect of class struggle in East Africa, some com-
ment about that struggle is necessary.\textsuperscript{15} National bourgeoisies, finding
their further development as classes thwarted by the racism of the co-
lonial state, led the struggle for independence. Although this struggle
was directed by national bourgeoisies and resulted in their achieving
control of the machinery of their respective states, it was politically
and ideologically a nationalist struggle. That is, it required the
mobilization of all social strata in support of an ideology which ex-

\textsuperscript{14}There is little or no writing that attempts, explicitly at least, to adopt this ap-
proach. As a partial exception see the interesting comment by Goode, \textit{Law Reform
Commission of Canada—Political Ideology of Criminal Process Reform}, 54 CANADIAN
B. REV. 653 (1976). Yash Ghai has produced an exhaustive discussion in \textit{Notes
Towards a Theory of Law and Ideology: Tanzanian Perspectives}, 13 AFR. L. STUD. 31
(1976). Ghai analyzes the extent to which official Tanzanian ideology is reflected, in
an instrumental sense, in its legal system. He does not deal, however, with the
ideological functions of the Tanzanian legal system.

\textsuperscript{15}The outlines of what follows can be found in C. Leys, \textit{Underdevelopment in
Shivji, \textit{Class Struggles in Tanzania} (1976). All the numbers of the \textit{Review of
African Political Economy} are useful. E. Brett, \textit{Colonialism and Underdevelop-
ment in East Africa: The Politics of Economic Change: 1919-1939} (1979) is ex-
tremely valuable and suggests a methodology through which some of the questions can-
vassed in this paper might be approached.
plained the material dislocation wrought by colonialism in nationalist, rather than class terms. More specifically at the ideological level, this required the destruction of colonialist hegemony and its replacement by nationalist (i.e., national bourgeois) hegemony. This was relatively easy in national terms, since colonial rule had never achieved, and could not achieve a significant degree of general legitimacy. It was more difficult, and more contradictory, in class terms, since national bourgeoisies had been thoroughly steeped in the ideologies of their colonial rulers. Furthermore, the class position of national bourgeoisies made the advocacy of a specifically revolutionary ideology impossible.

Two broad choices were open to national bourgeoisies at independence. First, they could have sought to transfer power to the mass of the people. This, as Amilcar Cabral has noted, would have amounted to class suicide. Since this choice has not been adopted anywhere in East Africa nothing remains to be said about it. Alternatively, national bourgeoisies could, as they have done, decide to remain in power. Here two possible courses of action have presented themselves. The first, which can succinctly be described as neo-colonialism, is the general policy approach adopted in Kenya. This involves maintaining the production relations established by colonialism, but ensuring, through control over the state machinery, that the national bourgeoisie consumes an ever expanding proportion of the national surplus. The second approach is to seek disengagement from imperialism through autarchy and the establishment of state capitalism. Tanzania has generally attempted to follow this course. In either case, the national bourgeoisie must seek sufficient hegemony to legitimate its position and role.

At independence in East Africa, domestic class relations were in a highly fluid state. This was so because national bourgeoisies were not economically dominant classes nor had they fully developed ideologies. Considerable intellectual energy was devoted to the latter task.

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17 This description is borrowed from M. KIDRON, CAPITALISM AND THEORY 171 (1974).
18 The reader has undoubtedly noticed that there is no reference in the preceding passage to Uganda. It would, in my view, be obscene to juxtapose a discussion of the Amin regime and an analysis of law. This juxtaposition is, therefore, avoided throughout the paper, although the odd specific reference to Uganda will be made. Those seeking further information on the "legal system" in present-day Uganda are referred to INT'L COMM'N OF JURISTS, UGANDA AND HUMAN RIGHTS: REPORTS TO THE U.N. COMMISSION ON HUMAN RIGHTS (Geneva 1977).
Although the overriding objective of such activity was the creation of a nationalist ideology, the process inevitably saw the expression of many contradictory tendencies. More recently, some attempts have been made to challenge national bourgeoisies to move away from pure ideology and create modes of analysis rooted in concrete conditions which address themselves to the interests of workers and peasants. The development of legal writing provides a clear illustration of this process.

While statutes and law reports existed from the earliest days of colonialism, there was very little writing about law during the colonial period. What existed tended to be anecdotal rather than analytical.\(^\text{19}\) In 1961 legal education began in East Africa at what was then University College, Dar es Salaam.\(^\text{20}\) Although there is far more to legal literature than the views of academics, the major ideological currents at work can be seen through a brief discussion of the development of writing about law in East Africa since independence. This development is arbitrarily divided into three periods.

1. The early period

Two features of the early period are immediately apparent. The people doing the writing are almost all foreigners and the writing they are doing is more or less aggressively anti-colonialist. The colonial bars in East Africa were composed of either Asians or Englishmen. Only a handful of Africans had been admitted to practice and all of these had been trained at the Inns of Court in London. Very few practitioners possessed university law degrees. It was, therefore, clear that if Africans were to be trained to staff the existing, English-based legal systems, they would have to be trained by persons from outside East Africa. The early staff members of the Faculty of Law of the University of East Africa came from England, with a certain number from other parts of the common law world, predominantly North America. From my own, admittedly unscientific, observations of foreigners who have gone to work in East Africa,\(^\text{21}\) there is a significant number of

\(^{19}\)See, e.g., A. Russell, The Magistrate (1945). For purely arbitrary reasons, I have not included a systematic discussion of writings about customary law in this essay.

\(^{20}\)For a description of the early years, see Twining, Legal Education within East Africa, in EAST AFRICAN LAW TODAY 115 (1966). For an overview see the various essays presented in W. Harvey, INTRODUCTION TO THE LEGAL SYSTEM IN EAST AFRICA ch. 1 (1975).

\(^{21}\)I have been more or less continuously associated with legal education in East Africa since 1967.
people who did so because they felt estranged from their own societies. This phenomenon is particularly evident among expatriate university teachers. If one couples with this an understandable desire to justify their presence in East Africa, the anti-colonial orientation of their writing makes more sense. Nonetheless, one should not be misled. "Anti-colonial" is being used here in a limited sense. The writing under discussion did not present a systematic critical analysis of colonialism as a particular phase of capitalist development nor did it question the legitimacy of the colonization of Africa. What it did do was criticize colonialism for the kind of legal systems it operated. The colonial legal systems of East Africa represented a denial in practice of the basic legal and political values which allegedly underlie all common law legal systems. These writers attacked the racism, the oppressiveness, and the arrogance of the administration of justice in colonial East Africa. Although they did not realize it, they were attacking colonial legal systems for being colonial legal systems. At the same time there was evinced an abstract fascination with traditional African legal matters. An attempt was made to legitimate customary law after its long colonial hiatus. The idea of synthesizing indigenous and imposed legal forms and ideas into distinctive national legal systems was eagerly pursued.

