Greater Ethiopia†: The Evolution of a Pluralist Politico-Legal System in a Pluralist Polity*

Alemayehu Fentaw♣

Introduction

Looking at its multiethnic nature, Carlo Conti-Rossini, the eminent Ethiopianist, described Ethiopia aptly as a museum of peoples- *un museo di popoli*. In what seemed a clean break with its constitutional past, Ethiopia embarked on a bold and unique experiment in federalism, since the demise of the Derg, the military dictatorship, in 1991, in "an attempt to translate iniquity of political history and demands, into equity of future provision."(Vaughn, 2003:85). Bold, because it has resulted in the restructuring of a highly centralized unitary state hitherto based on the principle of national self-determination and unique, because it has no parallel in any other African state and any state in today's world "in using ethnicity as its fundamental organizing principle". (Turton, 2006:)

So the preliminary question one should raise at this point is why the Ethiopian state, as opposed to the society, remained unitarist, as opposed to pluralist, for

---

† So titled after Donald N. Levine's second book, *Greater Ethiopia: The Evolution of a Multiethnic Society* (1974), which, has now become a classic, has long been considered a substantial contribution to understanding the phenomena of ethnic diversity and national unity in Ethiopia and is meant to be his Festschrift for his work in Ethiopian Studies, albeit his work in Sociology and Social Theory has been duly acknowledged and disseminated widely in a Festschrift written by great sociologists including Shmuel N. Eisenstadt, whose scholarship is already in his debt, and edited by Charles Camic and Hans Joas.

* The present article is drawn from a larger work-in-progress, which in turn is drawn from my book (2010) and doctoral proposal submitted to and accepted by the PhD Programme in Diversity Management and Governance at the University of Bologna, Italy. I'm, as always, indebted immensely to Prof Andreas Eshete and Prof Donald N. Levine, the preeminent American Ethiopianist scholar, the world's foremost Simmel scholar, and one probably of the two last surviving great sociologists, besides Robert N. Bellah, of his generation of grand intellectual figures. I also owe a debt of gratitude to my former teacher and colleague, Prof Muradu Abdo of AAU Law School, for drawing my attention to the salience of the center-periphery analysis, as an approach to Ethiopian political and legal development, as found in my earlier work, by reproducing in full the two sections of chapter 1 of my LLB thesis that made up the core of the present essay in his Legal History and Traditions, a course-book, in two volumes, commissioned by the Justice and Legal Systems Research Institute (2007), Addis Ababa.

♣ Alemayehu Fentaw, (LLB, MA summa cum laude), is an independent consultant on regional and national peace and security based in Addis Ababa, Ethiopia.

most of its history despite its mosaic diversity and what prompted the adoption of ethnic federalism? The aim of this short essay is thus to throw light on why it remained unitarist for most of its history, how political history conspired with legal history in the making of a unitarist politico-legal order, and what prompted the emergence of a pluralist politico-legal order recently. This I shall do by telling two distinct, but not unrelated, accounts regarding Ethiopia's politics and law with a focus on the center-periphery cleavage.

In what follows, the political history of Ethiopia will be analyzed through the evolution of the center-periphery cleavage. A great source of attraction of the center-periphery framework, as an alternative approach to political development, is its emphasis on the dominant role of elites and its ability to transcend ethnic and geographic limitations. According to Edward Shils(1961, 117-30), the center constitutes that part of society "in which authority is possessed," while the periphery is constituted by "the hinterland… over which authority is exercised." In the words of Lijphart (1989), "[t]he implications of this model for plural societies is that there must be political domination by a center."

The center-periphery cleavage, manifesting itself in various forms, has affected the political landscape of Ethiopia with variable intensity since the ascension to the throne of Emperor Menelik II. Mapping the history of this cleavage helps to identify the factors that prompted the emergence of ethnic federalism in Ethiopia. During the imperial era, the primary source of conflict was the endless rivalry between the monarchy in the center and the regional nobility. With the overthrow of the monarchy in 1974, the nationalist liberation movements came to replace the nobility as regional forces. Following the demise of the Derg in 1991, the ethno-nationalist liberation movements conquered the center. This cleavage, in effect, has historically translated itself into two alternative models of state restructuring: unitarist-authoritarian and federalist-democratic. The focus, however, of the analysis that follows is formal-historical, rather than substantive-political, and thus

remains silent about either the content or *modus operandi* of the multination federation in place in Ethiopia today.

