CHAPTER 2

THE CONCEPT OF A NATIONAL LEGAL LITERATURE

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When entering even a quite modest library, if one pauses to contemplate the contents as a whole, it requires a feat of imagination to envisage all the patience and learning, the obsession and the insight, the agony, the sweat and the love, which went into creating such a storehouse of wisdom, pleasure and knowledge - and so much dross. Even the most ardent book-lover can accept that almost any collection of books contains much that is trivial, foolish, out-dated, repetitious, or misleading; that libraries are monuments to human folly and absurdity as well as to human achievement; but it requires a considerable degree of philistinism or despair to conclude, after such an exercise, that overall the effort has not been worth the cost. One has to be a bit of a romantic to have a realistic vision of a library.

In modern times specialists in communication, librarians, sociologists, and computer experts are among those who have developed a variety of techniques for systematically analysing bodies of literature, both the products and the processes of creation and production, from a number of points of view. Lawyers can learn much from content analysis, from studies of information retrieval, from studying the economics of publishing and, more generally, from the sociology of knowledge. But analytical approaches and technological innovations have their limitations as well as their uses. However suggestive and illuminating they may be, they need not totally supplant our vision of literature as being the result of an untidy, largely unplanned, and conspicuously lavish expenditure of human effort.

To obtain a realistic and balanced picture of a nation's legal literature, actual and potential, similarly requires a combination of vision, hard-boiled scepticism, and informed analysis. It needs imagination to envisage the totality of the heritage of English or American legal literature; as it does to envision what Nigerian, Sudanese or Tanzanian legal literature might be like in twenty or thirty years time, if it realizes only half of its potential. But it will also require hard-headed, detailed, down-to-earth analysis of quite unromantic matters, if such aspirations are to have much hope of achievement.

In this paper I wish to discuss analytically, sometimes at a quite mundane level, the notion of a national legal literature and possible strategies and tactics for developing a corpus of work which can contribute to a healthy legal culture. My opening flight of fancy was intended to signal some of the limitations of this approach: literature is too fascinatingly complex to surrender to simple rationalism; it accumulates more by uncoordinated effort, serendipity and stubborn persistence than by planning and directives.

Yet analysis and an element of planning have their uses. In particular, there are a number of people involved in the creation, compilation and production of literature who could benefit both from seeing their own special problems in a broad context and from certain specific kinds of guidance: the postgraduate student looking for a thesis topic; the legal scholar mapping out his research plans for the next few years; a university appointments committee assessing the writings of candidates for a Chair or lectureship; the first Director of a Legal Research Institute; a Ministry of Justice preparing a budget; an international foundation considering its policies towards subsidies for publication; a Government printer handling law reports; a commercial publisher or a univeristy press considering whether to accept a particular legal manuscript for publication, and a reviewer of a book on a legal topic, are all examples of people or bodies confronted with choices which have a bearing on legal literature. And, up to a point, such choices can and should be informed and reasoned and based on articulated standards and priorities.

The concept of a national legal literature provides one possible starting point for approaching a variety of issues. By setting a broad context for discussion of specific topics such as law reporting, the statute book, educational materials for law students, communication of research findings, the economics of publishing, and the needs of the ordinary citizen for access to information about the legal system, it may be easier to make a realistic and balanced appraisal of needs and priorities, of gaps and imbalances, of opportunities and constraints in a particular country and of possible strategies for improvement.

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The concept of legal literature is necessarily imprecise. For present purposes it is useful to interpret the terms "legal" and "literature" quite broadly to encompass any written material which contributes to the dissemination of information or ideas about matters "legal", in a broad sense. In this usage the term encompasses books about law as well as books of law, legal biographies, anthropological studies of customary law,[1] accounts of famous trials, and where appropriate, even legal novels, as well as law reports, digests, citators, text-books and the statutebook. Similarly under "literature" could be included not only printed books and journals, but also unpublished records, cyclo-styled educational material, judicial circulars and so on - and similar considerations apply to other media, such as recorded broadcasts, films, computer programmes and cassettes which are now increasingly used in continuing legal education in the United States. But the main focus here will be on published writings for relatively specialized audiences.

Literature, like scholarship, is of course international as well as national. It is hard to envisage a worthwhile study of land law in Tanzania or of sanctioning processes in Zambia which was not influenced by thinking from elsewhere and which would be of no interest in other African countries or the world at large. But scholarship can sometimes be too international. I intend to concentrate here on the localization of legal literature, that is to say on what is involved in developing a corpus of works which deal with local problems and phenomena in a manner which may contribute to the better understanding and functioning of the local legal system.

The creation, production, dissemination, use and evaluation of literature is clearly a complex process which can be viewed from a variety of perspectives. One can look, for instance, at the standpoints and the problems of each of the types of participants in this process; one can look at the original author (whether he be researcher, compiler or editor) and ask questions about his situation, his motives, his conception of what he is trying to do, the assumptions and skills and qualities he brings to the task, the kinds of decisions he has to make, the source material and methods of approach open to him, the constraints he is working under and so on. Again, one could look at the users or "consumers" of legal literature: who they are, their book buying and reading habits, the relationship between their conceptions of their role and their uses of legal literature and, a more elusive form of enquiry, the relationship between this and their efficiency in performing their roles. This is almost unknown territory so far as research related to law is concerned, but I suspect that it is potentially a very rich one. It merits a short digression.

There is a well-known English shaggy dog story about an elderly and highly respected local doctor who had a thriving practise. One year when he decided to go on holiday, his patients begged him to make sure that while he was away they would be adequately looked after. So he advertised for a locum and selected a highly qualified younger man. When the latter arrived, he showed him round his house and surgery in a most hospitable matter. At the end of the tour he said, "I wish to beg one favour of you: make yourself at home, do anything you like, but please do not open the cupboard under the stairs." The young doctor agreed, but after some days this strange request began to prey on his mind. What was his host's secret? Could there be a dead body under the stairs? Or a store of illegal drugs? In the end his curiosity got the better of him and he opened the cupboard door. He was swamped in an avalanche of paper: years of unopened copies of drug companies' circulars and medical journals. The much respected doctor had not kept up with medical literature for thirty years.

