

CHAPTER 7

IDEOLOGICAL FUNCTIONS OF LEGAL LITERATURE IN EAST AFRICA¹

by

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Introduction

Ideology and Law

Marxists have traditionally preferred their law simple. Which is to say that they have tended to view law largely, and often solely, in terms of its coercive aspect. The Leninist perception of law² as a straightforward instrument of oppression is certainly not incorrect, for no-one could deny that "the law has force at its back in every country however civilized".³ But, put in its most basic terms, this theory does not go far enough. Lenin's unvarnished restatement of classical positivism is not adequate as a means of fully understanding the role which law plays in a capitalist state. There has recently been a minor avalanche of work, more or less rooted in Marxian methodology, which has sought not so much to refute the traditional approach to law, but to broaden and expand it.⁴ To attempt to summarize such work in two sentences, one might say that it has been recognized that law performs two additional functions which serve both to complement and obscure its coercive function. It creates the mechanisms through which, at different historical periods, accumulation takes place⁵ and it also forms a central part of the ideological apparatus deployed on behalf of a dominant class. It is with the latter function that the present essay is concerned.

Napoleon, who had a certain amount of experience in such matters, once observed that: "You can do everything with bayonets except sit on them". He was stating two truths about politics. The first is obvious; that the basic political fact is violence. The second is probably obvious also, but is rather more subtle. While the ultimate sanction available to any political regime is violence, it must, if it hopes to endure, seek to legitimate itself. Although there can be no denying that repression works, a political system which depends wholly or predominantly on repression for its survival is inherently unstable. A system of beliefs, an ideology,⁶ must be created which functions to persuade both the ruled and their rulers that existing social relations are just, rational and finally, inevitable. An ideology is successful to the degree that it actually defines the limits and modes of thought of all members of society. Once an ideology has achieved dominance people find it difficult, if not impossible, to reflect on the way they experience society outside of the categories and definitions imposed by that ideology.⁷

Bourgeois law contains many significant ideological norms - separation of powers, the rule of law, natural justice, equality before the law, etc.⁸ By demonstrating its continued fidelity to these norms the legal system plays a central role in persuading members of all social classes that existing social relations are fair and just and, therefore, worthy of preservation. The law mediates between individual members of society and the underlying system of class domination. To the extent that the law reflects social relations in a manner that appears to be just it inhibits members of an oppressed class from developing a consciousness of the injustice which is inherent in those social relations.

The point can be illustrated through a brief analysis of "equality before the law". Equality was a central political goal of the bourgeois democratic revolutions in Europe. The material ambitions of an ascendant class were formulated at the level of theory 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, forgetting, of course that formal equality before the law is, at best, meaningless in a society based upon objectively unequal relations of production.⁹

While some attention has been paid to the ideological exigencies which affect the development and administration of the law, little emphasis has been placed on the role

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which ideology plays in conditioning how and what people write about law.¹⁰ Much legal writing consists, when it ventures beyond the exposition of doctrine, of unvarnished statements of pure ideology. Two illustrations will suffice. In his book A Theory of Justice,¹¹ John Rawls purports to derive the structure of the ideal society from certain principles which he states. One becomes immediately suspicious since these principles are assumed a priori to be good and desirable. The interesting thing, however, is that the ideal society which Rawls eventually postulates turns out to look very much like the contemporary U.S. Somewhat similar observations can be made about much of the work of the Law Reform Commission of Canada. Its efforts can be seen as an ongoing attempt both to justify a burgeoning neo-liberal ideology and to bring the law of Canada into conformity with the requirements of that ideology. In reading the Commission's reports and working papers one is struck by the degree to which its recommendations depend upon the acceptance of normative generalizations that are both idealistic and unprovable.¹²

The bulk of what follows will be taken up by an investigation of the ideological role which writing about law plays in class struggle in East Africa.¹³ It is necessary at this point to make some brief observations on that struggle.

