

# Ethiopia's Quest for an Appropriate Law: 'An Answer' from a Brother from Afar

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## Abstract

There have been three waves of foreign influence in the 'flesh' and 'soul' of the Ethiopian legal regime ranging from the reception of *liberal laws* from Western modern legal systems to the *socialist legality* borrowed from the Marxist regimes of the pre-1990s. While the first epoch turned to the West for emulation, socialist legality went East. From the 1990s onward, Ethiopia seems to have a *hybrid (guramaile)* of the two. Once again, Ethiopia's post-2018 legal regime is rehearsing yet another chapter in its quest for the appropriate law. This comment reflects these pursuits and challenges, and it indicates the need for insight from an indigenous African wisdom of *Sankofa*.

## Key terms

Liberal legality · Socialist legality · Modernization · Appropriate law · Sankofa · Ethiopia

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## 1. Context

Frankly speaking, there is nothing original in what I am going to say. The value of my comment might perhaps lie in reminding ourselves about something which is simple; that which is known by an average citizen; that which is under our nose; but which I feel is often not given due attention.

Let me start with my encounter with the brother from Afar. I was delivering training (years back) to participants who came from Afar, Somali,

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Gambella and Beni-Shangul Gumz regions. All of them had humble educational background. None of them had prior legal education. They were destined to serve as social court judges upon completion of the short training.

I raised a starter question “what is law?” to the trainees. The participant from the Afar Region answered saying: ‘*law is a wild animal*’. I was puzzled and surprised by the answer, to say the least, at that time. I could not tell whether he offered an answer or asked an indirect question. Let me set aside this for the moment and reflect upon some observations.

Here is a map of my observation. I would like to look at Ethiopia’s quest for an appropriate set of state law in her contemporary history focusing on liberal legality, socialist legality, hybrid legality and liberal legal pragmatic approach. Towards the end, I will come back to the question of whether the Afar brother’s reply was actually an answer or a question. I will then wind up with the concept of *Sankofa*.

## 2. Pre-1974 Liberal Legality

His Majesty the Emperor Haile Selassie I envisioned the foundation for Ethiopia’s legal system to be liberal legality. It meant a right possessing individual understood as the Alpha and Omega of progress; the state as an enabler and protector of the individual in the pursuit of their life, freedom and property. It was up to every free being to decide their destiny without illegitimate state interferences.

The principle of liberal legality was reflected in the 1955 Revised Constitution, in whose preamble the Emperor spoke of ‘...great progress in all fields... [His desire to lay] a solid basis for the happiness and prosperity of the present and future generations...’ of His people.<sup>1</sup> The principle of legality was further elaborated in the six foundational legal codes: the Penal Code, the Civil Code, the Commercial Code, the Maritime Code, the Criminal Procedure Code and the Civil Procedure Code.

As we all know, liberal legality that underlined the newly introduced legal system emanated from the modernization theory of development; such a theory of development was at its height in the period between 1950s and 1970s. It sprang from the American soil. It was an endeavor to transform a traditional society with traditional legal systems into a modern society through economic, social, political, cultural, and psychological transformations. As the order of the day had it, an agrarian country such as

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<sup>1</sup> The Revised Constitution of 1955, Preamble.

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Ethiopia had to embrace laws based on legal systems of advanced societies, comparative method and legal science; that was supposed to propel traditional societies to all-rounded changes.

However, aspiration and reality diverged greatly. The appreciation of the individual as the center of progress embedded in the laws just mentioned was not lived reality. The reality on the ground projected a different vision; reality was dominated by collectivist thinking at the wider societal level; and feudalistic thinking was the mainstream at the level of the core economic and political elites. The transplanted laws and the facts on the ground were like ships that pass in the night.

Professor René David, the chief architect of the Civil Code, made an admission of the existence of significant disparity between the circumstances on the ground and the Emperor's vision behind the imported laws. He characterized the Civil Code as the future Code of Ethiopia, a vision for an Ethiopian society to come in half a century from then onwards. He wrote the following:

... Ethiopia wishes to modify her structure completely, even to the way of life of its people. Consequently, Ethiopians do not expect the new code to be work of consolidation, the methodical and clear statement of actual customary rules. They wish it to be a program 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.<sup>2</sup>

Let us keep in mind that the Emperor presented the legal Codes as truly a product of synthesis of modernity and tradition. He affirmed this in the Preface of the Civil Code in a memorable fashion.

### **3. 1975-1991 Socialist Legality: *Hebretesebeawinet***

Then came 1974 and the years which followed. In the era of Chairman Mengistu Hailemariam, Ethiopia attempted a second turn around in overhauling her legal system. The country started out with the political motto of *hebretesebeawinet*. Chairman Mengistu's administration presented *hebretesebeawinet* as an indigenous concept capable of pulling the country out of its predicaments. An official document articulated *hebretesebeawinet* as follows:

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<sup>2</sup> René David, "A Civil Code for Ethiopia: Considerations on the Codification of the Civil Law in African Countries", Vol. 37:2 *Tul. L. Rev.* 187 (1963).