Our own profession has similar stories. You may have heard the one about the old-fashioned English solicitor who had a reputation for great erudition. His office was lined with impressive leather-bound books from floor to ceiling on every wall. Whenever a client came to see him with a problem, the solicitor would pause for a moment, and then say something that sounded like "2 Meeson and Welsby 369". He then called for his elderly and decrepit clerk who would fetch a ladder and with wheezing and puffing fetch down a heavy volume, usually from thetop shelf. One client, more observant than the rest, noticed that on two separate occasions the same volume of the *English Reports* had been fetched to deal with two quite unconnected problems. He managed to sneak a look at the volume, to find thatit was an out-dated edition of *Everyman's Own Lawyer*, bound up to look like a volume of the *English Reports*.[2]

Every reputedly learned profession probably has stories of this kind. They may be used by outsiders to suggest that members of the profession are quacks or hypocrites; but they may serve within the profession itself as a sort of counter-mythology. Sometimes the mythology of the common law presents an image of even quite humble practitioners as men who spend long hours poring over enormous ancient tomes and crumbling parchments. The counter-myth suggests that a man may be a successful practitioner even though he rarely, if ever, resorted to books. I hope that serious empirical investigations into the reading habits of private practitioners and other lawyers in my country, or yours, would not reveal the notion of a learned profession to be a hollow fiction; but such an investigation might reveal that some widely held assumptions about lawyers' uses of literature are quite unrealistic. For instance, one wonders whether courses and literature on techniques of using a law library are based on a realistic picture of the habits, circumstances and needs of law students and legal practitioners. Certainly some recent research into undergraduate reading habits in England (not confined to law) suggests that there may often be a wide gap between teachers' expectations (and recommendations embodied in reading lists) on the one hand, and student practice, on the other.[3]

This kind of research is sometimes characterized as study of the "information needs" of lawyers. It has received some stimulus recently, partly because of interest in possible computer applications to law.[4] But it might be more appropriate, especially in Africa, if a start were made by attempting to get a realistic picture of the actual use made of fairly standard kinds of books such as law reports, digests and treatises. Even elementary research of this kind is fraught with difficulties. Moreover, while description of existing practices is a good starting-point, by itself it will not take us very far. For the book habits of some lawyers and law students may be quite simply bad habits, judged by almost any standard. And, although relevant, it may not be adequate to accept unquestioningly individuals' assessments of their own "information needs". For example, as a teacher I am well aware that my students do not always accept my recommendations about reading: sometimes they are lazy; sometimes I have expected too much of them; sometimes they may have realistic notions about how to outwit the examiners or play the system, thereby possibly frustrating desirable learning objectives; but sometimes student mythology about teachers' and examiners' expectations and criteria is unrealistic or philistine, and ultimately self-disserving. In short neither teachers' nor students' impressions of their "information needs" are a substitute for a more detached analysis of educational objectives and efficient ways of achieving them.

Similar considerations apply to practising lawyers of various kinds: it would be interesting systematically to obtain lawyers' assessments of their information needs and the extent to which they are being met by existing arrangements; but this alone would not be enough: some individuals may be lazy or incompetent or unduly parsimonious about expenditure on books; legal literature is a rapidly changing and increasingly complex phenomenon; individual lawyers may not be aware of the range of possibilities or up-to-date in their knowledge of recent developments; attitudes to and uses of literature are often based on habit, inertia and assumptions which may be out-dated or irrational or dysfunctional in some way. Few individuals give much thought to such matters. But the rationalization of legal literature requires analytical approaches using techniques of a quite specialized kind. And to develop criteria of information needs of lawyers which are not based merely on impression and prejudice, requires complicated and detailed analysis of the actual and potential tasks which law-trained people do or might perform and the extent to which various kinds of written material may help or hinder the efficient performance of these tasks. Thus, as with legal education, so with legal literature, serious analysis quickly pushes the enquirer into studying the legal profession itself.[5]

A rather different approach to legal literature is through studying the economics of law publishing. The recent spiralling of publishing costs, which has been compounded by such matters as the world paper shortage and the cutback of university library budgets, especially in America, provoked a crisis in scholarly publishing. In the early seventies this crisis stimulated some re-thinking (or in come cases first-time thinking) in this general area. In the United Kingdom, the Society of Public Teachers of Law set up a working party to "investigate problems of legal publishing as they affect legal education and legal scholarship and to make recommendations".

One fact emerged clearly from the study: there are many desirable kinds of legal literature which are not commercially profitable, even in a large jurisdiction. To leave the publication of legal literature to the operation of market forces is likely to have a number of undesirable consequences; in small jurisdictions, with very limited markets, it is likely to be disastrous, yet small jurisdictions are often poor jurisdictions economically.

It would not be appropriate here to try to examine in detail the complex topic of the economics of law publishing and distribution. But one thing is clear: in most less developed countries there are in the coming years likely to be severe economic constraints on building up a satisfactory local legal literature. If progress is to be made in resolving these problems serious attention needs to be given to such matters as: ways of reducing costs of publication; ways of increasing and exploiting the market for law books and law journals and law reports; ways of ensuring that there are adequate and sensible provisions, policies and priorities for subsidizing, directly orindirectly, the publication of significant works and so on. This is an area in which law schools can make a significant contribution by studying and analysing the problems locally and informing themselves of the possiblitiies, for academic lawyers are well placed to form a link between the legal profession and the world of publishing. To make one specific suggestion: an efficient international distribution mechanism for African legal publications, both governmental and other perhaps on a pan-African basis, could do much to relieve the economic pressures. There is an international market to be exploited for the benefit of local legal literature. At present such exploitation as there is appears to be of a reverse kind.

The whole problem of the economics of law publishing is in need of systematic study. From my own amateurish and preliminary enquiries three tentative general propositions have so far emerged. First, that it is an almost essential precondition for the development of a satisfactory system of publication of primary sources of law, such as statutes, law reports, and reports of other important tribunals, that the responsibility should as a matter of principle be accepted by governments: that their social importance should be assessed and given due recognition and that they should not necessarily be expected to be profit-making ventures. Second, that the economics of the market have had a much more profound, and often distorting, effect on legal scholarship and legal literature than has been appreciated in the past. Third, that the economic problems of *academic* law publishing are by and large shared with scholarly publishing in general; that the most obvious solutions, such as the development of subsidy schemes and university presses, belongs as much to the more general world of scholarship as to the specialized world of law.

So far we have looked briefly at legal literature mainly from the point of view of the information needs of users and the economics of publishing. There are, of course, other participants in the process of creation, distribution, and the use of legal literature: grant giving bodies; booksellers; wholesalers; librarians; editors; and of course, authors. Before proceeding to consider some particular types of product, it is worth pausing to comment briefly on one participant, the position and role of the critic of legal literature.

LEGAL LITERARY CRITICISM

A striking feature of legal literature in the western world is that there appears to be a total absence of any coherent theory or set of standards for legal literary criticism. Certain kinds of literary products are reviewed, others are not. Little connection is seen between the writing of case notes, the writing of notes on recent legislation and book reviews. The amount of space devoted to book reviewing in some legal journals appears to bear little relationship to the quality of this kind of writing or the trouble which is expected to be taken over it.