Class Struggle in East Africa

While it is clear that the three states of Kenya, Tanzania, and Uganda cannot be analyzed as if they formed a homogeneous whole, there is, despite their varied histories and despite the uneven economic development of the region, sufficient shared experience to justify one in speaking about East Africa.

National bourgeoisies, finding their further development as classes thwarted by the racist superstructure of the colonial 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.¹⁴ That is, it required the mobilization of all social strata in support of an ideology which explained 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.¹⁵ 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.¹⁶ The second approach is to seek disengagement from imperialism through autarchy and the establishment of state capitalism.¹⁷ Tanzania has generally attempted to follow this course. In either case, the national bourgeoisie must seek sufficient hegemony to legitimate its position and role.¹⁸

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. 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.¹⁹

An Overview of Legal Writing

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.²⁰ In 1961 legal education began in East Africa at what was then the University College, Dar es Salaam.²¹ 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.

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, mainly North America. From my own, admittedly unscientific, observations of foreigners who have gone to work in East Africa, there is a significant number of 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 some 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.²² 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.²³

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.²⁴ 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,²⁵ was to get as much local material into circulation as possible. Explicit consideration of methodology and ideology was avoided.

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 faculties to become more involved in national, as opposed to regional issues.

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 Amin's Uganda, but it is a noteworthy matter in Kenya.²⁶ 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 vigourously 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.²⁷ Neither has it dealt directly with the broader phenomenon of imperialism, a phenomenon which has, of course, an important ideological dimension. We turn now to a description and analysis of East African legal literature.

The Materials

Statutes

Extensive statutory materials exist for all three states. One is struck by the bulk of statutory law available. For present purposes the main points with regard to statutes are their accessibility and their internal organization.

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 advocates' 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.²⁸ If this is to occur, it will require a realization that legislative drafting is not a purely technical exercise. Drafting

clearly involves turning social or economic policies into a legal form which is politically and administratively workable.²⁹ 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 those exercising political power are content with the present situation.³⁰

It is a general characteristic of East African legislation that broad, often limitless, rule making powers are regularly delegated to officials.³¹ 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 emphasizes the extent to which the development of legal literature in East Africa depends on the efficiency of the government printers.

Internal Organizations

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 multi-volume 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's 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 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. 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 this end.

Law Reports

Prior to 1957 there were five series of general law reports published in East Africa.³² 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.³³ The earlier reports were published by the relevant public authorities, while the East Africa Law Reports, were published by Butterworths in England. They were edited by an advocate in private practice in Nairobi. Since the 1975 volume the East Africa Law Reports have been in limbo. 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 were devoted solely to decisions of the East African superior courts -- the High Courts of Kenya, Uganda, Tanzania, and Zanzibar, and the former 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 ceased when the jurisdiction of the Judicial Committee to hear such appeals ended. The origin of reported cases in the early 1970's was as follows:

<u>Year</u>	<u>Court</u>	<u>No. of Cases Reported</u>
1971	Court of Appeal	40
	Kenya H.C.	38
	Tanzania H.C.	14
	Uganda H.C.	21
		113
1972	Court of Appeal	63
	Kenya H.C.	41
	Tanzania H.C.	21
	Uganda H.C.	24
		149
1973	Court of Appeal	50
	Kenya H.C.	44
	Tanzania H.C.	12
	Uganda H.C.	20
		126

Cases to be reported were submitted to the editor by the registrar of the particular court as directed by the appropriate Chief Justice. Not all cases submitted were 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".³⁴

Since 1972 the number of cases submitted for reporting had declined. The 1975 volume contained only 78 cases.

The purpose of the East Africa Law Reports was essentially informational. This purpose was achieved through the presentation of authoritative judicial pronouncements. This factor to some extent explained the preponderance, during its existence, of Court of Appeal decisions.

There were recently criticisms from all the High Courts that not enough of their decisions were being reported. Particularly strong criticism came from the Tanzania High Court. The former editor took the position that he could only report what he received and that if a particular High Court did not send its judgments to him he could not report them. In 1975, out of the first eighty cases submitted for reporting only eight were from Tanzania. There were part-time editorial personnel located in both Tanzania and Uganda who were responsible for local liaison.