In terms of its form this legal writing presented a varied picture. The first problem was that the material necessary to teach law had to be created. In Nigeria, for example, this resulted in an effort to produce a range of basic textbooks. These tended to be English texts, with references to Nigerian cases and statutes. In East Africa there was confusion as to whether English texts or U.S. casebooks were the preferable form. Much time was expended on a rather unrewarding debate over the relative merits of English and U.S. teaching techniques. The implicit aim, which was made explicit by the International Legal Center in its 1975 report on legal education, was to get as much local material into circulation as possible. Systematic consideration of methodology and ideology was avoided.

**The apotheosis of this genre is Y. Ghai & J. McAuslan, Public Law and Political Change in Kenya (1970).**

**See, e.g., Report of the African Conference on Local Courts and Customary Law (Faculty of Law, University College, Dar es Salaam 1965).**

**A general description is found in L. Gower, Independent Africa: The Challenge to the Legal Profession ch. 3 (1967).**

**Int’l Legal Center, New York, Legal Education in a Changing World**
2. The middle period

In the middle period, roughly from the mid-60's to the early 70's, three new factors obtruded into the process of legal education. First, gradually, East Africans, both Asians and Africans, who had studied law in East Africa began to teach law. Their orientation was strongly nationalistic. They wished to see a rejection of all things European. While this view was advanced with great vigor at an abstract, rhetorical level, its concrete application to legal writing was uncertain. Actual results seemed to depend more on whether the individual in question had gone to graduate school in England or the U.S. Still, this factor intensified the questioning of imposed English legal ideas. Second, questions began to be raised as to the aims of legal education. The realities of the post-independence era made it difficult to continue to see legal education as an end in itself. The increasingly evident failure of independence to deliver on its material promises raised questions about the utility of training replicas of English or U.S. lawyers. Development began to be seen as the only legitimate aim of political or public activity and lawyers began to perceive that their activities had little to do with achieving this aim. Similarly, the then fashionable North American infatuation with "relevance" impinged on East Africa. On the whole, these concerns had beneficial effects on legal education. It was recognized that legal education, and therefore legal writing, could not continue to deal largely in abstractions. Legal education had to address itself in some way to the concrete conditions of East Africa. And further, legal education had to demonstrate a concern with changing these conditions. Finally, in 1970 the University of East Africa split up into three independent universities. It should not, however, be thought that by this time all law teaching was being carried on at Dar es Salaam. While the only Faculty of Law in East Africa was located there, law teaching was being conducted, although not to LL.B. students, at Makerere University College and the University College, Nairobi, and at the Kenya School of Law in Nairobi. In addition, law was being taught at various administrative training centres throughout East Africa. Still, with the creation of three Faculties of Law in East Africa in 1970, there was a tendency for the individual law facilities to become more involved in national, rather than regional issues.

71-74 (1975). My views on this report can be found in a review in 4 Melanesian L.J. 270 (1976).
3. The recent period

In the most recent phase, three additional factors have affected legal education. First, and most important, the staff of all three law faculties has become almost entirely localized. This has tended to remove many extraneous considerations from the agenda. Second, the amount of political repression has increased markedly. Today in East Africa one is much less free to write and talk about certain matters than in the earlier phases. This hardly requires comment in the instance of Uganda, but it is a noteworthy matter in Kenya. Tanzania still permits a degree of freedom in academic discourse. Such a climate has had an inevitable effect on legal writing. The third factor has been the growth in Tanzania, and among the Faculty of Law of the University of Dar es Salaam, of a strong and indigenous Marxist tradition. While the boundaries between Marxism and radical nationalism have not always been entirely clear, much creative legal writing has been produced which vigorously challenges the assumptions underlying the writing of the earlier two phases. It is interesting that these tendencies have had little effect on the way in which statutes are drafted or judgments written in East Africa.

This introduction is inevitably cursory. It has not dealt, for example, with the important questions of the ways in which the introduction of writing and, more important, printing have affected the development of law in East Africa.

I have tried to outline a framework for analyzing the ideological functions of law as evidenced by the legal literature of East Africa. We turn now to a description and analysis of that literature.

II. THE MATERIALS

A. Statutes

Extensive statutory materials exist for all three states. One is struck by the bulk of statutory law available. For present purposes the main

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\(^{26}\) But political discourse is not allowed. This is evidenced by the aggressive use of preventive detention in recent years.


\(^{28}\) Some insights are found in H. INNIS, EMPIRE AND COMMUNICATIONS (rev. ed. 1972), especially at 142-70. A great deal of the methodological confusion that has arisen concerning writings about customary law derives from a failure to deal with the impact of writing and printing on the form of customary law. This sort of confusion is evident.
points with regard to statutes are their accessibility and their internal organization.

1. Accessibility

Copies of current statutes are available in institutions where law is studied formally. Sets of Kenyan, Ugandan, and Tanzanian statutes are provided in the libraries of the three East African universities, while in other institutions the usual practice appears to be to provide only the statutes of the state in question. Access to non-current statutes is not uniform. This is an important problem in legal research, as the opportunity to examine non-current material is often essential. The University of Dar es Salaam has a good collection of non-current East African statutes. In contrast, the situation at the University of Nairobi is deplorable. Historical research is almost impossible.

For the general public, access to the statutes is not easy. Copies of the statutes are normally available in government offices, public libraries, and advocate's chambers. However, there may be little practical access because public libraries are found only in major centers. Further, many bureaucrats tend to treat statutes as if they were confidential documents, and it costs money to see a lawyer. Even if a member of the public gains access to the statutes, what he reads therein, assuming he can read, will be unintelligible because statutes are drafted in the English language and in the highly technical English style.

It may be little more than a pious hope that statutes can become a means of communication between government and people. If this is to occur, it will require a realization that legislative drafting is not a technical exercise. Drafting clearly involves turning social or economic policies into a legal form which is politically and administratively workable. This places heavy demands on the people responsible for drafting, demands which should be specifically addressed in legal education. Since East African statutes remain mystifying documents,
one can assume that national bourgeoisies are content with the present situation.\textsuperscript{31}

It is a general characteristic of East African legislation that broad, often limitless, rulemaking powers are regularly delegated to officials.\textsuperscript{32} A minimal requirement of legality is that persons affected should have access to subsidiary legislation. Unfortunately, the systems for printing and distributing subsidiary legislation are not as effective as those developed for acts themselves. It is often extremely difficult for the researcher to feel confident that he has seen complete, current subsidiary legislation in a particular area. This problem emphasises the extent to which the development of legal literature in East Africa depends on the efficiency of the government printers.