I

A Brief Account of Ethiopian Political History

Center-Periphery in the Era of Emperor Minelik II

With the ascent to the imperial throne of Menelik II following the death of Johannes IV at Matama fighting against the Mahdists in 1889, the center of the Ethiopian Empire-state moved to Shoa.[1]

Emperor Menelik II, emboldened by his national and international prestige owing to his triumph over Italians at the Battle of Adwa in 1896 and spurred on

---

[1] I've dispensed myself with transliteration, a formality common amongst academic historians, not because I find it to be unhelpful, but because it's unnecessarily cumbersome and waste of precious time, and hence does not add anything to our stock of knowledge. Menelik II is the Emperor who ruled Ethiopia between 1889-1913. Besides, I've avoided deliberately the use of the term 'nation-state' in reference to Ethiopia qua *body politic* insofar as it presupposes the existence of a coherent geographic entity whose borders were usually defined by natural boundaries and homogenous populations with shared cultural, linguistic, and religious values and norms. Instead, I use the term 'Empire-state' that refers to a political community (or, *body politic*) with an emperor at its head, as opposed to a president or prime minister as in the case of a republic. In this connection, I consider Adhana Haile's abortive attempt at coinage of and hair-splitting distinction between a 'state-nation', state-nation-state, and 'state-nation-empire-state' discombobulating. What Adhana Haile wished to get across seems the idea that the nation-state is far from being a universal political phenomenon; that the historic Ethiopian state (or Abyssinia) was not a nation-state, unlike England and France; that it rather was multi-ethnic or multi-national. He writes, "The historic Ethiopian state(or Abyssinia), as it consolidated itself during the medieval period, had the Tigray (speaking Tigrigna), the Christian Agaw (speaking Agawigna) and the Amhara (speaking Amharic) as its core and as the components of its *nationhood*, although the Tigray and the Amhara were preponderant. … [T]he historic Ethiopian state also embraced peoples outside the *nation-state*. The state was thus not only a *state-nation-state*, but also an empire-state. The historic Ethiopian state must be characterized therefore as a *state-nation-empire-state*." This is not only unheard-of in social science, but also is based on a false trichotomy. It would suffice to say that the historic Ethiopian state was a multi-ethnic or multi-nation-empire-state. See Adhana Haile Adhana, Mutation of Statehood and Contemporary Politics, in Ethiopia in Change: Peasantry, Nationalism and Democracy, Abebe Zegeye and Siegfried Pausewang(ed.), British Academic Press: London and New York, 1994, pp. 19-21.

by a fierce ambition of empire-building, embarked on a campaign of expanding and consolidating his rule from the central highlands to the South, West and East of the country in the decade following Adwa and established the current map of Ethiopia, a country housing more than eighty different ethnic groups.[2] Bahru Zewde(1991, 60) writes that:

> Menlik... pushed the frontier of the Ethiopian state to areas beyond the reach even of such renowned medieval empire-builders... as Amda Tseyon ... In the process, the Ethiopia of today was born, its shape consecrated by the boundary agreements made after the Battle of Adwa in 1896 with the adjoining colonial powers.

Put differently, the nineteenth century witnessed the radical shift of the country from an "outpost of Semitic civilization" to what Carlo Conti-Rossini called "*un museo di popoli*". (Andreas, 150)

Following his successful campaigns of expansion, if not conquest, to the periphery, Menelik sent governors from the center to administer the periphery. They were sent with contingents of their own so that they would install