A certain number of significant superior court decisions were not submitted and therefore were 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.,³⁵ 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.³⁶

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

There were suggestions in its later years that the East Africa Law Reports had got "behind schedule" or, at least, had become rather slow in making decisions available. These criticisms were probably without substance. Reported judgments were available in East Africa about fifteen months after a case had actually been decided.³⁷

Production of the Reports was handled by Butterworths in the U.K. This arrangement was 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, were 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 had experienced some difficulty in collecting payment for copies of reports which went to the governments of Tanzania and Uganda.

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

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

The belief that Tanzanian decisions were 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. Decisions from the Court of Appeal, High Court and Resident Magistrate's Courts are reported. Judgments are selected for reporting by an elected editorial board at the Faculty of Law. Uganda also published 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 and was designed to meet the needs of people who paid income tax and "their professional advisers". It 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. Butterworth's 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 Monthly Bulletin of Judgements and Orders of the High Court. Digests of decisions of the Court of Appeal were published in the East African Law Journal.

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. 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.

Textbooks and Monographs

This category is defined broadly to include all non-official books, as opposed to articles or pamphlets, which treat directly of law in East Africa. The most striking feature of this category is its unevenness in coverage, in quality, and in purpose.

A survey³⁸ of the writing in this category would suggest a number of conclusions. First, it is clear that there has never been a policy with regard to the writing and publishing of East African legal literature. Second, it would not appear that market forces have had a particularly significant 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 not been the case. Basic textbooks have not appeared in many areas until quite recently and, indeed, the coverage is still far from complete.³⁹ 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.⁴⁰ It is presently being corrected and one assumes that this process will continue. Still, while a number of very bad books have been published, one cannot but be impressed by the range and depth of what has been produced in less than two decades.

Journals

There was, until recently, a relatively wide range of legal periodicals being published in East Africa. Given the rather limited market for such publications, it could be argued that there were too many.

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. It 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, since 1972 at the Faculty of Law of the University of Nairobi. 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 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. Circulation of the East African Law Journal has been low by international standards, but reasonable for an East African academic periodical.

Eastern Africa Law Review

The Review was started by the Law Faculty in Dar es Salaam in 1968. 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 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. With the demise of The East African Literature Bureau, production was undertaken at the University of Dar es Salaam.

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 appeared sporadically and were of low editorial and production quality. In 1976 the Makerere Law Journal began to be published by the East African Literature Bureau. Its future is now uncertain.

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, but not entirely written, by students.

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.

Printing and Publishing

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.

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 publishing without detracting from the quality of the finished product.⁴¹ 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.

Publishing

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 profession 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.⁴² The Literature Bureau published an amazing range of legal titles. These varied from gigantic casebooks to highly specialized monographs. It is interesting that the best-selling title on the Bureau's list was a law book.

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 sales.

In 1977, the East African Community collapsed. The Literature Bureau was one of the casualties. Many of its functions have been taken over by the Kenya Literature Bureau, but this organization will not, by its nature, be able to provide the services formerly available to scholars in Uganda and Tanzania.

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.

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 could not be expected to take an interest in the development of East African legal literature.

Tanzania Publishing House

This company was established under the National Development Corporation to function as a national publisher. Its main work has been in 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.

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.

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 specialised 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.

Finance

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 in recent 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 pressure 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 not a crucial factor in East Africa, where national bourgeoisies aggressively suppress union activity,⁴³ increased labour 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.

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. Assuming a relatively sound product, an East 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.

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 Macmillans 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 Macmillans, which appeared to see the venture as a device for dumping unsellable school texts in the Tanzanian market.⁴⁴ 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 receive a certain amount of assistance from external sources. 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.