All too often, especially in respect of book reviews, criticism is conceived of as a mixture of praise and excoriation or ritual eulogy rather than in terms of the relatively dispassionate application of a set of articulated standards. Yet from the perspective of a concern to develop a national legalliterature, serious criticism has an important role to perform. Of course, individual book reviews can serve one or more of a variety of functions, such as to disseminate information about a work, expose specific errors and faults, pass judgment on its usefulness for a particular purpose, provide feedback and encouragement (or the reverse) to authors and publishers and so on. Many book reviews in law journals do this kind of job quite adequately,[6] but there is a more fundamental role for serious legal literary criticism. The professional theatre, film or literary critic is concerned not only with individual performances, productions or works, but also with general trends and the overall state of the art; there is an analogous function to be served by criticism in any academic field. Sustained and serious criticism can map ignorance, point to gaps and imbalances, expose and examine concealed assumptions in the context of some general picture of the state of the literature on a given subject at a particular moment of time. It seems that such a conception of criticism is not a particularly well developed aspect of our shared tradition of academic law. But it is a natural corollary of the approach to legal literature advocated in this paper.

In order to be able to carry out this role competently the critic needs certain qualifications: for instance, an awareness of the present state of the literature in the area, some conception of needs and priorities, of gaps and imbalances, and of markets and users; an informed appreciation of the values and limitations of various kinds of literary form and their suitability for different purposes; a realistic understanding of economic and other constraints on research, writing and publishing; a sympathetic awareness of the problems of authors and publishers; and a set of qualitative standards respecting scholarship and style, which he is prepared to articulate and to defend.

PRIMARY SOURCES, WITH PARTICULAR REFERENCE TO LAW REPORTING IN AFRICA

In what might be termed simple (as opposed to pluralistic) common law jurisdictions, such as England or the various jurisdictions of the Unitied Staes, by far the most important primary sources of law are traditionally considered to be: (a) legislation (superior and subordinate) and (b) judicial decisions. According to orthodox doctrine, these are supplemented to a relatively small degree by custom, academic writings and so on. In pluralistic common law jurisdictions, such as the majority of English speaking African countries, the situation is recognized to be more complicated. Legislation and judicial decisions remain very important, but account has to be taken of customary law, religious personal law and so on. The main criteria by which one would evaluate a nation's legal literature in relation to its primary sources are probably relatively uncontroversial: I would suggest they would require that they should be (i) as comprehensive as possible (ii) up-to-date (iii) reliable (iv) accessible to the main users, and (v) available in a form which takes into account the needs of the user in respect of efficiency and convenience.

It is a striking commentary on the state of legal technology in the modern world that it is doubtful whether many, indeed any, jurisdictions come very near to satisfying these criteria. Certainly my own country hardly provides a model: a series of reports by the Statute Law Society has highlighted the extraordinarily primitive state of the Statute Book in England[7] and these criticisms have by and large been confirmed by the report of the Renton Committee on the Preparation of Legislation:[8] indeed, criticisms have been made of it in respect of its comprehensibility, unnecessary bulk, and almost total disregard of the convenience of users. The system of law reporting in England is rather less primitive than our Statute Book. It is a strange feature of the English system that publication of this important kind of official document has been left largely to private enterprise in the shape first of individual entrepreneurs, and latterly of commercial publishing houses; since 1865 there has been a semi-official council set up, not by government, but by members of the legal profession. It was incorporated in 1870, but it was only in 1971 that the English Court of Appeal held that The Council of Law Reporting was entitled to register as a charity on the ground that the publication and dissemination of reports of judicial decisions was a purpose beneficial to the community in that it made a significant contribution to the sound development, administration and knowledge of the law; alternatively (with Russell L.J. dissenting) that the preparation of law reports could be regarded as being for the advancement of education.[9]

It is perhaps symbolic of the priority given until recently by successive British governments to the question of efficient documentation of primary sources of law that it has recently been estimated that "it would take approximately 60 years to complete consolidating legislation in force at the present time if work is carried on at the rate of the last few years,"[10] without any new legislation being introduced in the meantime. A research project by the Queen's University, Ontario estimated in 1970 that the official list of treaties maintained by the British government underestimated by about 40% the treaties which in fact related to Great Britain.[11]

I give these examples to make two points: Firstly, that as a legal system grows more complex, attention needs to be given to ways and means of ensuring that the system of publication of primary sources of law is technologically sophisticated enough to cope with the traffic it has to bear. Thus as many modern legal systems resort to computers and other modem technical devices is becoming increasingly a necessity.

Secondly, it should be axiomatic in the modern world that the primary responsibility for publication and dissemination of primary sources of law lies with governments, and that, if some of the most elementary criteria of a just and efficient legal system are to be taken seriously (such as that the law should be promulgated in a comprehensible form, and that citizens should have access to the legal system) then a reasonably high prioity needs to be given to the development of an efficent system for disseminating information about primary sources.

Against this background I propose to make some rather general remarks about law reporting in common law African jurisdictions. During the colonial period, by and large, law reporting was not highly developed and was mainly a matter of individual initiative. It is not entirely surprising that colonial governments gave them a low priority: there was no great pressure to hasten the adjustment of common law doctrines to local conditions through judicial innovation; judges and the legal profession were to a large extent content to rely on English authority, such as law reports when they were available, or otherwise secondary sources such as *Halsbury*. Until the establishment of local law faculties, there was no demand for systematic local law reporting from law teachers or law students. It is perhaps not entirely a coincidence that the two most important commercially produced series of law reports during the colonial period, the *Eastern Africa Law Reports* and the *Rhodesia and Nyasaland Law Reports* (which ended in 1963) evolved in jurisdictions where there were relatively prosperous, expatriate dominated local bars.

That there were any law reports at all during the colonial period was largely thanks to the initiative of individuals. King-Farlow and Renner in the Gold Coast and

Nigeria, Stanley-Baker in the Sudan, Smith in Lagos and Murison in Zanzibar, are all examples of individual officials who appear to have taken private initiatives, sometimes with government support, in editing and arranging for publication of collections of cases. But, with a few notable exceptions, it is difficult to disagree with one commentator who, in referring to such law reports as there were in the colonial period in Africa, says "they were law reports in the classic English tradition: randomly selected, negligibly edited, atrociously indexed and sporadically published."[13]

With the coming of independence the situation changed: in some countries, such as the Sudan, systematic law reporting developed relatively rapidly after independence; in some jurisdictions it remained much as before and in a few it declined. Recently projects like the *African Law Reports* and initiatives by individual governments have led to a significant improvement in the overall situation - and it is encouraging to learn that law reporting was on the agenda of the meeting of the Commonwealth Law Ministers in Lagos in 1975 and has been the subject of two recent studies sponsored by the Commonwealth Secretariat.[14]

Perhaps two factors in particular created a climate more favourable to the introduction of systematic law reporting in the the post-independence period: firstly, the development of a legal system suited to local needs and conditions was perceived to be a part of nation building, and in common law jurisdictions the regular reporting of locally decided cases was seen to be one of the ways of developing a genuinely national legal system. Secondly, the establishment of local law faculties, which by and large coincided closely in time with the achievement of independence, created a new class of local user: if law students were to learn the law of their country they needed to have access to locally decided cases. The same was true of doctrinally-oriented scholars who wished to research into local law.