2. Internal Organization

East African statutes are not easy to use. A similar system has been adopted in all three states. Periodically all the statutory law is revised, consolidated, and published in multivolume sets. This has been done roughly once a decade. The three revisions presently in force cover about ten substantial volumes each. Acts are assigned chapter numbers and are grouped together within the various volumes according to broad subject categories. New acts, bills, and subsidiary legislation are normally published from time to time as supplements to the government gazette. New acts are numbered consecutively according to the year of their passage. Some of the difficulties involved may be appreciated by looking at the example of Tanzania. The last revision of the laws was carried out in 1965. This revision encompasses roughly

\textsuperscript{31}In 1967 Kenya embarked upon a major exercise in law reform. The purpose of this exercise was a complete overhaul of the law relating to marriage, divorce, and succession. Two lengthy reports were produced: Report of the Commission on the Law of Marriage and Divorce (Nairobi 1968), and Report of the Commission on the Law of Succession (Nairobi 1968). These reports led to the drafting of two supremely unintelligible statutes: the Law of Succession Act (Act 14 of 1972) and the Marriage Bill (1976). Even at the narrow technical level, the statutes which arose from this exercise were not well drafted. See my comments The Age of Majority and the Kenya Law of Succession Act, 1972, 9 E. Afr. L.J. 77 (1973); and The Kenya Age of Majority Act, 1974, 10 E. Afr. L.J. 120 (1974). The Commonwealth Secretariat has, for a number of years, been active in trying to improve all aspects of drafting in the commonwealth. See, e.g., Seminar on the Commonwealth Secretariat Programme for the Training of Legislative Draftsmen (London 1975). On the functioning of legislatures see Martin, Legislatures and Economic Development in Commonwealth America, 1977 PUB. L. 48.

540 acts, plus a certain amount of subsidiary legislation. The general index to these consolidated statutes is good and it is a simple matter to discover all the acts which are relevant to a particular subject. However, one cannot always be sure that one has found all the subsidiary legislation or any U.K. legislation which may be in effect. The real difficulty arises in keeping up to date with subsequent legislation. Since 1965 the Tanzanian National Assembly has passed, on the average, fifty acts per year. There has also been a considerable amount of subsidiary legislation. Discovering the current legislation on a given topic can be very time consuming and often a hit-or-miss exercise. There are neither cumulative nor annual indexes to new statutes and subsidiary legislation. A certain amount of subsidiary legislation is not published in the Gazette. Amendments to existing statutes must be written by hand into the relevant chapter in the 1965 revision. The same thing applies where a statute has been repealed. This process of continuous updating should be done by a librarian, but from my experience in East African libraries it would be unwise to rely on it actually being done. For the advocate or bureaucrat who does not have the services of a librarian the difficulties are obviously greater.

The point of all this is that the present system for publishing East African statutes is far from ideal. Statutes can be presented in such a way as to maximize their usefulness. The recent edition of the laws of Swaziland is an example of such a presentation. The question is whether the respective governments of East Africa would be willing to devote the necessary resources to put their statutory law into a form which would achieve his end.

B. Law Reports

Prior to 1957 there were five series of general law reports published in East Africa. These were the Kenya Law Reports (originally the East African Protectorate Law Reports), the Uganda Law Reports, the Tanganyika Law Reports, the Zanzibar Law Reports, and the Court of Appeal for Eastern Africa Law Reports. Beginning in 1957 all these reports were merged into the East Africa Law Reports. The earlier
reports were published by the relevant public authorities, while the *East Africa Law Reports* were, and continue to be, published by Butterworths in England. They are edited by an advocate in private practice in Nairobi. The East African Literature Bureau has reprinted the *Court of Appeal Reports*. Copies of the other older series are often difficult to locate.

The *East Africa Law Reports* are devoted solely to decisions of the East African superior courts—the High Courts of Kenya, Uganda, Tanzania, and Zanzibar, and the Court of Appeal for East Africa. Decisions of the Judicial Committee of the Privy Council in appeals from the Court of Appeal were also reported, but this has ceased since the jurisdiction of the Judicial Committee to hear such appeals has been ended. The origin of reported cases in recent years is as follows:

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<tr>
<th>Year</th>
<th>Court</th>
<th>No. of Cases Reported</th>
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<tbody>
<tr>
<td>1971</td>
<td>Court of Appeal</td>
<td>40</td>
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<td>Kenya H.C.</td>
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<td>Tanzania H.C.</td>
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<td>Uganda H.C.</td>
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<td><strong>113</strong></td>
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<tr>
<td>1972</td>
<td>Court of Appeal</td>
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<td>Kenya H.C.</td>
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<td>Uganda H.C.</td>
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<td><strong>149</strong></td>
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<td>1973</td>
<td>Court of Appeal</td>
<td>50</td>
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<td>Kenya H.C.</td>
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<td><strong>126</strong></td>
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Cases to be reported are submitted to the editor by the registrar of the particular court as directed by the appropriate Chief Justice or the President of the Court of Appeal. Not all cases submitted are reported. In 1972 forty cases submitted to the editor were not reported, and in 1973 twenty-eight were not. These cases were not reported since they were "concerned only with the facts."\(^{35}\) The editor changed on 1967, presumably in response to the formation of the East African Community.

\(^{35}\)Information reported to the author by the editor.
generally takes the view that all other judgments submitted should be reported unless they are wrong in law or irrelevant.

Since 1972 the number of cases submitted for reporting has declined. In 1972 only 133 cases were submitted. If this decline continues it obviously raises questions about the future of the reports.

The purpose of the *East Africa Law Reports* is essentially informational. This purpose is achieved through the presentation of authoritative judicial pronouncements. This factor to some extent explains the preponderance of Court of Appeal decisions.

There have recently been criticisms from all the High Courts that not enough of their decisions are being reported. Particularly strong criticism has come from the Tanzanian High Court. These criticisms are somewhat exaggerated. The editor takes the position that he can only report what he receives and that if a particular High Court does not send its judgments to him he cannot report them. In 1975, out of the first eighty cases submitted for reporting only eight were from Tanzania. There are part-time editorial personnel located in both Tanzania and Uganda who are responsible for local liaison.

Nonetheless, it is true that a certain number of significant superior court decisions are not submitted and therefore are not reported. Citation of unreported cases is a fairly common matter in East Africa. It is difficult to generalize about the kinds of cases that go unreported. Still, it has happened that politically embarrassing cases have not found their way into the *East Africa Law Reports*. The best known of these is *Ooko v. R.*, the leading case on preventive detention under Kenya's Preservation of Public Security Act. If a case has not been reported one must look for the judgment in the appropriate court registry. Finding cases is, for various reasons, not always easy. Today one is not permitted, to repeat the same example, even to look at the judgment in *Ooko*.

The *East Africa Law Reports* are handsomely produced on high quality paper and incorporate all the production extras normally found in English law reports. Four parts plus a single bound volume are produced each year.

There have been suggestions that the *East Africa Law Reports* are "behind schedule" or, at least, rather slow in making decisions available. These criticisms are probably without substance. Reported

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36High Court of Kenya at Nairobi, Civil Case No. 1159 of 1966.

37This is mentioned in Gilmore, *Organised Labour and Government Controls in Kenya*, 11 E. AFR. L.J. 1, 33 n.136 (1975).
judgments are available in East Africa about fifteen months after a case has actually been decided.  

Production of the Reports is handled entirely by Butterworths in the U.K. This arrangement is difficult to justify. It is possible, in Nairobi at any rate, to produce printed material as quickly and as easily as in the U.K.