Planning and Co-ordination

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 co-ordination 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 on production costs. A co-ordinating body could receive and distribute subsidies and grants and develop a system for external distribution. Finally, an established system of co-ordination should contribute to the formulation of professional social, intellectual, and literary standards for East African legal publishing. Whether the creation of such a system under existing conditions is a practical possibility remains doubtful.

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.

Conclusion

This essay has focused on the ideological, as opposed to professional 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.⁴⁵ It has also suggested that this is not an ahistorical 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 ideology and which concentrates on the ideological 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.⁴⁶ 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 from even being considered.⁴⁷

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.⁴⁸ 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.⁴⁹

FOOTNOTES

1. An earlier version of this essay appeared in (1978) 10 Case Western Reserve Journal of International Law 123.
2. One should, perhaps, call this the "Engelsian perception of Law". For Engels' early view, see "The Origin of the Family, Private Property, and the State", in Marx and Engels, Selected Works, vol. III, (Moscow, 1970) p. 191. Lenin's view is set out in his well-known essay "The State and Revolution", in Selected Works, vol. II, (Moscow, 1947) p. 144. A lesser known and blunter formulation is his essay, The State, (Peking, 1965). It should be added that, late in life, Engels qualified his earlier view. See "Letter to C. Schmidt (5 August 1890)", in Marx and Engels, *loc. cit.*, p. 489. For a contemporary defence of Lenin's analysis, see Boehringer, "The Law and Class Struggle", (1977) 46 Arena (Greensborough, Australia) 90.
3. F.D. Lugard, Political Memoranda, 3rd ed. (London, 1970), p. 249. It is of some interest that the architect of the colonial state in British-ruled Africa should share Lenin's view of the nature of law.
4. It would be impossible to cite all the work in question. Critique of Law Editorial Collective, Critique of Law: A Marxist Analysis, (Sydney, 1978) can be recommended. Not only does it succinctly set out the major contemporary currents in Marxist legal thought, it provides bibliographies which are truly awesome in their scope. Two essays are especially valuable: Fraser, "Legal Theory and Legal Practice", (1976) 44/45 Arena 123 and Holloway and Picciotto "Introduction" to J. Holloway and S. Picciotto, (eds.), State and Capital: A Marxist debate (London, 1978) p. 1.
5. This understanding was central to Pashukanis' work. For contemporary formulations see, Balbus, "Commodity Form and Legal Form", (1977) 11 Law and Society Review 571; Panitch, "The Role and Nature of the Canadian State", in L. Panitch, (ed.), The Canadian State (Toronto and Buffalo, 1977), p.3; and Blanke, Jurgens, and Kastendienk, "On the Current Marxist Discussion on the Analysis of Form and Function of the Bourgeois State", in Holloway and Picciotto, *op. cit.*, p. 108.
6. It is possible that "ideology" is the least understood of Marxist concepts. For a clear exposition of its meaning, see Alex Callinicos, Althusser's Marxism (London, 1976). The clarity, it should be added, comes from Callinicos, not from Althusser!
7. The point was first made by Marx and Engels in "The German Ideology", in Marx and Engels, *op. cit.*, vol I, p. 16. Its systematic development was left to Gramsci. See his Selections from the Prison Notebooks (London, 1971) especially the essay, "State and Civil Society", p. 210. For commentary, see Carl Boggs, Gramsci's Marxism, London, 1976 and James Joll, Gramsci (Glasgow, 1977). In his book The State in Capitalist Society (London, 1969) Ralph Miliband has attempted to apply many of Gramsci's ideas to the modern liberal-democratic state. Interesting critical analysis of Gramsci's thought is found in Perry Anderson, "The Antinomies of Antonio Gramsci", (1977) 100 New Left Review 5. Finally, it is worth noting that even as committed a Stalinist as Lukacs was willing to concede the importance of ideology in the maintenance of class rule. See History and Class Consciousness (London, 1971) especially "Legality and Illegality", p. 256.
8. On the ideological role of law, see Eugene Genovese, Roll, Jordan, Roll (New York, 1974) p. 25 ("The Hegemonic Function of the Law"); and Hay, "Property, Authority, and the Criminal Law", in D. Hay, P. Linebaugh, J. Rule, E.P. Thompson, and C. Winslow, Albion's Fatal Tree (London, 1975) p. 17. Yash Ghai has written on "Notes Towards a Theory of Law and Ideology: Tanzanian Perspectives", (1976) 13 African Law Studies 31. In fact, he discusses the extent to which official Tanzanian ideology is reflected, in an instrumental sense, in that country's legal system. He does not seek to analyze the ideological role of the Tanzanian legal system. For one of the very few judicial pronouncements on this question, see the speech of Viscount Simonds in Shaw v. D.P.P. [1962] A.C. 220, 260-269.
9. For discussions on equality", see Marx, "Critique of Hegel's Doctrine of the State" in Karl Marx, Early Writings (New York, 1975) p. 57; Colletti, "Introduction", in *ibid.*, p. 7; Marx, "Marginal Notes to the Programme of the German Workers' Party", in Marx and Engels, *op. cit.*, vol. III, p. 13; and F. Engels, Anti-Duhring (Moscow, 1975) pp. 123-125. A useful discussion of Jefferson's thoughts on equality is found in H. Aptheker, The Nature of Democracy, Freedom, and Revolution (New York, 1967) pp. 8-13.