---

[2] I've argued elsewhere that though Adwa could be construed to be a formative moment in the evolution of Ethiopia's multi-ethnic society, its legacy as symbol of nationhood remains ambiguous for different reasons. Commenting on the interpretive subjectivity and consequent ambiguous legacy of Adwa, Andreas Eshete writes, "Even events and symbols commanding wide collective pride are not equally or similarly prized by all peoples of Ethiopia. Victory at Adwa earned international recognition and prestige for Menilik's Ethiopia, an accomplishment about which conquered peoples of imperial Ethiopia, including those that fought valiantly at Adwa, are bound to be ambivalent." In the words of Gebru Tareke, "paradoxically Adwa was both a negation and an affirmation of Wichale." (Gebru, 41). For instance, What explains the ambivalence of Tigreans towards Adwa is first Menelik's decision to sign the Treaty of Wichale, despite the fact that Article III of which gave away Ethiopia's coastal territory to Italy, and then his failure to capitalize on the Adwa Victory to drive the Italians out of Mereb Mellash and reunite the Tigrigna-speaking part of the Ethiopian Empire. In this connection, Harold Marcus, the eminent biographer and historian of the times of Menelik, writes: "We do not know why Menilek made this *historic cession of territory—the first for an Ethiopian ruler*. The decision may have stemmed from Menilek's political anxiety about the north and the empire's continuing economic crisis. Since he believed his army's shortage of supplies and draft animals precluded an expedition to Tigray, he might have concluded that he *had to rely on the Italians to control Rases Mengesha and Alula*." (Italics mine) Besides, most, if not all, historians of modern Ethiopia, including Bahru Zewde, Sven Rubenson and Harold Marcus concede it was the dispute over the discrepancy between the Italian and Amharic versions of Article XVII, rather than the establishment of the Italian colony of Eritrea by virtue of Article III of the Wichale Treaty, that purported to create an Italian protectorate over all of Ethiopia that brought about the 1st Italo-Ethiopian war in 1896 at Adwa. Sven Rubenson refers to Article III as "the legal birth certificate of the Italian colony of Eritrea."Commenting on the success in negotiating this particular treaty and its significance to his government, Antonelli described Article III as "the most important article." See my 2011 paper on Adwa.

themselves in the vicinity for their respective administrations. Having been unsalaried, the administrators along with their soldiers were maintained by a system which in lieu of wages allotted each man the overlordship of certain number of tenants. In the words of Dame Margery Perham(1969, 295-296), "the land was regarded ... as confiscated to the crown, a varying proportion being allotted to the conquered chief and people and the rest used to reward or maintain Amhara, and especially Shoa soldiers, officials and notables." As a result, the subject people were literally reduced to tenants and become victims of national oppression.

Center and Periphery in the Era of Emperor Haile Sellassie I

Haile Sellassie's rule (r.1930-1974) was marked by a ceaseless rivalry between the monarchy and the nobility. The promulgation of the first constitution in 1931 was seen as the first move towards settling the center-periphery rivalry by affirming the absolute power of the crown. Andreas(2004, 152) remarks that "[t]he political triumph of the center over the regions, initiated and legitimated by the constitution, was practically demonstrated when the Emperor prevailed over Abba Jiffar II of Jimma and Ras Hailu of Gojjam in 1932." Apart from a brief interlude during the Ethio-Italy war (1935-1941), Emperor Haile Sellassie resumed the historic task of centralizing the state which he had begun in the first half of the decade following his ascension to the throne. In connection with this, Bahru Zewde(1991, 201), the eminent historiographer of modern Ethiopia, has the following to say:

> The period after 1941 witnessed the apogee of absolutism. The tentative beginnings in this direction of the pre-1935 years matured into untrammeled autocracy. The power of the state reached a limit unprecedented in Ethiopian history.

Donald Levine, the preeminent Ethiopianist and sociologist, in the preface to the second edition of *Greater Ethiopia,* his magisterial book, has pointed out the tension that existed between the center and periphery for most of Ethiopia's history. In the words of Levine (2000, xiv), "Throughout Ethiopian history there have been tensions between the national center and diverse

regional and ethnic groups. Yet the bureaucratic centralization of the postwar years was bound to exacerbate these tensions."

Although the 1955 revised constitution granted basic freedoms to speak, to assemble and to vote, essentially it was, to use Bahru's words, "a legal charter for the consolidation of absolutism."(1991, 206)Article 5 of the revised constitution expressly spells out the absolute powers of the emperor: "By virtue of His Imperial Blood, as well as by the anointing which he has received, the person of the Emperor is sacred, His dignity… inviolable and His power… indisputable." Therefore, the 1955 constitution served as little more than a screen behind which conservative positions could be entrenched. Furthermore, Amharic was made the official language, and what is worse, it alone was used in all the newly established institutions. The Ethiopian Orthodox Church was accorded the official status of national religion.

Now let us turn to a brief discussion of the resistance that Haile Sellassie's rule faced from the periphery. First, his autocratic rule was met with peasant rebellions, and latter with nationalist resistance in Eritrea, in Tigray, in the Oromo areas, in Sidamo, and in Ogaden. Andreas(2004,152) writes succinctly that:

> Nationalist struggle was a reaction against the suppression of national and regional identity as well as the encroachment on land often by people from other nationalities. Peasant revolts were directed against the growing burdens of taxation and tenancy, highhandedly administered by officials appointed or backed by central government.