Financial matters, including marketing and distribution, are also handled entirely by Butterworths. In 1975, the circulation in Kenya was 188. Of these, fifty-five copies went to the judiciary, forty-three to the Commissioner of Police, twenty-five to the Attorney-General's Chambers, and the rest, presumably, to practitioners. Butterworths has experienced some difficulty in collecting payment for copies of reports which go to the governments of Tanzania and Uganda.

The editor is formally responsible only to Butterworths, although there is an editorial board and an annual report is submitted to the President of the Court of Appeal.

It seems beyond argument that the East Africa Law Reports perform a useful function. Still there appear to be two areas of concern. First, the East Africa Law Reports may not cater adequately to specific national, as opposed to East African, interests, and, second, they do not report the decisions of lower courts.

It has already been suggested that the criticisms coming from Tanzania and Uganda to the effect that decisions of their High Courts are not being adequately reported are largely unfounded. Nonetheless, the feeling that Tanzanian decisions are not being accorded appropriate treatment led in 1973 to the creation of the Law Reports of Tanzania. These reports are produced in a modest cyclostyled format by the Faculty of Law of the University of Dar es Salaam. They are essentially a fuller version of the Tanzania High Court Digest which was first published in 1967. Only decisions of the High Court of Tanzania and of the Court of Appeal on appeal from the High Court are reported.

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"An example of this criticism is the following: "[T]o make matters worse, the production of the East Africa Law Reports is well over a year behind schedule . . . ." Hiller, Case Note on Somani's v. Shirinkhanu (No. 2): The Inherent Review Power of the Court of Appeal, 11 E. Afr. L.J. 123, 137 n.47 (1975). This remark came close to setting off a lawsuit. A random survey of other reports suggests the following average time elapses between the day judgment is given in a case and its appearance in a printed report: All England Reports — 5.8 months, with 2 or 3 months for decisions of the House of Lords; Dominion Law Reports — 7.5 months; and Appeal Cases — 11 months."
Uganda has also been publishing some law reports through its Law Development Centre.

There is no reporting of lower court decisions in East Africa. There are a number of reasons for this. First, and most important, none of the three states possesses the resources necessary to collect, edit, and publish lower court decisions. Second, the utility of reporting such decisions is questionable. Judgments are usually very short, often containing little more than a few sentences outlining the facts of the case followed by the court's holding. One seldom finds clearly expressed legal reasoning. While researchers should not neglect lower court decisions, although it is often very difficult to gain access to them, it does not follow from this that any useful purpose would be served by their publication in law reports. Finally, it would be most difficult to establish consistent criteria to be used in selecting decisions for reporting.

There was one series of specialized law reports published, the *East African Tax Cases*. This series began publication in 1955 under the auspices of the East African High Commission and was continued by the East African Common Services Organization and the East African Community. The reports were published to meet the needs of people who paid income tax and "their professional advisers" and originally reported all tax cases. Four volumes were published. Since the common income tax has now disappeared and Tanzania, Kenya, and Uganda each has its own separate system, these reports have been discontinued.

Certain indexes and noters-up are available. Butterworths has published an index to the *East Africa Law Reports* covering the years 1957 to 1967 and a further index for 1970 to 1972. Works prepared by Mr. Justice Spry, formerly of the Court of Appeal, and Philip Durand, formerly of the Kenya Institute of Administration, are also helpful. Nonetheless, finding East African case law is often a function of knowing what you are looking for.

Finally, various national series of digests of superior court decisions may be mentioned. In 1967 the Law Faculty of the University College, Dar es Salaam, began publishing the *Tanzania High Court Digest*. This consisted of condensed summaries of judgments. The *Digest* continued until 1973 when it was incorporated into the *Law Reports of Tanzania*. In 1971, the Faculty of Law of the University of Nairobi began publishing the *Kenya High Court Digest*. In 1974 the *Kenya Digest* expired. The Uganda Law Development Centre publishes a
Monēthly Bulletin of Judgements and Orders of the High Court. Digests of decisions of the Court of Appeal have been published in the East African Law Journal. The value of a publication like the Tanzania High Court Digest was that it provided information on important judgments quickly and to a wide range of subscribers. The Tanzanian Digest was very well edited and was accepted for citation in the courts.

C. Government Documents

This category is wide and embraces a range of publications which are of great significance in East African legal literature. It includes, for example, policy papers, annual reports, reports of special commissions or inquiries, various parliamentary documents, political speeches of leaders, and so on. A government printer which can produce material quickly, cheaply, and in a serviceable form is a basic component in the development of legal literature. The extent to which a government printer will be able to perform these functions is a political decision, depending on the extent of the resources, human and monetary, allocated to it. To put it another way, the operation of a government printer depends primarily on political forces and secondarily on market forces.

The Kenya Government Printer appears to be a good example of such an organization, and the publication of the Report of the Public Service Structure and Remuneration Commission is a useful case in point. The Commission completed its work in May 1971. Within a month the printed report of 295 pages, plus 100 pages of appendices, was available to the public. The printed report, although free from costly publication extras, was competently presented. The cost of the Report was (Kenya Shillings) K Sh20.00 per copy.\(^9\) The Government Printer maintains a shop in Nairobi. The shop is not elegantly appointed, but the people who work in it are familiar with government publications and maintain an inventory adequate to satisfy public demands. Government printing and publishing in Tanzania are not up to the same standard. Publications are often poorly printed. There is a considerable delay involved in producing material and significant publications are often out of stock.

D. Textbooks and Monographs

This category is defined broadly to include all non-official books, as opposed to articles or pamphlets, which treat directly law in East

\(^9\)Roughly U.S. $2.50.
Africa. The most striking feature of this category is its unevenness—in coverage, in quality, and in purpose. These characteristics perhaps can best be illustrated by some of the books that have been published.

1. Oxford University Press (East Africa)

Maini, *Land Law in East Africa* (1967)
This is a poor book. It is superficial, inaccurate, and much of it has been plagiarised. It was never used seriously as a student text, although this is clearly what it was intended for. One of its effects was to make a hitherto unsuspecting Oxford University Press skeptical about publishing law books.

A serious work of scholarship, this book established new directions in the study of public law. Its relatively limited scope and, for 1970, high price of KSh50.00 gave it a rather narrow market. The first 3,000 copies of this book have yet to be sold.

This is a specialized, short monograph which aggressively argues the Tanzanian approach to the question of state succession to treaty obligations. It has an obviously limited market.

An attempt to present a socialist analysis of public law in Tanzania. It has been called tendentious and undoubtedly is. The book has sold well, probably because of a publication subsidy from the Social Science Research Council of Canada which allowed it to be marketed at a very low price. It was reprinted in 1976.

Clifford surveys theoretical problems in criminology and attempts to fix these in an African context. However, the book lacks contextual depth and tends to accept traditional views uncritically. It could be used as an introductory textbook. It is presently selling slowly.

2. Oxford University Press (U.K.)

Very much a work for the specialist.

Morris and Read, *Indirect Rule and the Search for Justice* (1972)
While there are many who would be made uneasy by this book's ideological orientation, it is an outstanding piece of scholarship. It is essential reading for anyone who wishes to understand the inner workings of the colonial state, although a high price and the depth of its treatment give it a limited student market.
3. Sweet and Maxwell/Stevens (U.K.)