10. On the ideological functions of academic writing generally, see Marx and Engels, "The German Ideology", *op. cit.*, at p. 48; and Yurick, "Introduction" to Christopher Caudwell, Studies and Further Studies in a Dying Culture (New York and London) 1971, p. 1. On legal writing, see Goode, "Law Reform Commission of Canada - Political Ideology of Criminal Process Reform", (1976) 54 Canadian Bar Review 653; and Martin, "Book Review", (1979) 57 *ibid.*, 137. For an extremely confused attempt at self-criticism by two legal writers, see Trubek and Galanter, "Scholars in Self- Estrangement", [1974] Wisconsin Law Review 1062.
11. New Haven, 1971.
12. See Goode, *op. cit.*
13. Five books suggest a methodology for applying class analysis to East Africa and, at the same time, make available a vast amount of data. They are: Giovanni Arrighi and John Saul, Essays on the Political Economy of Africa (New York and London, 1973); E.A. Brett, Colonialism and Underdevelopment in East Africa: The Politics of Economic Change: 1919-1939 (London, 1973); Colin Leys, Underdevelopment in Kenya: The Political Economy of Neo-Colonialism, 1964-1971 (London 1975); Mahmood Mamdani, Politics and Class Formation in Uganda (New York and London, 1976); and Issa Shivji, Class Struggles in Tanzania (London and Dar es Salaam, 1976).
14. It might appear in this passage that I am unsympathetic to nationalism in the abstract. I am merely unsympathetic to nationalism led and directed by the national bourgeoisie. See the thoughtful discussion in Horace B. Davis, Toward a Marxist Theory of Nationalism (New York and London, 1978).
15. Revolution in Guinea (London, 1969) pp. 57-58.
16. See the discussion in Wallerstein, "The State and Social Transformation", (1971) 1 Politics and Society 359.
17. The phraseology is borrowed from M. Kidron, Capitalism and Theory (London, 1974) p. 171.
18. With the proviso, of course, that if it fails to do so, it can always attempt to continue to rule through coercion. This is, evidently, the norm on the African continent today and goes a long way towards explaining the extreme instability of most regimes.
19. The reader will have noticed that there is in the preceding section no explicit reference to Uganda. President Obote, prior to this overthrow, appeared to be moving vaguely along the same path as Tanzania. It would be obscene to juxtapose a discussion of the Amin regime and an analysis of law. Suffice it to say that the form of rule which he developed does not fit within the typology outlined above. One suspects that Amin represented another aspect of class struggle in East Africa -- political rule by the national petite bourgeoisie. It is far too early (July 1979) to attempt an assessment of the post-Amin government. At the level of ideology, it might be observed that a number of commentators have a great deal to answer for in some of the apologies they wrote on behalf of Idi Amin. See, for example, Mazrui, "The Resurrection of the Warrior Tradition in African Political Culture", (1975) 13 Journal of Modern African Studies 67.
20. See, for example, Alison Russell, The Magistrate (London, 1945). For purely arbitrary reasons, I have not discussed colonial writing about customary law in this essay.
21. For a description of the early years, see Twining "Legal Education within East Africa", in East African Law Today (London, 1966), p. 115. For an overview see Ch. I of William Harvey, An Introduction to the Legal System in East Africa (Nairobi, 1975). A discussion of certain aspects of what follows, from a point of view somewhat different from mine, is found in J.S. Bainbridge, The Study and Teaching of Law in Africa (Hackensack, N.J., 1972).
22. The classic statement is undoubtedly Y.P. Ghai and J.P.W.B. McAuslan, Public Law and Political Change in Kenya (Nairobi, 1970).
23. See African Conference on Local Courts and Customary Law, Report (Dar es Salaam, 1963). More exhaustive discussions are found in A.N. Allott, Essays in African Law (London, 1960) and New Essays in African Law (London, 1970). Old ideas die hard. For a particularly egregious statement, see E.V. Mittlebeeler, African Custom and Western Law: The Development of the Rhodesian Criminal Law for Africans (New York and London, 1976).