It is very important at this juncture to note that there has been a shift of emphasis from an all-inclusive national identity to a particularist ethno-national identity. In the words of Donald Levine(2000, xv), "primordial assertions germinated during the last years of Haile Sellassie and sprouted under the Derg."

In view of the foregoing, it should be clear that both Menelik II and Haile Sellassie I pursued three distinct but interrelated goals, namely, centralization,

modernization and integration. Although all of them had a lasting effect on the legal and political culture of the country, I would like to, by de-emphasizing modernization, draw attention to centralization and integration, and try to make a general remark about unity and diversity in contemporary Ethiopia.

In an effort to bring about national integration, emperors Menelik and Haile Sellassie embarked upon cultural and religious homogenization by way of Amharization[3] and Orthodox Christianization. First, Menelik's conquest of the southern areas resulted in the suppression of local customary law by Abyssinian (Amhara-Tigre) traditional laws and practices. The southern conquest had the same effect on the indigenous laws as colonialism in most the third world countries. (Brietzke, 1982:31) Next, the legal transplants of the 1950's and 1960's , on which I shall dwell later, had a detrimental effect on customary laws of the country in general. Paul H. Brietzke(Id, 32), commenting on the integration attempts, writes that:

> Strong disintegrative forces exist in most societies, but Ethiopia is nonintegrated even in comparison with most other Third World states; internal armed combat has been a constant feature ... Traditional integrative devices such as conquest, the charismatic authority of an emperor, and the progressive Amharization of an Ethiopian national culture and legal system... failed to secure a high degree of national unity- the ultimate prize of social integration.

Center-Periphery in the Era of the Derg

As Lovise Aalen(2001, 5-6), commenting on the tendency to describe the events of 1974 as a revolution, points out: "Although the events in 1974 are most commonly described as a revolution, implying fundamental changes to the society *the continuities from the imperial regime to the new military regime became more apparent as the years went by after the coup.*" (Italics mine) Andreas (2004, 154) is clear on this point:

---

[3] Amharization refers to the process of converting non-Amharas into quasi-Amharas through religious and secular education, language, fellowship in the Ethiopian Orthodox Church, and the adoption of Amhara personal names. Amharized peoples enjoyed better chances in public life, as they are in effect so far removed from the periphery so as to be integrated into the center.

> The government that supplanted Haile Sellassie *perpetuated his quest for centralization* (italics mine). The overthrow of the monarchy offered an opportunity to reconsider Ethiopia's imperial status and to redress the plight of aggrieved cultural communities, who increasingly saw themselves as captives of the empire. Despite declarations of cultural equality and occasional gestures in the direction of cultural autonomy, the successor regime showed little sign of political will to seize this opportunity. Instead, the commitment was to a unitary state in order to uphold what was called the "indivisibility of Ethiopian Unity".

The military government's initial program, *Ityopia Tikdem* or Ethiopia First, was a telling example of, to use Andreas's words, "the priority accorded to an inclusive national identity". (Id) The new regime did not only refuse to give recognition to Eritrean nationalism, but also outlawed any conduct challenging the state's integrity. Derg's conception of national unity eventually degenerated into an obsessive dogma which brooked no cultural or ethnic diversity among the peoples of Ethiopia. In fine, Mengistu's linguistic and cultural oppression, actually, ended up stimulating regionalism and peripheral nationalism in Ethiopia.

Another program, which was meant as a socialist gesture, constitutes a range of radical policies. The most important and comprehensive was probably the land reform whose significance lies not only in demolishing the economic foundation of feudalism, but also in removing a major cause of national discord in some parts of the country. (Id; see also Brietzke, 291-294) Commenting on the land question alongside the nationality question, Pausewang(1994, 219) writes:

> "In 1974, the key to legitimacy of the new government of the Derg lay in solving the *land question*. The land reform of 1975 was clearly a response to a compelling political demand of necessity. In 1991 no new government could have hoped to win legitimacy without solving the *nationality issue*. A far reaching decentralization was, at that moment, the only chance to keep Ethiopia together. It would be denying realities to ignore this need." (Italics in the original)

In the following years, the regime focused on the consolidation of its power. Meanwhile, urban opposition forces led by the Ethiopian Peoples' Revolutionary Party (EPRP) gathered momentum and engaged the military

government in urban guerrilla warfare. And the military's reaction to EPRP's challenge was fatal. The Red Terror was declared in 1977, where the Derg and its supporters hunted EPRP members, imprisoning 30,000 and killing over several thousand of them. (Brietzke, 196-197)