Although law faculties and individual academic lawyers may have helped to stimulate efforts to improve the systems of law reporting in Africa, there are some factors which suggest that it would not be appropriate for law faculties as institutions to take on primary long-term reponsibility for this kind of work. First, the job, if it is to be done properly, requires specialised training and needs to be part of the regular duties of one or more persons who are specifially employed for the task. Full-time scholar-teachers of law may be unwise to commit all, or a very substantial proportion, of their research time to the kind of editorial work involved in editing law reports and digests. In terms of current criteria of academic advancement they would be unwise to undertake this kind of work for substantial periods of time, yet a period of apprenticeship is highly desirable. More important, however, is the point that law reporting should be a responsibility of government and while law faculties may constructively contribute to this at certain times (as law faculties have done in Sudan and Nigeria, for example), this should not obscure the point that this is a case where the job should be done where the responsibility lies.

If the foregoing analysis is correct, then it is clear that in order to achieve an orthodox system of law reporting which satisfies the criteria enumerated above, that is to say that it is comprehensive, reliable, up-to-date, and efficient and convenient from the point of view of the user, then governments need to be persuaded of the following points: (a) that law reports, like statutes, are a primary source of law and as such it is an important responsiblity of government to ensure that an efficient system of law reporting is established and maintained; (b) that like many other forms of socially useful literature, law reports may not be a commercially profitable kind of publication. An element of subsidisation of both editorial and publication costs is likely to be necessary especially in smaller or poorer jurisdictions. In this respect it is interesting to note that in Ontario the annual license fee for practitioners has for many years included an element which is treated as a subscription to the *Ontario Reports*. Nevertheless the Ontario Law Reform Commission has recently recommended that some of the financial burden of publishing the *Ontario Reports* should be borne by the provincial government, because "the provision of proper law reporting is a function of the administration of justice".15 (c) Responsibility for editing is specialized work: it needs to be done by lawyers who have also had special training for the purpose and who are employed to do the work as part of their normal duties. (d) There is a not insignificant potential international market for national series of law reports, both in other African jurisdictions and in the world at large; some of the costs of preparing and publishing law reports in smaller jurisdictions could be reduced or possibly even covered if an efficient system of international distribution of such publications were developed, perhaps through an international consortium. (e) While help and advice with the establishment of an efficient national system of law reporting can be given through foreign aid projects, such as the *African Law Reports* in the long-run the continuation of such a system must be a local responsiblity.

So far I have accepted as axiomatic one general assumption about law reporting in the common law world, viz. that the only reportable cases are cases of courts of superior jurisdiction whose decisions have precedent. Typically this means decisions of

High Courts and value appellate courts. But a system of legal literature which confines its attention to the decisions of such courts is in danger of re-inforcing an imbalanced, perhaps even a distorted picture of the legal system as it really is. We all know that not all significant law-regulated social behaviour leads to disputes; that only a small proportion of disputes reach any courts, as contested cases, that in most countries cases, dealt with by Superior Courts not only represent a small proportion of all cases decided by courts, but may well also only represent a small proportion of *types* of cases which reach courts or which are the subject matter of non-litigated disputes. Furthermore, if the cases of Superior Courts deemed worthy of reporting are selected by orthodox criteria, the sample of cases appearing in the law reports may be biased even more significantly, judged against cases reaching the courts or disputes in society in general.

Let me illustrate this by two examples from the Sudan. First, an anecdote: when editing the *Sudan Law Journal and Reports* I noticed that nearly all the criminal cases sent to me for reporting related to homicide. Hardly any cases relating to other offences, or even to certain other aspects of homicide which regularly posed problems for judges, ever reached the editor. I happened one day to be consulted by one of my former students, who was then a magistrate in one of the three towns in Khartoum, about the interpretation of a section of the Penal Code dealing with house trespass. Not only were we unable to find any reported or unreported case of this offence which had reached the High Court, but we also discovered on investigation that within the three towns many cases of house trespass were coming to the courts, yet different interpretations of the ingredients of the offence were being attached to this section by different courts. In one of the magistrates courts "building" was being interpreted, following Indian authorities, to be restricted to any covered building; but in courts in the other two towns it was being interpreted to mean the compound or 'hosh' - equivalent to the English close - so that anyone entering within the compound, whether or not he actually entered a covered place was held to be guilty of the offence. Although there was a system of judicial circulars, there was at that time no efficient institutionalised means of communication between court and court within the Sudan legal system for ensuring consistent interpretations of provisions concerning minor offences.

Another example of the way in which conventional law reporting may involve serious gaps and imbalances is to be found again in the *Sudan Law Reports*. A preliminary exercise in content analysis of the period 1956-1970, that is to say the first fifteen years of relatively contemporaneous law reporting, produced the following figures:

(1) There are 447 sections in the Sudan Penal Code;
(2) In a period of fifteen years, only 38 of these sections were referred to in reported cases;
(3) Nearly half of the section references related to culpable homicide or attempts to commit culpable homicide or to other aspects of homicide.
(4) 58% of the references were to offences affecting the human body; 13% to offences against property - the second largest category. Over a high proportion of offences there was not a single reported case.17

If these figures were set against criminal statistics (which has yet to be done), it is not improbable that it might give some support to the following cynical hypotheses: the more frequent the offence, the less likely that cases about it will be reported in the law reports; the more unusual the offence, the greater the likelihood that cases about it will be reported in the law reports. That is, of course, a simplification - but it does at least suggest that systematic content analysis of a nation's law reports might reveal some startling gaps and imbalances, judged by general, relatively uncontroversial criteria of social significance.

The problem of establishing an efficient system of communication between inferior courts has sometimes attracted spasmodic attention in relation to such matters as sentencing. On the whole the solution has not been seen in terms of reporting decisions, but in terms of informal communication at conferences and through judicial circulars and the like. It is obvious that there would be grave difficulties in trying to develop a regular system of even highly selective reporting of decisions of inferior courts in an African country, because of the form of the records, the quality of judgments (when reasoned judgments are given), and the total scale of the enterprise.18 But devising ways of monitoring the work of these courts over and above a system of appeals and review is of special importance in African jurisdictions for a number of reasons: Firstly, because of the importance of customary law and the limitations of systematizing and communicating customary law merely through codes and restatements; secondly, in so far as legal literature and academic study of law constitute a prism not only on the operation of the legal system, but as some people claim on important aspects of social life, if we are dependent on an orthodox system of law reporting as one of our main literary sources of information about the operation of the law in action within that system, the prism is likely to give a distorted picture.