24. See Ch. III of L.C.B. Gower, Independent Africa: The Challenge to the Legal Profession (Cambridge, Mass., 1967).
25. International Legal Center, Legal Education in a Changing World (New York, 1975) pp. 71-74. For my views on this report, see the review at (1976) 4 Melanesian Law Journal 270.
26. See the detailed discussion in Martin, "Teaching Law in Kenya", (1977) 14 African Law Studies 63.
27. See the extremely valuable discussion in Harold Innis, Empire and Communications, rev. ed. (Toronto and Buffalo, 1972). A great deal of the methodology confusion that surrounds analysis of customary law arises from a failure to deal with the impact of writing and printing on the substance of customary law. As an example of this confusion see S.M. Poulter, Family Law and Litigation in Basotho Society (Oxford, 1976). See also my review at (1977) 16 University of Western Ontario Law Review 268.
28. The problem is analyzed in R.B. Seidman, The State, Law and Development (London and New York, 1978) pp. 105-131. For a somewhat incoherent attempt to rework Seidman's earlier ideas on the subject, see Mutungi, "The Communication of the Law under Conditions of Development", (1973) 9 East African Law Journal 11.
29. See Rahim, "Legislative Implementation of the Arusha Declaration", (1968) 4 East African Law Journal 183; and Seidman, "Law and Development" (1975) 13 Journal of Modern African Studies 641.
30. In 1967 Kenya embarked upon a major exercise in law reform. The aim of this exercise was the admirable one of completely overhauling the law relating to marriage, divorce, and succession. Two lengthy reports were produced: Commission on the Law of Marriage and Divorce, Report, Nairobi, 1968 and Commission on the Law of Succession, Report, Nairobi, 1968. The purport of the reforms suggested was substantially frustrated by male members of the Kenyan national bourgeoisie who did not wish to see any of their privileges, particularly with respect to women, undermined. Nonetheless, two statutes, ostensibly embodying the reforms suggested by the commissions were drafted: the Law of Succession Act, 1972, No. 14 of 1972 and the Marriage Bill. In addition to being couched in language that was almost unintelligible, the two statutes were poorly drafted in a technical sense. See my comments at (1973) 9 East African Law Journal 77 and (1974) 10 *ibid.*, 120. The Commonwealth Secretariat has, for a number of years, been active in attempting to improve all aspects of drafting in the commonwealth. See, for example, Seminar on the Commonwealth Secretariat Programme for the Training of Legislative Draftsmen, London, 1975.
31. See R. Martin, Personal Freedom and the Law in Tanzania (Nairobi, 1974) pp. 110-115.
32. On law reports see generally the magisterial article, Macneil, "Research in East African Law", (1967) 3 East African Law Journal 47. See also T. Kane, A Study on Law Reporting in the Commonwealth (London, 1975); and the brief discussion by Slattery in a review at (1969) 2 Eastern Africa Law Review 279.
33. These were originally called the Eastern Africa Law Reports, but the name was changed in 1967, presumably in response to the formation of the East African Community.
34. Information reported to the author by the editor in 1975.
35. High Court of Kenya at Nairobi, Civil Case No. 1159 of 1966.
36. This is stated in Gilmore, "Organised Labour and Government Controls in Kenya", (1975) 11 East African Law Journal 1 at p.33, n. 136.
37. An example of such 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", (1975) 11 East African Law Journal 123 at p. 137, n. 47. This remark nearly gave rise to a lawsuit. A random survey of other series of law reports suggests the following average time periods between the giving of judgment in a case and a report of that judgment appearing in print in a law report: All England Reports -- 5.8 months, with 2 or 3 months for House of Lords' decisions; Dominion Law Reports -- 7.5 months; and Appeal Cases -- 11 months.
38. For a detailed survey see Martin, "Notes on Legal Literature in East Africa", *op. cit.*, pp. 141-146.