Cole and Denison, *Tanganyika: The Development of its Laws and Constitution* (1964)
This book suffers from the limitations imposed by the series of which it is a part and from the colonialist orientation of its authors. It is now out of date.

This useful book was, unfortunately as a result of Obote's coup, out of date on the day it was published. It does contain useful historical information.

*East African Law Today* (1966)
This volume is a random collection of essays dealing with various aspects of law in East Africa. It is of doubtful value as the essays were superficial when written and are now dated.

These volumes are part of the Restatement of African Law project of the School of Oriental and African Studies, London. They attempt to formulate customary principles in terms of legal rules. There is some doubt as to whether this is desirable or possible. Still, they are the only recent works that deal exclusively with customary law. There are a number of older books on customary law in East Africa which I have not included in this summary, notably the works of Corry, Corry and Hartnoll, Gulliver, and Wagner.

The following titles are included in Sweet and Maxwell's "Law in Africa" series.

The author has presented what are essentially annotated versions of the Ugandan and Kenyan Criminal Procedure Codes. The book is short on analysis. It could be used by students.

Here we have a counterpart to the preceding volume; both follow much the same approach and format. Collingwood's book is widely used by students.

This is a bad book. It is written as if intended for an audience of semi-literate persons and is superficial to the point of vacuity. It manages to talk about the "law of Uganda" for 133 pages without referring to a single decided case and only mentions in passing a handful of statutes. While there is clearly an important place for
books about law aimed at a general readership, this does not justify works which fall into the "law for the under-five" category.

Morris, *Evidence in East Africa* (1968)
An annotation of the East African Evidence Act, it is short on analysis and exposition and is not, therefore, adequate as a text. The book is nonetheless widely used by students in East Africa.

The author wrote the book in order to assist secondary school students in making career choices. The book contains useful, if arcane, information. It is very much out of date.

Veitch's book points up one of the major difficulties involved in preparing an exclusively East African casebook. There are many areas of tort law which have simply not been dealt with by the East African courts. Since there are no East African cases in these areas they are not covered in the present book. The book is superficial and was obviously thrown together in a hurry. It is lacking in exposition and analysis. To be useful for teaching the book would have to be supplemented by an English text and an English casebook.

Hodgin's book shares many of the problems of Veitch's book. It is, however, more carefully prepared and therefore more successful. Like Veitch's work, this is very much an English casebook.

4. Rothman (U.S.)

This is an excellent casebook, carefully organized, rich in both expository legal commentary and nonlegal material. It is illustrative of the U.S. type of casebook at its best. Its only drawback is that the text would be difficult to present for a teacher who did not possess Macneil's point of view and ability. Leaving aside the book's content, it was cheaply produced. It was offset-printed from typed masters. Since the type size has been reduced and the right margins are not justified the book is rather difficult to read. The binding is of poor quality and does not stand up to a full year of student use. Nonetheless, the existence of this book makes it clear that the traditional law book layout and design are not essential. Major departures from this traditional form are taking place in Canada and the U.K. and do, because of their lower cost and shorter production time, deserve consideration in East Africa.40

5. East African Literature Bureau


A general survey of Kenyan law. The book is superficial and often pedestrian, but these characteristics may be a function of its subject matter. It is interesting that this book is the best selling title on the E.A.L.B. list, the first edition having sold more than 6,000 copies. This book led to serious questions about the role, if any, of expatriate writers. It has been suggested that the book exemplifies the extent to which the inappropriate perspectives and the lack of a basic knowledge on the part of expatriates distort the development of legal scholarship.41

James, *Land Tenure and Policy in Tanzania* (1971)

This book arises out of lecture notes prepared for use at the University of Dar es Salaam. Because of the general approach that prevails in the Faculty of Law there, the book is concerned with the non-legal framework within which Tanzanian land law operates.


A survey of the law and practice with regard to sentencing in Tanzania. An admirable feature of the book is that it seeks not only to expound the law, but to discover what East African policies underlie it.

Oluyede, *Administrative Law in East Africa* (1973)

This is the worst book about law in East Africa ever published. Most of it (even the thanks to the author's wife) is plagiarised. What is not plagiarised is inaccurate. The author appears not to have the slightest notion about public administration in East Africa.42


The collected speeches of former Chief Justice Georges of Tanzania. The book is valuable as a source of some of the thoughts of Telford Georges, a man of singular intellect, character, and integrity. The volume is marred by its disingenuous introduction by the editors.


This casebook deals exhaustively with its subject matter and provides considerable non-legal material.

Byamugisha, *Insurance Law in East Africa* (1973)
A short and pedestrian introductory text. There is no discussion of the social and economic functions of insurance. It does not provide adequate depth to be used by students without considerable supplementation. The author's writing style ranges from cloudy to impenetrable.

Harvey, *An Introduction to the Legal System in East Africa* (1975)
This is a massive collection of cases, statutes, and readings running to 906 pages and costing K Sh218.00 in paperback. The material involved was originally brought together for a legal system course at the University of Nairobi. It is a contemporary U.S.-style casebook and is designed to be used for teaching purposes. Because of its size, price, and eclecticism it raises basic questions about the place of U.S.-style casebooks in East Africa, particularly when such a casebook is produced to traditional law book standards. In addition, a casebook is not a neutral teaching tool. The nature and organization of casebooks create a clear ideological framework for the teaching of a given subject. That is, a casebook tends to confine the study of law to doctrinal questions, significantly precluding historical or social analysis.43

Kiapi, *Civil Service Laws in East Africa* (1975)
A dry little book which deals with the legal rules regulating certain aspects of the public service in the three East African states. Little attention is devoted to actual practice or the political contexts in which civil servants operate.

A succinct and straightforward introduction to basic contract law. The author states in his preface that he wishes merely to state the law. The business of social analysis or law reform is left to others.

By East African standards this is a gigantic sourcebook, running to over 1,000 pages. It attempts to deal with the law of all forms of business association—partnerships, companies, co-operatives, parastatals, etc. It is a work of careful scholarship and detailed research. Unfortunately, the high price of this book limits its markets.


This is a collection of papers given at a conference held in Dar es Salaam in 1966. A number of the essays are of value on their own, although few bear directly on the matters suggested by the book's title.

7. Tanzania Publishing House

Thomas, *Private Enterprise and the East African Company* (1968)
The editor put together a very random collection of essays. It is difficult to see what purpose this book serves.

Sawyerr and Hiller, *The Doctrine of Precedent in the Court of Appeal for East Africa* (1971)
This is a ninety-page monograph which deals exhaustively with the subject-matter indicated in the title. Further, it is a good example, from the standpoint of production, of how a book can be published cheaply, with nothing but essentials added to its basic text, and still be adequate for its purposes.

8. Tabor Mission Press

Mwakasungula, *Jifunze Sheria* (1968)
This book, written by a Tanzanian District Magistrate, is of interest as being the only general work on law published in Swahili. It is a competent and unambitious introduction to selected topics in criminal law.