It was the American jurist, Jerome Frank who, in diagnosing his sense of dissatisfaction with much of American academic law, gave currency to the term "appellate court-itis" to designate the disease which consists in concentrating unduly on decisions of appellate courts and neglecting other types of decision which were equally interesting and problematic, and furthermore allowing one's perception of the nature of a legal system and the problems it faces to be unduly influenced by reading the law reports. In short, a highly unrepresentative part of a legal system is treated as if it were the whole.[19]

Frank's analysis was developed in the context of his rather narrow concern with prediction of decisions of courts from the point of view of participants. But it has important implications for those who have broader concerns with the realities and the health of a legal system in its daily operation. Up to a point this conern is shared both by those with a social science orientation and by ordinary practising lawyers; it helps in part to explain not only their shared dissatisfaction with the expository tradition of academic law, but their shared interest in some of the subject matters which have been neglected by that tradition. Nevertheless, it is important to recognize that these concerns are not identical. Someone who is interested in understanding the legal system as a whole, or some part of it , will typically require a much greater variety of types of information than professional participants, such as private practitioners of law or the personnel of various kinds of tribunal. Clearly the information needs of the latter will depend on their roles in the system - for instance, detailed, regular and accurate reports of decisions of administrative tribunals or of lower courts only become of practical importance to practitioners, when they appear before them regularly and some sort of regular use of precedent has started to develop. It is probably unrealistic to expect that governments, in devising and developing systems of reporting decisions of courts and other tribunals, will do otherwise than to give the highest priority to reports which will have immediate utility to judges and practitioners. But even from this point of view, it is worth bearing in mind that many of the assumptions of orthodox discussions of law reporting are being increasingly challenged. This can be illustrated by one brief quotation from a report on the publication of administrative board decisions in Canada: the author, referring to the proliferation of administrative and quasi judicial tribunals of various kinds, observes that for the most part they lack an adequate or rational system of reporting. Yet he says: "an impartial observer who was not taken in by the pomp and circumstance surrounding the traditional courts of law would conclude that, measured on any realistic social or economic scale, boards today often have far greater influence than the civil courts".[20]

Clearly the relative social and economic importance of different kinds of tribunal varies greatly from country to country. But it is far from obvious in the modern world that reports of decisions of the highest courts necessarily should represent the highest priority in a national system of law reporting. In short, while recent efforts to improve what might be called orthodox law reporting are greatly to be welcomed, the time is ripe to consider this problem in the broader context of the needs and problems for reporting decisions of tribunals of all types. For, as Kenneth Culp Davis has reminded us: "Secret law, whether in the form of precedents or in the form of rules, has no place in any decent system of justice".[21]

EXPOSITORY WORKS

The I.L.C. research report states:

> "Legal research has traditionally been concerned with the development or elaboration of legal doctrine, and the raw materials of such research have been laws, regulations, rulings and cases. Doctrinal research, and associated activities like codifications and law reporting, has played an important role in the development and functioning of legal systems, and has produced much research of outstanding quality. Doctrinal research, however, is not the focus of our report. For this there are two reasons. First, we found that the nature and value of such efforts was well understood. There are well established traditions and techniques to which we had little to add. Second, most members of the Committee were convinced that the most interesting and intractable questions in the area we were examining could not be answered merely through doctrinal research."[22]

The research report is concerned almost entirely with types of research and publication which "go beyond" doctrinal research or are alternatives to it. Although they are careful to acknowledge that such research and writing has an important role to perform, the tenor of the report not only suggests that there are other equally or even more valuable types of research and writing about law, but also that some of the assumptions of at least some doctrinal studies are questionable. Accordingly they put in issue not only the matter of over-emphasis on doctrinal research, but also in some contexts its utility and possibly even its validity.

I am in sympathy with the thrust of much of the Committee's analysis. But I disagree with their conclusion that the nature and value of such efforts are well understood. For questions about the nature and value of expository works are rather more complex than appears on the surface, and there is a danger that those who are concerned to develop other types of research and writing about law should spoil their case through over simplification. Accordingly it is pertinent to sketch the basis for a balanced appraisal of the nature and functions of expository works and their potential place in a healthy national legal literature.[23]

In this context the term "expository work" includes any work which sets out systematically to expound the legal doctrine prevailing at a particular moment of time in a given jurisdiction in respect of some topic or field of law. Typically such topics or areas or fields are designated by categories which themselves have a technical legal meaning, for example real property, contract, conflict of laws, trusts.

For the sake of brevity, and at the risk of some simplification, let us take as the basis for discussion the genus of leading English textbooks such as Cheshire, Winfield, Cheshire and Fifoot, and *Cross on Evidence*. Although the purposes of the authors, the interest of the publishers, and the actual uses to which they have been put by the "the consumers" have not been identical, we can nevertheless isolate three main functions of such works from the point of view of both producer and consumer: the function of systematization; a reference function; an educational function. Some of the virtues and the limitations of these works lie in the very fact that they have tried to kill three birds with one stone. When they have succeeded this has had the virtue of economy, but at other times failure to reconcile these functions has been one of the main sources of dissatisfaction.

The values by which these works have been judged have been fairly well settled: reliability, precision, comprehensiveness, order, clarity, succinctness, internal consistency, and up-to-dateness. These values are redolent of a rather pure form of classicism. They are central values of most forms of scholarship and it would be an eccentric scholar who rejected any one of them entirely. It would be a poor scholar who did not aspire to meet at least minimum standards in respect of nearly all of them. Where issue is taken with the values underlying the classic textbook it is on two grounds: either that there may be other values equally or, in some contexts, more important, or that where choices have to be made, a different ordering of priorities may be desirable.

This can be illustrated by looking a bit more closely at the three functions of expository works outline above and the compatibility between them.[24] One of the principal contributions of academic lawyers within the common law has been to assist in its systematization through attempts to mould the raw materials of legal doctrine into internally consistent bodies of rules and principles. It is now generally ackowledged that when the systematizing function has been done well an element of disciplined creativity has been involved through the process of selection, interpretation, choice of perferred alternatives and the reconciliation of seemingly contradictory authorities. I certainly do not wish to underestimate the utility or the difficulty of compiling such works. Within the framework of assumptions of the expository orthodoxy the most important kind of criticism that has regularly been made is directed against a tendency to hide behind confident, simple unqualified assertions some of the vagueness, complexity or internal inconsistency that should be revealed. But this tendency is not a necessary attribute of works within that tradition. The work of Corbin is perhaps the leading example of someone who tried to face this particular kind of difficulty; and, at a less weighty level, the preface to the most recent edition of *Maxwell on the Interpretation of Statutes* purports to make a virtue of the fact that many of the statements in the text appear to be pointing in different directions --this means, says the editor, that there is ammunition for both sides in every case involving a disputed interpretation of a statute.25 Presumably the main question that the authors of the research report would wish to raise is the *priority* to be given to this kind of work in a developing country where legal scholars are a scarce resource and legal doctrine is changing rapidly.