39. This may be a characteristic of a colonised culture. The same statement could have been made, until very recently, about Canadian legal literature. And, in any case, many of the basic text books that have appeared in recent years have been written by non-Canadians.
40. For insight into the place, if any, of foreign authors, see the acrimonious exchange between Okoth-Ogendo and Jackson at (1970) 6 East African Law Journal 307 and (1971) 184. See also the book review by Okoth-Ogendo at (1977) 14 African Law Studies 108.
41. See the useful discussion in Dowrick, "Law Book Publishing", (1974) 13 Journal of the Society of Public Teachers of Law.²⁷ In the United Kingdom discussions have been going on for a number of years between law teachers and law publishers over appropriate production standards. See Society of Public Teachers of Law Working Party on Law Publishing and Legal Scholarship, Interim Report, mimeo., 1975. For Canada, Butterworth's Canadian Legal Casebook Series is an interesting example of experimentation with new forms. While the results may be esthetically disappointing, the form developed is certainly adequate for teaching purposes.
42. One result of this was P.A. Oluyede, Administrative Law in East Africa (Nairobi, 1973). See the reviews by Nowrojee and Rembe in (1975) 11 East African Law Journal 107 and by Martin in (1975) 13 Journal of Modern African Studies 153.
43. See Gilmore, *op. cit.*, and Miho, "Labour Unrest and the Quest for Workers' Control in Tanzania", (1974) 7 Eastern Africa Law Review 1.
44. Hutchinson, "Neo-Colonial Tactics", (1973) 23 Africa 74.
45. A useful collection of writings describing a similar process in the early history of the United States is P. Miller, (ed.), The Legal Mind in America: From Independence to the Civil War (New York, 1962).
46. See the forceful expression of this point in Shivji, "From the Analysis of Forms to the Exposition of Substance", (1972) 5 Eastern Africa Law Review 1.
47. On casebooks in East Africa, see Huber, "Legal Education in Anglophonic Africa", [1969] Wisconsin Law Review 1188 and Okoth-Ogendo, "Book Review", (1977) 14 African Law Studies 108. A general discussion of the case method of study is found in Patterson, "The Case Method in American Legal Education", (1951) 4 Journal of Legal Education 1. On the ideological functions of the casebook form, see William Chambliss and Robert Seidman, Law, Order, and Power (Reading, Mass., 1971).
48. Although Blackstone's Commentaries, as an exceptional example, did play a major part in shaping the social and political thinking of several generations of bourgeois Englishmen and Americans.
49. I would like to thank David Broad, S. Goulborne, Roger Houghton, N.G. Ngulukulu, Jack Quinn, Michael Steinberg, and William Twining for their assistance in the preparation of this essay.