9. Legal Publications Limited

Rogers, *Outline of the Commercial Law of East Africa* (1968)
A sparse, descriptive account designed for commerce students.

A number of rather obvious conclusions can be drawn from this survey. First, it is clear that there has never been a policy with regard to the writing and publishing of East African legal literature. This undoubtedly results from the absence of clear class hegemony. Second, it would not appear that market forces have had a particularly signifi-
cant effect. If market forces had played a major role in determining what was to be published and what was not, one would, it is suggested, find an emphasis on basic student textbooks and a corresponding absence of specialized monographs. But this has clearly not been the case. Basic textbooks have not appeared in many areas until quite recently and, indeed, the coverage is still far from complete. I am personally unaware of any instance where a legal manuscript dealing with an East African subject has been rejected by an East African publisher for commercial reasons. Third, there is a preponderance of non-East African authors. The reasons for this imbalance have already been suggested. It is presently being corrected and one assumes that this process will continue.

E. Journals

There was, until recently, a relatively wide range of legal periodicals being published in East Africa. There were in fact too many.

1. East African Law Journal

This journal was started in 1965 and was largely edited and written by the staff of the Faculty of Law at the University College, Dar es Salaam. The Journal was published under the auspices of Legal Publications Limited, a company incorporated in Kenya. There was a close connection between this company and Oceana Publications, a U.S. company which handled overseas distribution for the East African Law Journal. In 1967, as a result of disagreements with Oceana and Legal Publications Limited, the Law Faculty in Dar es Salaam decided to sever its connections with the Journal and establish its own publication. Thenceforth the Journal was edited in Nairobi. From 1968 to 1971 it was edited at the Kenya Institute of Administration, just outside Nairobi. Since 1972 it has been edited at the Faculty of Law of the University of Nairobi. Difficulties with Legal Publications Limited and Oceana continued to beset the Journal. In 1973 the East African Literature Bureau undertook publication. Overseas distribution, still handled by Oceana, was not satisfactory. Parts of the 1972 volume were never distributed, and the uncertain relationship between Oceana and the East African Literature Bureau gave rise to recriminations on both sides. Originally the Journal appeared four times per year, but

4This is probably a feature of a colonized culture. The same statement could also be made, for example, about Canadian legal literature.
this proved impossible to maintain because of delays in printing and the difficulty of finding sufficient material of acceptable quality. By the end of 1973 the Journal was also far behind in publication. For these reasons it was decided in 1974 to publish only two issues per year. The Journal has been accused of being too Kenyan and narrowly practice-oriented. In fact, the very low volume of material submitted made it difficult to have any editorial policy at all. The 1974 and 1975 volumes arguably indicated a certain broadening of coverage.\textsuperscript{45} Circulation of the \textit{East African Law Journal} has been low by international standards, but reasonable for an East African academic periodical. There are now less than 300 subscribers, half of whom are outside East Africa. It has always been a difficult matter to achieve wide international circulation for East African journals.

2. Eastern Africa Law Review

The Review was started by the Law Faculty in Dar es Salaam in 1968. As indicated, the Review came into existence as a result of the opposition which members of that faculty felt towards financial, administrative, and ideological aspects of the \textit{East African Law Journal}. It has attempted to be a socially, and socialist, oriented periodical. From 1968 to 1971, the Review was published by the Law Faculty in Dar es Salaam, but beginning with the 1972 volume it was published by the East African Literature Bureau. The Review appears three times a year and has a total circulation of about four hundred. It has recently been rather behind in its production schedule.

3. Makerere Law Journal; Uganda Law Focus

The first of these periodicals is published by the Faculty of Law at Makerere University and the second by the Uganda Law Development Centre. Both have appeared sporadically and were of low editorial and production quality. In 1976 the \textit{Makerere Law Journal} began to be published by the East African Literature Bureau.

It is difficult to justify the publication of three university law journals in East Africa. All had the same publisher and printer. They followed a traditional law review format and were aimed at essentially the same market. Their combined circulation per issue was less than 700. All lost a great deal of money. Common sense dictated a rationalization of this situation. The main obstacles to such a rationalization

\textsuperscript{45}I must declare my interest and indicate that I edited the \textit{Journal} from 1973 to 1975.
were the editorial staffs of the *East African Law Journal* and the *Eastern Africa Law Review*. Each feared that amalgamation or integration would result in one journal being absorbed by the other. The editors of the *Review* were particularly concerned lest its socialist orientation be diluted. The situation could only have been rectified by the fiat of the East African Literature Bureau which, as the payer of the bills, had some right to intercede. With the demise of the Literature Bureau, which is discussed in detail below, matters have become uncertain.

4. Dar es Salaam University Law Journal

This is the oldest legal periodical in East Africa, having begun its life in 1964 as the *Journal of the Denning Law Society*. It has appeared at irregular intervals since then, having adopted its present name with volume three. The *Journal* is organized and edited by students, but not entirely written by students.

F. Unpublished Material

A prodigious amount of work has been done in the East African universities, and other institutions of higher education, to produce materials for teaching law. Largely because of the high turnover of staff in these centers, much of this work has been wasted. The creation of a register and depository for unpublished legal material should be an urgent matter.

III. PRINTING AND PUBLISHING

A. Printing

The main printing center for East Africa, indeed for all of black Africa, is Nairobi. There are a large number of private printing firms in Nairobi and many of them possess modern and sophisticated equipment. There is a considerable demand for commercial printing services. This often results in substantial delay in non-commercial jobs. Printing facilities in Dar es Salaam and Kampala are much below the level of those in Nairobi.

Production costs in Nairobi are about as high as in other parts of the world. For example, on a 244-page law book published in 1974 by Oxford University Press the costs were K Sh16,000 for composing and K Sh10,000 for paper and machining. Paper costs doubled over the next two years. The recent opening of a paper mill at Webuye in Kenya has stabilized the costs of paper.
The absence of uniform production standards for East African legal publications raises an important consideration. Tables, running heads, textual footnotes, variable typefaces and other production formalities increase the costs of legal publication. The elimination of unnecessary formalities from the printing process could simplify legal printing without detracting from the quality of the finished product. Today there is considerable variation among East African publishers on these matters. Little direction is coming from lawyers, academics, civil servants, students, and others who have an interest in legal publishing.

B. Publishing

1. East African Literature Bureau

The Bureau was until recently the largest specialist publisher in East Africa. It had approximately sixty titles in production at any one time in addition to publishing more than twenty academic, cultural, and professional periodicals. N.G. Ngulukulu, the director until 1977, acted with considerable foresight and expanded the academic publishing activities of the Bureau. The Literature Bureau became the de facto university press for East Africa. This development was not without difficulty. In addition to having a small editorial staff, the Bureau operated in a number of areas where it did not possess qualified editors. Law was one of these areas, although the Bureau did take the step of sending one of its editors for a one-year, graduate diploma in law at the University of Dar es Salaam during 1974-75. A significant increase in the editorial staff was achieved in 1977, but it was necessary to send these new staff members overseas for training. Nonetheless, many of the Bureau’s editors were attempting to deal with matters well beyond their training and experience. In specialised areas the Bureau was often able to call on the services of outside readers and editors. This was the case with a number of legal titles.