With regard to the reference function we do not have sufficient information about the needs and habits of users of expository works in any single jurisdiction to know how well legal textbooks on the English model perform this function. I suspect that they may be under-valued as a reference tool for office lawyers, but are not sufficiently detailed to be reliable reference works for those who are engaged in litigation involving disputed points of law. If their main use for students was as reference works, it may well be the case that many of them perform the function admirably. In this respect, their main limitation is that it is difficult for works with an average life cycle of four or more years to satisfy efficiently the requirements of keeping up-to-date, for even annual supplements are not entirely satisfactory for this purpose. The co-existence of students' works with purely reference works such as encyclopaedias suggests that the textbook is not generally regarded as ideal for performing the reference function.

It is in the educational sphere that the dominance of the legal textbook needs to be most severely challenged. For judged by either liberal or vocational criteria its over-use and abuse have often been deplorable. For the dominance of the textbook, whether because it has been imposed by teachers or because of the temptation it offers to the lazy, the timid or the unimaginative student, has led to the imposition of one implicit learning objective - the accurate recall of information within a short time - in some cases to the almost total exclusion of all other types of learning objective. Judged by the classical standards of liberal education, short-term recall of information takes a low priority in relation to such values as analytical ability, capacity for independent thought, and understanding in a broader sense. Judged by vocational standards, not only is it generally accepted and obvious that a textbook trained lawyer has hardly begun to learn to be a good practitioner, but there are certain other obvious limitations which are almost systematically overlooked: an expensive form of education has been a poor investment if the student has devoted his energies to learning facts the great majority of which he will have forgotten in six months, or, if remembered, may be overtaken by events, or, if not overtaken by events, may give the future practitioner a vested interest in retaining the rules unchanged whatever their merits.

Of course the case against expository legal education, as typified by most professional examinations and many university examinations, can be overstated: some basic knowledge of the details of some legal doctrine is a necessary foundation, and the difficulty of acquiring it can easily be underestimated; a capacious memory for detail may be a desirable quality for some types of lawyers; and certainly some forms of expository legal education may develop other qualities, such as analytical skill,respect for accuracy and specialised types of ability to apply rules to facts. Nevertheless, it is my personal judgment, based on teaching in jurisdictions where textbooks have been available and in jurisdictions where there have been no textbooks, that on the whole the absence of textbooks serves as often as not to enhance rather than detract from the quality of students' educational experience.

Let me conclude these remarks by making some general points:

a) The influence of economic factors on expository literature can be very great. Cost may be the single most important influence on length. Often students provide a more attractive market than practitioners to a commercial publisher, but where a work can be sold as serving several markets simultaneously, there will be pressure to force works into that mould to the detriment of one function or another. One reason for the continued domination of the *textbook* in legal education is because, by virtue of its reference function and its claim to cover whole fields, it is typically more attractive commercially to law publishers than most other types of educational work.

b) Economic factors tend to lead to bunching of expository literature, concentrating on those fields for which there is a reasonably assured educational market. Certain standard areas, such as contract and tort and land law, may suffer from over-concentration, other areas, such as industrial property, welfare law or consumer law may be neglected because the market for such works is restricted. Similarly innovation may be inhibited because publishers will wait for courses to develop and courses will wait for books. Content analysis of the spread of expository literature in a particular jurisdiction, even in terms of standard expository categories, might reveal some striking and unwholesome imbalances.

c) There appears to be a number of factors mitigating against experimentation and innovation; thinking about appropriate forms of expository literature, modes of production, classification, and so on is often very primitive or non-existent. Unthinking imitation is often, quite unnecessarily, the order of the day. A little ingenuity, a little enterprise, and some questioning of the suitability of existing works as models may lead to solution of some of the problems even within existing constraints.

Nevertheless anyone concerned to develop alternative types of legal literature needs to be well aware of these constraints. Apart from the factors which have already been touched on, some others are worth mentioning. Whereas the values of the classic expository work are reasonably well-defined this is not necessarily true when one starts on a search for alternatives. Many matters are simultaneously put in issue and conflicts of priorities and values may arise, which were not present within the expository tradition. Even those who know what kind of book it is that they want to write may lack relevant skills or concepts, or equally important, may lack the confidence to embark on tackling such work. And, in an undeveloped field, the relevant raw material may just not be available, whereas within the expository tradition the basic raw material of statutes and cases has been generated by someone else and are usually relatively accessible.

BOOKS ABOUT LAW

In an important article, which takes the form of a review of Max Rheinstein's *Marriage Stability, Divorce and the Law,* Richard Abel explores the distinction between books of law and books about law.[26] A law book says Abel, is a study which

> "identifies, defines, organizes and criticizes the rules (which legal institutions apply) by means of criteria proper to the legal system, it *rationalizes* them in Weber's sense... By contrast, a book about law is a mode of *reflection* upon the legal system. Neither legal training nor professional competence is adequate qualification to write about the legal system, any more than an Olympic swimmer or leading opera singer is qualified to explain the hydrodynamics of swimming or the physiology of singing."[27]

According to Abel, the legal scholarship which produces law books is a form of participant professional activity, which is as much a response to the demands of a functioning legal system as arguing a case or writing a judgment. Books about law, on the other hand, have objectives which lie outside the legal system: their primary objective is *understanding*[28] Abel proceeds to argue plausibly, if rather harshly, that Rheinstein has failed in large part to achieve his self-imposed objective of writing a satisfactory book *about law* because he has not been able to make a sufficiently radical break from the habits of traditional (expository) legal scholarship.

> "The book is therefore plagued by the perennial dilemma of inter-disciplinary research: in its attempt to satisfy the standards of two disciplines, it fails to satisfy either, and risks being disowned by both."[29]

It is not possible here to do justice to Abel's very illuminating analysis nor to go into detail about all my reasons for thinking that his application of standards of scientific explanation to Rheinstein's book are misplaced. His article should be studied by anyone who is concerned to work out ways of developing alternative forms of scholarly legal writing which break away from the stereotype of the legal textbook. However,it is relevant for present purposes to question Abel's assumption that there are only two main competing models. In so doing, he seems to be making the common error of seeking for a single alternative to the expository tradition, and so is falling into the trap of seeking to replace one orthodoxy by another. He compounds this by being too readily seduced by yet one more version of the scientific analogy. To put the matter briefly, I believe that at this moment of time Abel's standards are unrealistic and his objective is undesirable. It would take at least another twenty years of work by many scholars before a comparative study of marriage stability and breakdown which satisfied his criteria could be produced; premature aspiration to meet such standards could well be counter-productive at this stage in legal scholarship and, most important, a healthy body of legal literature would need to have much greater diversity than doctrinal writings and works of scientific explanation. Scholarship is more varied than that.