From 1976 onward, demands for regional autonomy became significantly more intense. After 1976, Mengistu emerged as the unchallenged leader, "the continuities from the imperial era became more prevailing."(Aalen, 15) Like Haile Sellassie, Mengistu who was under the illusion that his regime was that of Ethiopian state, perpetuated the despotic centralization and deprived other regional opposition forces of legitimacy. Under his rule, the nationalist liberation movements replaced the role of the nobility as centrifugal forces. Despite the regime's appeal to a socialist ideology, the Derg was identified with an 'Amhara suppresser' by the nationalist liberation movements. Siegfried Pausewang (Id), a close observer of the Ethiopian politico–legal order, has this to say:

> Mengistu's regime increasingly reverted to the Pan-Ethiopian ideology of national development, abandoning the initial libratory promise of the revolution to allow all ethnic groups their freedom of cultural development and ethnic self-determination. Instead, the ideology of 'nation building' with Amharic as the common language and Amhara as the leading nationality was becoming official policy again.

Center-Periphery in the Era of EPRDF: the Periphery as the Center

A coalition of three ethnic insurgent groups, namely, the Eritrean People's Liberation Front (EPLF), Tigray peoples Liberation Front (TPLF), and Oromo Liberation Front (OLF) overthrew the Derg and set up a civilian government in 1991. With the demise of the Derg in 1991, Ethiopia's borders returned to where it was nearly a century ago. In July 1991, the National conference on peace and reconciliation was held in Addis Ababa which was meant to lay foundations for a transitional period. In this conference, Eritrea, represented by EPLF, was an observer, as it became a de facto independent state.

Commenting on the 1991 Ethiopian revolution Christopher Clapham(1994, 37) writes that:

> The overthrow of the Mengistu government in May 1991 amounted to more than the collapse of a particular regime. It effectively marked the failure of a project, dating back to Menelik's accession in 1989 of creating a 'modern' and centralized Ethiopian state around a Shoan core. This project, which provided theme for Haile Sellasie's long reign, was tested to self-destruction by a revolutionary regime which provoked a level of resistance that eventually culminated in the appearance of Tigrean guerrillas on the streets of Addis Ababa – a dramatic reversal of the process which, over the previous century, had seen central armies moving out to incorporate and subdue the periphery.

This assembly, as it appears from its composition, made it crystal-clear that state restructuring, henceforth in Ethiopia, will scrupulously follow ethnic lines. Donald Levine thus remarks that "[W]hen … these ethnic insurgent groups overthrew the Derg it was not surprising that ethnic allegiances and identities became politicized in consequence". (Levine, 2000: xiv)This was evident when the right to self-determination, including and up to secession made its way to the National Charter. Furthermore, Proclamation No. 1/1992 delimited the boundaries of the self-governing ethnically based regions. As Andreas(2004, 158) notes, "The history and identity of the protagonists that emerged in the wake of the victory over tyranny thus explains why ethnic federalism proved to be a decisive political instrument in Ethiopia's transition to democracy."

In this manner the ideology of national self-determination made its way into Ethiopian democratic political consciousness. In sum, the development of regionalism and subsequent ethno-nationalism can be regarded as an unintended outcome of the extreme centralization pursued by Menelik II, Haile Sellassie I, and Mengistu Hailemariam. The rise of regional self-government during the Transitional Period was thus largely due to a desire to establish democratic institutions which would guarantee the right of national self-determination. Since then democratization has been inextricably linked to the protection of the sovereignty of Ethiopia's cultural communities. Such a generalization has its support in the works of several historiographers. A case in

point is the following statement by Harold Marcus and Kevin Brown(1997, 156):

> The Mengistu regime never understood that the insurgencies in Eritrea and Tigray were political in nature and required a political solution. The leadership in Addis Ababa saw Ethiopia in highly centralized terms and believed that any success by provincial movements would undermine the state's character. Though the struggle was couched invariably in Marxist terms of class and dialectic the fight was between conceptualizations of Ethiopia as a *unitary nation* or as a *federal, even ethnically based, state*.(Italics mine)

II

A Brief Account of Ethiopian Legal History

Let us now turn to a brief discussion of Ethiopia's legal history, with an eye to unfolding the political salience of diversity, and the various ways in which diversity was subjected to uniformity by the law. This in a way helps to make out a case for legal pluralism under Ethiopia's new constitutional dispensation.

