
William Burnett Harvey, An Introduction to the Legal System in East Africa. Nairobi, East African Literature Bureau: 1975. 902 pp. K Shs. 150 in East Africa

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Legal scholarship in East Africa during the last decade or so seems to have undergone two important phases. The first, which ended roughly in 1970, saw the proliferation of a basically regional approach to research and publication. This was not at all surprising. The common heritage of the East African legal systems, as well as the fact that the Faculty of Law at Dar es Salaam was still the only center for legal studies, made this macro-level approach pragmatic and inevitable. But there was another factor. Many expatriates who held teaching positions in the Faculty also tended to define their research

interests in rather global terms, quite apart from the constraints already explained. Since 1970, however, scholarship has moved into a phase that emphasizes national-level analyses of specific aspects of law and legal regulation. The explanation is not simply that there are now three separate law faculties within the region, each concentrating on the problems of a separate country. There is a feeling among many East African scholars now that a more disciplined focus on micro-level issues may yield a better literature than that which presently exists.

William Burnett Harvey's massive 902 pages is, for reasons that will be explained later, a classic example of the first of these two phases. The book consists of a collection of reading materials on the legal system in East Africa, co-ordinated by a series of introductory notes at the beginning of each chapter. In this, the book follows the dominant trend in pre-1970 scholarship, the drive towards the publication of reading materials rather than monographs. The primary motive for this was to put together source-books that could be built upon as legal education grew and became more established within the University community. But the emergence of source-books was also a function of the way in which the intellectual background and approach to legal education among expatriate teachers shaped the nature, content and style of the works that they produced. This was particularly conspicuous in relation to work by American teachers in East Africa. Their methodology style of presentation and theory of learning was markedly different from the English approach that dominated much of University education. The tendency towards the socratic (question-and-answer) method of teaching and the emphasis on self-learning techniques among the students themselves tended in the case of American scholars to manifest itself in the form of source-books. Harvey's book is part of that tendency.

The purpose of the book, Harvey explains, is to enable the students to step back from the details of rules and doctrines to develop a perspective of the legal order as a system and a process. In other words he sees his work essentially as an aid to socio-legal investigation and a stimulant towards more intelligent enquiry. Without questioning whether the book succeeds in achieving any of these values, I would like to raise several other issues that are of importance both in terms of the book's coverage and the future of legal scholarship in East Africa generally. The first relates to Harvey's arrangement of chapters and themes. He starts with legal education, then proceeds to structure and process of civil (how about criminal?) litigation, nature of law and its social functions, the sources of law, the role of precedent and finally the interpretation of litigation. This order is puzzling. It reads as if the author started from the middle and worked himself to an unspecified beginning. Where is the theoretical construct that explains that order or ties it all neatly together? Shouldn't he have included a chapter on the nature of a legal system - as opposed to the nature of law?

The student may well be baffled by it all since at the end of the year he may not separate a course on legal systems from a poorly taught course on substantive law areas. My hunch is that these are the topics which Harvey covered when teaching at the University of Nairobi in 1971-72 and the order in which he taught them.

The second issue related to the content of the materials Harvey has selected and its relevance to the study of legal systems in East Africa. In this request I must commend Harvey's painstaking effort to include East African materials in his Shopping List. But that List also contains important foundation readings which describe situations that may be extremely different from our own. What this means is that the burden of contextualising such readings must rest heavily with the teacher even though Harvey poses pertinent questions at the end of each reading that are of valuable assistance. Harvey will probably agree and justify these readings on the grounds that there are no local materials on the subject. That is true, and it points to an important issue that future scholarship must take into account. That is what the publication of a source-book such as this merely highlights the need for serious research in these areas. A book of readings must not be treated as a substitute for the kind of work that "second phase" scholars are beginning to get into.

The final problem relates to the audience which Harvey's book is likely to reach. The book runs 902 pages and originally cost the astounding sum of Sh. 218/ = (approximately \$27)! Even at Sh. 150/ = (approximately \$18.50), the market for the book is practically reduced to libraries. This factor alone will greatly reduce the utility of the book. The question that may be posed to the publishers (and Harvey's is only one among many) is whether the size of publication and the pricing are not in the end counter-productive. It might be a lot better if they promoted monographs based on solid research rather than massive collections of materials which must eventually be superseded by the former. What is being called for here is not an "extra/or" policy but one that is likely to shape scholarship in the direction of a more permanent contribution to the understanding of legal phenomena in East Africa.