All this amounts to relatively minor criticism. Abel is postulating a rather ambitious model of comparative research and writing about law and he does not give adequate recognition to the arguments for diversity in literature and to the constraints in developing broader approaches within legal scholarship. He represents one version of the view that legal scholarship must go beyond traditional doctrinal study and that the starting-point needs typically to be something other than existing legal doctrine such as social phenomena, social problems or particular policy goals. Despite its faults Abel's article provides an excellent example of what can be achieved by serious criticism of legal literature and a stimulating outline of one kind of worthwhile aspiration for legal research.

CONCLUSION

In this paper I have attempted to outline the kind of perspective and approach which might form the basis for a constructive and relatively systematic approach to the analysis and improvement of a nation's legal literature. The model can be refined and developed in a variety of ways for different purposes. It is based on a number of assumptions, which might be the subject of disagreement. For example, it seems to me to be a reasonable assumption (although in need of refinement) that the localisation of legal literature has a potentially significant role to play in the development of a healthy legal system - but there is obviously scope for disagreement about the social utility of various kinds of literature, the relative importance of "localisation" and so on.

Implicit in much of what has gone before is a "liberal" belief in the values of diversity and tolerance, especially in the world of ideas - a belief which is neither universally shared nor respected. Moreover in many legal cultures there appears to be a number of quite deeply rooted stereotyped assumptions and fallacies which need to be exposed and critically examined.

It may be useful to end by sketching an aspirational model for a corpus of local legal literature in a developing country; but before doing so it is important to make some obvious caveats: quite clearly in most, if not all, developing countries in the post-colonial period there will be a number of important constraints to bear in mind: not only may money be short, the market small, and the number of legal scholars few, but also potential authors may be subject to many competing demands and diversions; source material may be inaccessible; there may be inhibitions on freedom of communication or other political constraints; and, less obviously, the pace of social, political and legal change may be so great that many works may be overtaken by events shortly after they are published or even earlier - witness the fate of many books on constitutional law in Africa. Indeed, the problem of ephemerality is one of the most acute problems facing those involved in the creation and production of legal literature in a rapidly changing society.

Given these constraints and problems, typically the situation in a developing country will require a careful ordering of priorities. The approach adopted here may provide some basis for doing this. Some important lessons may also be learned from the experience of countries with a longer history of legal writing. For instance, one does not have to look very far in the common law world to spot some of the major weaknesses to be looked for, such as over-concentration on some areas of no great social significance; neglect of areas of special social significance; duplication of effort; waste of talent on relatively trivial tasks; inefficient or otherwise unsatisfactory systems of publishing primary sources; inappropriate choices of forms of communciation unsuited to their purposes; the predominance of one ideology or of a single approach to law; over--concentration on one legal standpoint, for instance that of appellate court judges, to the neglect of other important legal standpoints - and so on.

One final caveat: it is important to distinguish between long-term aspirational goals and minimum standards for a healthy system. What follows is essentially an aspirational statement of long-term objectives:

I. <u>With regard to primary sources, that there should be</u>:

1. a) A statute book (including subordinate legislation) which is comprehensive, up-to-date, flexible and convenient to use;
   b) A system of amendment which suits the convenience of the main users;
   c) A regular and compehensive indexing service;
   d) that in drafting 'the interest of the ultimate user should always have priority over the interest of the legislators';
   e) 'That the jurisdiction should have a comprehensive interpretation act, which balances the need to reduce prolixity and ambiguity in statutes with the need to maintain comprehensibility for the non-specialist'.

2. a) A system of reporting decisions of courts (and other important tribunals), especially decisions with precedent value, which is comprehensive, up-to-date, flexible and convenient to use and which is also of manageable proportions; and
   b) that primary responsibility for law reporting is recognized to lie with government;
   c) that the number of decisions reported is not materially influenced by considerations of commercial necessity;
   d) that the system of law reporting takes due account of the need for consistency of decisions in, and for public information about, the work of lower courts and tribunals;
   e) that it also takes into account the need for consistency and equity in sentencing
   f) that selection of cases for reporting is based on criteria which have a direct functional relationship with the uses of law reports (in addition to precedent value, these may include considerations of value with regard to localization, legal education, etc.)

3. a) An efficient system of supplementary intra-professional communication - for instance judicial circulars, magisterial circulars, practice directions, sentencing guidelines, court handbooks and so on, and
   b) that these should be monitored so as to provide a regular flow of information.

4. a) A national legal archive (or series of archives) in which are preserved not only

documents which are of practical utility or interest to lawyers and legal researchers, but also as many as possible which may be of value to social scientists, historians and others; and

b) that policies of preservation and destruction should be based on informed and reflective awareness of the long term needs of potential users, with interested groups having an opportunity to participate in the formulation of such policies.

5. a) that copies of primary sources are readily available in practice to all professional lawyers and officials involved in the administration of justice and, in particular,

   b) that legislation, including subordinate legislation, should remain in print,

   c) that the needs of provincial lawyers and officials are adequately provided for.

II. <u>With regard to secondary literature for specialist legal users that there be:</u>

1. A body of specifically educational literature which furthers rather than frustrates desired learning objectives at different levels of legal education, (for example, if a learning objective is to develop certain analytical skills in students, lecture notes and condensed text-books which merely provide information to be learned by heart do not further this).

2. A body of reference works suited to the needs of the most important classes of users, in particular noters up, citator systems, encyclopedias, digests, practice treatises andprocedural works - the functional equivalents of Stone's Justice's Manual, Archbold, and the 'White Book' in England.

3. a) A variety of periodical outlets which provide opportunities for communication of research findings, news, opinions, criticism and speculation,

   b) that these should cater adequately for different categories of users and interest and

   c) that where the need arises, periodical coverage should be able to fill some of th gaps left by the absence of standard services, such as bibliographies, law report information about current legislation.

4. A specifically legal bibliography and some form of regular bibliographical service.

5. In common law jurisdictions closely related to a parent jurisdiction an adequate system of local 'converters' or supplements.