The Literature Bureau was not, of course, a commercial publisher. It was an agency of the East African Community and had its headquarters in Nairobi. It received its funds from the Community and its director was responsible to the Communications Council of the Community. Given its relative freedom from financial worries, the Bureau was able to publish widely without being particularly concerned with

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46 The reader who may have doubts on this score is advised to look at P. Oluyede, Administrative Law in East Africa (1973).
sales. The primary goal of its publishing policy appears to have been one of getting as much material as possible onto the market. The literary or intellectual content of what was published does not seem to have been a central concern. Under the circumstances this was a sound and legitimate policy. The Literature Bureau provided an important outlet for East African writers. Any attempt to work out policies or priorities concerning legal publishing in East Africa would have had to be undertaken in close cooperation with the East African Literature Bureau.

In 1977, after a life of ten years, the East African Community effectively collapsed. This is not the place to investigate the reasons for that collapse in detail. The most important factors involved were undoubtedly Field Marshal Amin and the differences in social policy and level of economic development between Kenya and Tanzania. The Literature Bureau was one of the casualties. It appears that the Bureau is now at the mercy of its creditors who have, among other things, seized the proofs of the most recent edition of the East African Law Journal. The Bureau's demise is bound to have disastrous effects on academic publishing in general and legal publishing in particular. At this stage it is impossible to predict how, and indeed whether, the gap created by its disappearance will be filled.

2. Oxford University Press

Oxford is the most prestigious publisher in East Africa. It has produced some titles of high intellectual and production quality. It has done little legal publishing and will probably do less in the future. My impression is that it intends to do only a limited amount of specialized tertiary publication in the future and that this will be predominantly in cases where particular titles have received subsidies from one source or another. Oxford does not have a resident legal editor.

3. Legal Publications Limited

This organization has been moribund for several years. The idea of having a specifically "legal" publishing house in East Africa appears, in the abstract, to be attractive. The experience of Legal Publications casts some doubt on its practicability. If a legal publishing house is to be workable at some future date, the experience of Legal Publications suggests some valuable lessons. First, ongoing subsidies from some source are essential. Second, a core of full-time editorial and production staff must be created and maintained. Third, there must be wide-
spread involvement by persons connected with the legal system in the process of establishing publication needs and goals, editorial and production standards, and marketing criteria. Finally, such an organization must be local in character and not simply a branch plant of external interests. Legal Publications died largely because it was conceived as an East African satellite of Oceana Publications. Its management was left in the hands of a firm of commercial booksellers who would not be expected to take an interest in the development of East African legal literature.

4. Tanzania Publishing House

This company was established under the National Development Corporation to function as a national publisher. Its main work has been the preparation of school texts. It has also produced a number of useful monographs on political economy. In the last few years these have been of a strongly ideological nature. Tanzania Publishing House has a small, non-specialized, editorial staff.

5. East African Publishing House

In the middle and late 60's it appeared that East African Publishing House might become the leading academic publisher in East Africa. Unfortunately, the firm encountered serious financial problems. It is not likely that it will play a significant role in legal publishing in the foreseeable future.

6. Longman's (East Africa)

Although Longman's has done a significant amount of legal publishing elsewhere, it has only tentatively entered this field in East Africa. It does not, however, have a policy objection to publishing law books.

It would appear that legal publishing has been a random business in East Africa. Although the East African Literature Bureau had become established as the dominant legal publisher, this appears to have been a function of the kinds of manuscripts submitted to it rather than the result of a clear policy choice. Legal publishing has not developed as a specialized field. In my view this explains the uneven quality of what has been published so far. The fate of Legal Publications Limited should not be taken to have established forever the impossibility of specialized legal publishing in East Africa. It does, however, make clear that if some form of specialized legal publishing is going to succeed it will have to be much better planned and co-
ordinated than was Legal Publications. As will be suggested such a development seems unlikely at present.

IV. **Finance**

A. **Inflation**

East Africa has not escaped current inflationary trends. This has affected, and will continue to affect, legal publishing in a number of ways.

First, paper costs have increased drastically, more than doubling over the last three years. Until 1976 all the high quality paper used in book publishing had to be imported and there was no way in which its price could be controlled, except through internal subsidies. The paper mill at Webuye in Kenya began operations in 1976 and since then all books published in Kenya have been printed on local paper. The prices for Webuye paper are not, however, significantly below world prices.

Second, new printing equipment and spare parts must be imported. The prices of such items are subject to the same inflationary pressures as are the prices of other imported manufactured goods. As foreign exchange becomes scarcer and its expenditure more stringently controlled, it is unlikely that the importation of printing equipment will receive a high priority.

Third, rising prices lead to demands for higher wages. Although this is a significant factor in East Africa, where national bourgeoisies aggressively suppress union activity, increased labor costs will lead to either higher book prices, reduced production, or both.

Finally, books are, in any economy, a marginal commodity. As prices rise generally, and particularly as the price of books rises, one can assume that sales will decline. This is especially true in East Africa where there is not a wide reading public. An exception is found in the school textbook market. The introduction of free primary education in Kenya (1974) and Tanzania (1978) has created a boom in this market.

B. **The General Situation**

Inflation serves only to compound the financial problems besetting legal publishing in East Africa. Prominent among these is the limited size of the market. Jackson's *The Law of Kenya* sold 6,000 copies, an extraordinary figure. Assuming a relatively sound product, an East

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African publisher can usually expect to sell 1,000 to 1,500 copies of a law book within East Africa. A book will normally be on the market at least three years before sales of this order are achieved. This suggests that if prices are not to become absurdly inflated, two complementary activities are called for. The first is an efficient and aggressive system of external marketing. Oxford University Press enjoys a great advantage in this regard. Its international organization permits it to promote and sell books all over the world. Going to the other extreme, the East African Literature Bureau had no system for overseas distribution. While it took part in book fairs in various foreign countries, it had no offices and only one agent outside East Africa. The book fairs yielded few benefits and the Bureau's agent in the U.K. was a constant source of trouble. The Bureau could only respond to direct orders for specific titles. It is obvious that this was not a happy situation.

Assuming that an analysis of the problems of the Literature Bureau may be of benefit for the future, there would seem to have been two alternative approaches it might have tried. Either the Bureau could have made a general arrangement with an international firm to distribute all its titles overseas, or it could have entered into separate arrangements with specialized publishers for the distribution of specialized titles. The experience of Tanzania Publishing House with Macmillan's helped to make the Literature Bureau wary of entering into relationships with foreign publishers. It was the view of T.P.H. that it received very little positive benefit from its connection with Macmillan's, which appeared to see the venture as a device for dumping unsellable school texts in the Tanzanian market. The Literature Bureau very correctly did not regard overseas distribution as an end in itself.