Center-Periphery in the Pre-Codes Era

Adopting the periodization suggested by Getachew Assefa(2001), Ethiopian legal history may be divided into two periods, taking the year 1957 as a watershed. Until 1957, Ethiopia did not have a distinct formal legal system. Rather, it had, to use the words of Paul Brietzke(1982, 31) , "numerous and overlapping systems of laws" According to Brietzke(Id), there are, on the one hand, "customary rules", which were used to regulate the day-to-day activities of individual members of the numerous ethnic groups. On the other hand, there are "traditional rules", which were used to regulate various relations within the Amhara-Tigre Empire and the Orthodox Church from the 14th onwards. Therefore, during the pre 1957 period, except for the 1923 law of loans, the 1930 Nationality Act and the 1948 statute of limitations. Ethiopian normative orders were informal, unsystematized, undifferentiated, and

particularistic customary laws.   In this connection John H. Beckstrom(1973) writes that:

> Until 1950s the "laws" of Ethiopia was a rather amorphous mix. There were some legislation in the form of statutes and decrees, primarily in the public law sphere, as well as a Penal code that had been promulgated in 1930. But taking Ethiopia as a geographic whole, *by far the major de facto source of rules governing social relations was found in the customs and traditions of the various tribal and ethnic and religious groupings.* (Italics mine)

Center-Periphery in the Era of the Codes

Since 1957, however, a comprehensive process of codification, which mainly drew upon European sources, took place in Ethiopia. A Penal Code (1957), Civil Code (1960), Commercial Code (1960), Maritime Code (1960),Criminal Procedure Code (1961) , Civil Procedure (1965). This codification process was guided by the modernization ambition of the Emperor. The Emperor, in the preface to the Civil Code, has pointed out:

> The progress achieved by Ethiopia requires the modernization of the legal framework of our empire's social structure... in order to consolidate the progress already achieved and to facilitate further growth and development; precise and detailed rules must be laid down.

Thus a comprehensive legal transplant was carried out throughout this period. In other words, the legal rules and principles found in the newly enacted codes had been taken in the main from European sources. Professor Rene David(1963,188-189), the draftsman of the Civil Code, commenting on it writes that:

> The development and modernization of Ethiopia necessitate the adoption of a "ready-made" system...while safeguarding certain traditional values to which she remains profoundly attached Ethiopia wishes to modify her structures completely, even to the way of life the people. They wish it to be a programme envisaging a total transformation of society and they demand that for the most part, it set out new rules appropriate for the society they wish to create.

For David, therefore, once Ethiopia had opted for the path of legal modernization, it could not have settled for anything less than adopting a foreign legal system. He maintained the view that it would not have been practical to wait for a law to emerge from within the indigenous culture. This appears starker nowhere than in his statement that Ethiopia could not afford

to wait 300 years to have a modern system of private law. The adoption of a Civil Code based on the French model, would according to David (Id), "assure as quick as possible a minimal security of social relations." However, the rationale for these western imports cannot be modernization. It must lie elsewhere. Lawrence Friedman(1975, 222) is helpful in unmasking the real motivation: "a single, uniform system of law should act as a tool of unification; like a common language, a common law should help wield a single nation out of the jumble of classes or tribes. ... The new nation will have to be built from the center. The center will have to grow at the expense of provinces...and outlying culture..."

Julio Faundez(1997, 4) points to a major flaw in David's thought as well as the ill-founded project of adopting a Civil Code based on the French model. Because of its centrality to my critique of the premises and orientations of the past law projects I wish to make throughout this paper, I set it out in its entirety.

> David's remarks on Ethiopia's Civil Code could be seen simply as a legal consultant's rationalization of the assignment that he had undertaken. It could be argued that David misrepresents the choice confronting an external legal consultant; for in the statement quoted above he appears to suggest that the choice was between either waiting for a modern indigenous legal culture to emerge or introducing an imported Civil Code. An alternative course of action would have been to ensure that the new legislation was as far as possible consistent with local practices.