III. <u>Beyond the orthodox model</u>

This section does not contain aspirations so much as suggestions of types of legal literature outside the purely functional scope of the primary and secondary sources noted above. These could include, among others:

1. A corpus of literature which adequately maps the legal system and depicts the law in action in the particular society in a reliable, realistic, comprehensive and comprehensible manner.

2. An efficient system of communicating important information about the legal system and particular laws to the public at large and to classes of persons, especially non-experts, whose interests are directly involved -- for example literature for intermediaries such as non-lawyer advisors, social workers, consumer organisations, and explanatory leaflets and posters.

3. A range of critical literature which covers the spectrum from literature devoted to official law reform, through analysis without a view to action, of particular aspects of the legal system or works of legal literature, to radical writing containing a more fundamental criticism of the legal system and society.

It should be pointed out that this is a theoretical model and that it is not intended to suggest that this is a level of provision which all jurisdictions can, or should, achieve -- indeed no jurisdiction we have yet encountered in any way measures up to this aspirational level. The statement also concentrates on products rather than their uses or users, and can doubtless be queried from some of the standpoints already mentioned. For example it is clearly more fitted to the "modernization" model described by Jim Paul where the legal system is under the direction of the central authorities and judiciary than to alternative development strategies. However, I suggest that it can be useful as a general framework and guide for those who are concerned with the provision of legal literature to service the existing legal system and who are facing practical problems. While we hope to discuss the potential of empirical research and of enquiry into the theoretical problems underlying the discussion of legal literature at the seminar it is with this primarily practical approach that the pilot project has been most concerned.

FOOTNOTES

1. See R. Abel, "Law Books and Books About the Law," 26 Stanford Law Review 175 (1974), discussed later in this paper.

2. One version is related by Glanville Williams Learning the Law 9th. Ed. (London: Stevens and Sons, 1973), p. 47n.

3. P. Mann, Books and Students (London: National Book League, 1973). For futher references on student reading habits see Margaret Mann's bibliography, The Role of Books in Higher Education (University of Sheffield, 1974).

4. See, for example, W.Aitken, C.M. Campbell, and R.S. Morgan, Computers for Lawyers (Scottish Computers Trust, 1972).

5. Research into legal literature may provide a stimulus for and a route into detailed analysis of lawyers operations, a subject which has been neglected to a remarkable extent so far in sociological studies of the legal profession.

6. But there are some bad habits. For example, in recent years an increasing number of books have footnotes relegated to the end of the chapter or the end of the book. This saves money, but can cause inconveninece. Reviewers all too often comment adversely on the practice without any reference to the cost factor. Another dubious habit is cluttering a review with lists of trivial errors, such as misprints, which would more appropriately be communicated directly to the author. On some common fallacies in reviewing law books for students, see 12 J.S.P.T.L. (N.S.) 267 (1972).

7. Statute Law Society, Statute Law Deficiences, the Heap Report (London: Sweet and Maxwell, 1970).
Statute Law Society, Statute Law: the key to Clarity, the Stow Hill Report (London: Sweet and Maxwell, 1972).
Statute Law Society, Statute Law: A Radical Simplification, the Maxwell Report (London: Sweet and Maxwell, 1974).

8. The Preparation of Legislation, the Renton Report (London: HMSO, 1975), Cmnd. 6053.

9. The Incorporated Council of Law Reporting for England and Wales v. Attorney General (1971) 3 All E.R. 1029 (C.A.).

10. Statute Law Society, Statute Law: The Key to Clarity, *op. cit.*, para. 14. For a more complacent view see the Renton Committee Report Chapter XIV.

11. Colin Tapper, Computers and the Law (London: Weidenfield &Nicholson, 1973), p. 260.

12. There is a quite extensive literature on law reporting in common law Africa, see especially E. Kofi Tetteh, "Law Reporting in Anglophone Africa," 20 International and Comparative Law Quarterly 87 (1971); Alan Milner, "The African Law Reports" 11 Journal of African Law 151 (1967); 61 Law Library Journal 11 (1968); E. Guttman, "Law Reporting in the Sudan," 6 International and Comparative Law Quarterly 685 (1957); and Jill Cottrell,"Law Reports in Nigeria," 7 African Law Studies 63 (1972). I am indebted to information provided by Dr. Alan Milner and to A Study on Law Reporting in the Commonwealth by T. Gregory Kane (London: Commonwealth Secretariat, 1975).

13. Alan Milner, "The African Law Reports" (unpublished paper quoted with permission of the author).

14. Kane, *op. cit.*, and P. Niekirk, Law Reporting in the Commonwealth: A Consideration of Some Contemporary Problems (London: Commonwealth Secretariat, 1977).

15. Ontario. Law Reform Commission. Report on Administration of Ontario Courts, pt. 111 (Toronto: The Commission, 1973).

16. The Sudan Penal Code, s. 381. See A. Gledhill, The Penal Codes of Northern Nigeria and the Sudan (London: Sweet and Maxwell, 1963). It was subsequently held in *Sudan Govt. v. Father Silvano Gittardi* (1960) S.L.J.R. 245 that a '*hosh*' is not a "building" for this purpose.

17. From a pilot project by Philip Boynton undertaken for the author. The figures are approximate.

18. See further, Law Reform Commission of Papua New Guinea, Law Information Centre, in Occasional Paper no. 6 (1977).

19. See especially, J. Frank, Courts on Trial (Princeton, N.J.: Princeton Univ. Press, 1949).

20. H.N. Janisch, "Introduction" to A. Janisch, Publication of Administrative Board Decisions in Canada (London, Ont.: Canadian Assoc. of Law Libraries, 1972).

21. K.C. Davis, Discretionary Justice (Baton Rouge: Louisiana State Univ. Press, 1969).

22. At p. 19.

23. This section represents a restatement of an argument previously put forward in a number of scattered writings, see especially 11 J.S.P.T.L. (N.S.) 81 (1970); 12 J.S.P.T.L. (N.S.) 167 (1972); 58 Cornell Law Review 275, 293-99 (1973).

24. I would include under the heading of "expository works" encyclopedias such as: Halsbury's Laws of England; monumental scholarly treatises such as Williston's and Corbin's great works on contract; practitioners' works such as Clark and Lindsell on Torts, Chitty on Contracts; legaltextbooks such as Cheshire and Fifoot on Contract; elementary learning aids such as nutshells and introductory texts; hybrids designed to meet special problems, such as the American Restatements and the Restatement of African Law.

25. Maxwell on the Interpretation of Statutes, 12th. ed., by P. St.J. Langan (London: Sweet & Maxwell, 1969), preface.

26. Abel, *op. cit.* Max Rheinstein, Marriage Stability, Divorce and the Law (Chicago: Univ. Chicago, 1972).

27. *ibid,* pp. 175-76.

28. *ibid,*

29. *ibid,* p. 228.