There is a further problem concerning overseas distribution. Until very recently, East African publishers could rely on selling three to four hundred copies of almost any academic title to university libraries in the United States and two to three hundred in Europe and the U.K. These guaranteed markets operated as a kind of built-in subsidy. Today, however, overseas universities are not in the same financial position. Their libraries have adopted more selective acquisitions policies. Sales in this market of the earlier volume can therefore no longer be seen as automatic.

Second, there is, as has been noted, a need for subsidizing legal publishing in a systematic fashion. In this regard the East African
Literature Bureau was in an advantageous position. By the nature of its constitution it enjoyed continuous subsidization. In addition, since it was a public body, it could potentially receive a certain amount of assistance from external sources. In 1973 the Canadian Government provided the Bureau with a small amount of paper and the Norwegian Government made the services of an editor with experience in periodical publishing available for one year. Commercial publishers are not so fortunate. Where they do receive publication subsidies, such subsidies will normally be arranged by the author of the work in question. Nothing along the lines of a social science research council exists in East Africa, so that subsidies will ordinarily have to be sought from external sources. As a final point, government printers, like the East African Literature Bureau, are automatically subsidized. This suggests that they might be able to undertake a broader role in legal publishing beyond the production of statutes and other official documents. It is interesting in this connection that the Kenya Government Printer has published for general consumption various materials prepared for teaching purposes by the law department of the Kenya Institute of Administration.

V. PLANNING AND COORDINATION

It should be clear from the foregoing that a systematic approach to the publication of legal literature in East Africa does not exist. Such an approach appears, in the abstract, to be desirable for the following reasons.

First, an attempt could be made to determine with some degree of precision the needs which an East African legal literature should be filling. This would not be an easy process since, for ideological reasons, many of the constituencies involved hold fundamentally different perceptions of these needs. Nonetheless, certain questions are susceptible of resolution. For example, it could be determined whether legal materials should be published in Swahili, and if so, what sorts of materials and in what form. Second, if it is possible to clarify the needs involved, it should then also be possible to articulate broad goals and to establish priorities with regard both to the content of what is to be published and the form in which it is to be produced. In this regard it would be useful to assign publication and content priorities with respect to four, more-or-less distinct groups of law book consumers—practitioners, law students, non-law students, and the general public. Third, any degree of planning and coordination is bound to limit the effect of financial pressures. The possibility of publishing.
questionable material could be minimized, thereby avoiding a great deal of waste. Standardization of format and layout would permit savings of production costs. A coordinating body could receive and distribute subsidies and grants and develop a system for external distribution. Finally, an established system of coordination should contribute to the formulation of professional, social, intellectual, and literary standards for East African legal publishing.

The creation of a rationalized system for publishing legal literature in East Africa has certain attractions. Given existing conditions, however, the creation of such a system is unlikely and, even if it were possible, it is not certain that it would lead to desirable results. There is presently a respectable body of East African legal literature. Much of it is bad and much of it is of questionable relevance to social reality in East Africa. The process of producing it has often been wasteful and costly. But it is there. A structure along the lines discussed could certainly be created. It would be quite another matter to find the will necessary to make it work in contemporary East Africa. Antipathy between academics and bureaucrats, ideologically-based mistrust, careerism, corruption—all these would affect any attempt to establish a system of the type discussed. This can be illustrated by looking at one aborted initiative. Problems of planning and coordinating legal publishing were discussed at the meeting of the East African Law Teachers Association held in Dar es Salaam in December 1973. The possibility of establishing a committee to advise the East African Literature Bureau was canvassed. The Bureau itself was eager to see such a committee established and sent one of its editors to attend the meeting. It was agreed on all sides that such an advisory committee would be a good thing and that it should be established by the East African Law Teachers Association. Nothing was ever done. Indeed, this Law Teachers Association itself is now moribund.

VI. LAW LIBRARIES AND BOOKSELLERS

To emphasize the point made above concerning access, it is self-evident that legal literature only has a value if it is available to be read and used. Significant collections of legal materials are found in East Africa in university libraries, High Court buildings, Attorney-Generals' chambers, and government administrative training institutes. For the legal practitioner the position is good. He will have little or no difficulty gaining access to any of these collections, although in fact few practitioners in East Africa read very widely outside the law reports and the
statute book. The student will have to rely on the collection available in his own institution. He will find it difficult to gain admittance to the High Court library or the Attorney-General's library. A member of the general public will find it almost impossible to use any of these collections. Public and national libraries do make certain legal materials available, but their collections tend to be rather haphazard. It should be stressed that almost all the facilities described are to be found only in the capital city. Access to legal literature on the part of anyone living in the rural areas is limited.

The value of a relatively large collection of legal materials is, to a great extent, a function of the skill and energy of the librarians involved. The creation of a cadre of trained and service-oriented law librarians would be a major contribution to the development of national legal literature in East Africa. It would be idle to imagine that such a course of action is likely at present to receive a very high priority in the allocation of public resources.

Apart from one or two shops in Nairobi, the situation with regard to East African commercial booksellers is not encouraging. The great bulk of what is offered for sale in these shops comprises school texts, religious tracts, or tourist pap. One does often find legal literature in bookshops, but it is clear that ordering is random. There is no specialized legal bookseller in East Africa. If one of the aims of developing a national legal literature is to increase popular consciousness of the law, then serious efforts must be made to deliver this literature to the public. It would seem that a program to do this is also unlikely to merit a very high priority.

VII. CONCLUSION

This essay has focused on the ideological, as opposed to professional or doctrinal, aspects of legal literature. It has sought to indicate that legal writing in East Africa today represents a process of groping towards an appropriate mode of expression, in terms of its form and content. It has also suggested that this is not a historical process, that the development of legal literature is only intelligible if seen in the context of the concrete historical conditions of East Africa. This requires an analysis of class struggle in East Africa which is directed specifically towards the question of hegemony and which concentrates

A useful collection of writings describing a similar process during the first century of the United States is THE LEGAL MIND IN AMERICA: FROM INDEPENDENCE TO THE CIVIL WAR (P. Miller ed. 1962).
on the hegemonic functions of legal literature. Such an analysis arises from a perception that legal writing, and, for that matter, any category of writing, cannot be socially neutral. Indeed, legal literature has traditionally played a major ideological role by seeking to present itself as neutral. An exclusive concern with doctrinal questions serves as a means of removing other broader, and more important, issues from the agenda. The case method of legal education, for example, operates to define political, social, and historical questions as irrelevant and, therefore, to prevent such matters even being considered.

One must not exaggerate the significance of legal writing. It is both a minor feature of the legal system itself and of the wider intellectual, ideological system. Legal writing is, and has been, directed towards a narrow and specialized audience. Nonetheless, the study of legal writing can be a useful vehicle for expanding understanding of the historical origins and social functions of legal systems.

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50See the forceful expression in Shivji, From the Analysis of Forms to the Exposition of Substance: The Tasks of a Lawyer-Intellectual, 5 E. AFRICA L. REV. 1 (1972).

51See sources cited in note 43 supra.

52Although Blackstone's Commentaries, as an extreme example, did shape the social and political thinking of several generations of Englishmen and Americans of a particular class.

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