Furthermore, Faundez(Id) points to an important problem raised by legal transplantation namely, the question of whether the role of an external legal adviser amounts to policy making. This raises the problem of legitimacy of the enacted laws. Brietzke(1982, 267) joins tune with us in saying that "the 1960 codes represent an almost complete break with the past. They also illustrate virtually all of the pitfalls that attend legal transplantations." He goes on to say that:

> Notwithstanding the eclectic approach claimed by the French draftsmen [R. David & Jean Escarra], the predominant flavor of the Ethiopian codes is French. The draftsmen displayed an interest in the internal logic of abstract concepts rather than their social effect, and, above an ethnocentrism. (Id)

Although it was claimed that a very eclectic approach was deployed, I dismiss such claims as disingenuous. For the bulk of the legal system, procedures and structures introduced tended to impose western patterns upon a non-western polity. In so doing, much of value in the traditional systems such as informal dispute resolution and group rights tended to be ignored. In short, despite claims that allowances were made for pockets of native jurisculture, the legal system introduced by these codes worked to the detriment of the customary laws of the various ethnic groups in Ethiopia. It's this manifest lack of innovation in the codification process that forced Donald Levine (1974, 23) to write as follows:

> With respect to innovative procedures and policies, moreover, it sometimes leads to artificially imposed forms which do not relate successfully to Ethiopia as a living system. A notable case in point has been the establishment of a supermodern set of civil and penal codes which do not take into account the existing forms of customary.

According to John Beckstrom, in order for transplants to bring about the desired result, the economic and cultural gaps between the importing and exporting states should be the least. He points out that: "[....] no greater distance has existed between the receiving country and the places of origin of the transplanted laws than in the Ethiopian experience."[55]

In fact, as Rene David explains, he actually tried to incorporate elements of customary laws into the code. Yet, in the words of Beckstrom(1973), "explicit incorporation was ... minimal." Because of diversity of local customs and lack of systematic survey of the same in Ethiopia, "there was little for the drafts men to draw upon except fragmentary and largely impressionistic reports." Beckstrom makes a further point:

> Some additional "Ethiopianization" of the codes occurred in the Codification Commission and Parliament before enactment, but this appears to have been as much a reflection of the personal preferences of the elite, urbanized individuals in those bodies as of the customary practices of the Ethiopian masses. [58](Italics mine) (Id)

Following the tack taken by Getachew, I contend that the codification process failed to understand that the formal legal system only reaches a small section of the population as in most developing countries. Thus, by focusing largely on the formal legal system the codification process went astray, as it ignored customary laws and other informal systems of law. The legitimacy crisis of the formal legal system was further deepened where the application of the codified laws, both in the civil and criminal jurisdiction, has actually been displaced by indigenous norms and practices. As Brietzke(1982, 34) points out "Many centuries of legal history and social relations are not transformed into a *tabula rasa* by simply legislating custom out of existence". That is what Arthur Schiller meant by an Ethiopian "fantasy law"(Cited in Brietzke, Id) embodied in Civil Code Article 3347(1): "Unless otherwise expressly provided all rules whether written or customary previously in force, concerning matters provided for in this code shall be replaced by this code and are hereby repealed."

Ethnic Federalism and Legal Pluralism: The Periphery as the Center

In view of the foregoing, I therefore suggest that one way to think about the 1960 Civil Code is as a politically salient legal process that has gone on for over 40 years and has been continually challenged from the periphery. For much of that period, the tendency appeared to be in the direction of greater homogeneity. Since 1991, forces of difference appear to have strengthened the heterogeneity of personal law, culminating in adopting varied family laws by the regional states. Unity, if not better, homogeneity was served powerfully in law by the processes of codification, like it was served powerfully in politics by centralization. The homogenization of personal law was effected through an express repeal of the ethnically as well as religiously based personal laws. Besides the great wave of legal codification by the continental European drafter in the mid-twentieth century swept away the particularities of criminal law (Via the penal code of 1957), preserving neither religious nor customary penalties.

Getachew Assefa(2001, 18-27) has recently suggested that the adoption of a multination federal system could give latitude for legal pluralism:

> … The existence of the traditional mechanism of undertaking legal affairs in the various Ethiopian communities is one… aspect of the problem of legitimacy crisis of formal legal system. To do away with this problem, mechanisms of harmonizing the modern legal norms and the traditional ones must be designed. With the adoption of the federal form of government in Ethiopia, the system of allowing the play of traditional norms in various parts of the country (the states) could be easily done.

Conclusion

The great upshot of this is that if we understand the codification project as a historical process, instead of a one-shot experience, this is the story as much of the centralization as is the homogenization process. Seen in this light, it forms part of the country's political history; that there's common thread running through modern Ethiopian political and legal history, which is that politics and law, as manifested themselves in the country's recent history of centralization and homogenization, conspired with each other to change the country's political and legal landscape.

What accounts for the rise of ethno-nationalism in Ethiopia in the final analysis, in my contention, is the failure of the centralization project, bent on bloody cultural homogenization, rather than democratic reformation. The failure to incorporate the masses of the population that lived in the periphery into the center of the society engendered a sense of alienation from the society with which they would otherwise have difficulty identifying themselves with a high degree of civic solidarity and civic duty to comply with its laws, and without the legitimacy crisis implicit in the politico-legal system. In other words, the rise of ethno-national movements in the last years of Emperor Haile Selassie I signaled the end only of the beginning, whilst the demise of the Derg in 1991 marked the displacement of the center by the periphery, so to speak, changed the politico-legal landscape for good.

References

Aalen, Lovise. 2001. Ethnic Federalism in a Dominant party state: The Ethiopian Experience, M.Phil. diss. University of Bergen.

Alemayehu Fentaw. 2010. Legal Pluralism in Contemporary Ethiopia, Saarbrucken, Germany.
_____.2011. The Ambiguous Legacy of Adwa as a National Symbol, Paper Delivered at the 115th Anniversary of the Victory of Adwa, Adwa, Soloda Hotel. It can be accessed online at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1788786

Andreas Eshete. 2004. Ethnic Federalism: New Frontiers in Ethiopian Politics, in Proceedings of the 1st National Conference on Federalism, Conflict and Peace Building, May 5-7 2003, Addis Ababa, Ministry of Federal Affairs, United Printers, pp 142-172.

Bahru Zewde. 1991. A History of Modern Ethiopia 1855-1974, Addis Ababa: Addis Ababa University Press.

Beckstrom, John H.1973. Transplantation of Legal Systems: An Early Report on the Reception of Western Laws in Ethiopia 21 Am. J. Comp. L. 557
Brietzke, Paul H.1982. Law, Development and the Ethiopian Revolution (London and Toronto: Associated University press, p. 26

Clapham, Christopher. 1994. Ethnicity and the National Question in Ethiopia, in Conflict and Peace in the Horn of Africa: Federalism and its Alternatives, Peter Woodward and Murray Forsyth (eds.) (Brookfield: Darmouth publishing co.), p. 37

David, Rene.1963. "A Civil Code for Ethiopia: Considerations on the Codification of the Civil Law in African Countries" 37 Tulane Law Review, pp. 188-189

Faundez, Julio (ed.).1997. Good Government and Law-Legal and Institutional Reform in Developing Countries (London: Macmillan Press Ltd., 1997), p. 4
Friedman, Lawrence M. 1975. The Legal System: A Social Science Perspective (New York: Russell Sage Foundation, p. 222

Getachew Assefa .2001. "Re-evaluating the Legitimacy of the Codified Laws in Ethiopia" 2The Law Student Bulletin2, Law Faculty, AAU, p. 20

Levine, Donald. [1974] 2000. Greater Ethiopia: The Evolution of a Multiethnic Society, Chicago and London: University of Chicago Press.

Lijphart, Arend.1989. Democracy and Plural Societies: A Comparative Exploration (Bombay: Popular Prakashan,), pp. 20 ff.

Marcus, Harold and Kevin Brown. 1997. "Ethiopia and Eritrea, Nationalism Undermines Mass and Technology" in Ethiopia in Broader Perspective: Papers of the XIIIth International Conference of Ethiopian Studies, vol. II, K.Fukui eta al (eds.) (Kyoto: Shakado Booksellers), p. 156

Pausewang, Siegfried "Democratic Dialogue and Local Tradition" Ethiopia in Boarder perspective proceedings of the XIIth International Conference of Ethiopian Studies p. 196

Pausewang, Siegfried et al.2002. Ethiopia Since the Derg (London and New York L Zed Books), p. 27

Perham, Margery.1969.The Government of Ethiopia (Evanston: North western University press), pp. 295-296

Shils Edward.1961. 'Centre and periphery', in *The Logic of Personal Knowledge: Essays Presented to Michael Polanyi,* Routledge & Kegan Paul, pp. 117-30.

Turton, David (ed.).2006.Ethnic Federalsim: The Ethiopian Experience in Comparative Perspective. Addis Ababa, Addis Ababa University Press.

Vaughn, Sarah.2003. Ethnicity and Power in Ethiopia. Unpublished PhD diss., the University of Edinburgh.