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...[It is] a political philosophy [which springs] from the culture and the soil of Ethiopia... [it emanates] from the aspirations of the broad masses; ... our great religions which teach the equality of man, and from our tradition of living and sharing together, as well as from our history so replete with national sacrifice... it is not [imported] from abroad like some decorative article of commerce. ...It [is] a philosophy which brings Ethiopia closer to those of her progressive neighbors committed to fairness and human justice as well as the broad masses of humanity. ... It [is]... capable of providing effective solutions to our long standing political and economic problems. It is moreover, based on equality, self-reliance; the dignity of labor; the supremacy of the common good... those are the principles upon which the foundations of the new Ethiopia will rest.<sup>3</sup>

The rhetoric behind *hebretesebeawinet* ultimately mutated into a somewhat foreign rather than homegrown thinking named socialist legality. The initial motto of ‘*Ethiopia Tikdem* (Ethiopia First)’ could not sustain itself in view of the push towards radical Marxism, and gave way to the Leninist thresholds of the *New Democratic Revolution* which were circulated in various documents and posted at Meskel Square (that was renamed Revolution Square). Socialist legality dismissed the human person as the center of gravity of societal progress as a capitalist propaganda. It gave paramount importance to collective interest. If liberal legality sought to produce a rational individual out of a traditional society, socialist legality operated to the opposite, seeking to manufacture an individual with a collectivist orientation. The operating paradigm assumed that where collective interest was achieved, the interest of the individual would also be achieved automatically, not the other way round.

Socialist legality was encapsulated in successive revolutionary legal framework including the bills (enacted in 1975) that recognized agricultural land to the tiller law and the nationalization of urban land and ‘extra’ houses.

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<sup>3</sup> *Ye Ethiopiya Ye Economina Ye Maheberawi Edget Meri Eqed* (1977-1986) (the Perspective Plan), (Addis Ababa, 1977) p.146. Declaration of the Provisional Military Government of Ethiopia: “Ethiopia Tikdem”: The Origins and Future Direction of the Movement” (the Economic Policy) as reproduced in Scholler, Heinrich and Brietzke, Paul (1976), *Ethiopia: Revolution, Law and Politics* (Munich, Weltforum Verlag), pp-141-150. Taffara said: “At this time this homespun ideology [Ethiopian socialism] appealed to all of us. It was made to fit the conditions and the needs of Ethiopian society and we accepted it as part of the much needed social reform policy.” Taffara Deguefe`, Minutes of an Ethiopian Century, (Addis Ababa: Shama Books, 2006) pp.5003).

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Socialist legality also led to the nationalization of major enterprises of production, distribution and services and it further included those laws that set up cooperatives and mass associations. These bills culminated in the People's Democratic Republic of Ethiopia (PDRE) Constitution in 1987 which declared in its preamble, among others, the transformation of "... Ethiopia into a socialist society with a high level of development where justice, equality and social prosperity prevail".<sup>4</sup>

Socialist legality shared various premises with dependency theory, which attributed underdevelopment of poor nations to colonial exploitation and oppressive local, national and international capitalist and feudal elites. As we can tell easily, while his Majesty's administration turned to the West for emulation, Chairman Mengistu's government went East.

Despite declaration of adoption of a 'philosophy' rooted in our traditions, there existed a gulf between the vision behind socialist legality and actual conditions in the country. The uniform collectivist laws enacted under the rubric of socialist legality remained on paper in the face of governing conditions.

#### 4. 'Hybrid' Legality

Hybrid legality underlined the notion of law in the post 1991 period. First, legal hybridity had to be constructed out of the leftist legacy of Prime Minister Meles Zenawi's party. Second, another ingredient had to be added; that came from global realities of the 1990s, which means liberal inclinations of powerful western governments, international elite institutions, transnational corporations and civil societies. The immediate past left behind by Chairman Mengistu's administration had to be factored in.

It is to reflect the reception of this mixed legal legacy that the governing party criticized itself for lack of purity in approach in its own official document by saying:

በርካታ አመለካከቶች አንድ ላይ ተደርተው ጉራማይሌ አስተሳሰብ የተያዘበት ወቅት ነበር ለማለት ይቻላል። ድራቶ ጉራማይሌ አስተሳሰብ ማለት ከኢህአዴግ ያለፉ አመለካከቶች የተሸጋገሩ ቅሪቶች፣ ከነባራዊ ሁኔታው የመነጨ አስተሳሰቦችና በከፊልም ቢሆን ከልማታዊ መንግሥት ልምድ የተገኙ አመለካከቶች ናቸው።<sup>5</sup>

It can be considered as a period of a hybrid (*guramaile*) conception that emerged from padding up several views. The padded up hybrid conception emanated from the residues carried

<sup>4</sup> The PDRE Constitution of 1987, Preamble, Paragraph 1.

<sup>5</sup> ኢህአዴግ፣ ልማት፣ ዲሞክራሲና አብዮታዊ ዲሞክራሲ፣ 1999፣ ገጽ 68.

forward from EPRDF's previous ideology, views that emerged from the objective reality and partly from experience of developmental states.

This hybrid legal dispensation had one of its legs on the Marxist legacy; while the other leg was on the liberal camp. Laws straddled the fused approach. Laws regarding private investment and human rights signaled liberal thinking. Legal framework which retained public ownership of land and the rampant practice of commercial activities by the state and the party pointed to the leftist inclination of the system. The FDRE Constitution represents that mixed strand of legal thinking.

During this period, the Government of Prime Minister Meles borrowed legislative and institutional arrangements from the west, the east, regional and global actors. In this period, too, the reality on the ground had been messy. The uniformity and coherence projected by the mixed approach betrayed the plural legal contexts prevailing on the ground.

## 5. Post-2018

In post April 2018 Ethiopia, situations are still unfolding under the administration of Prime Minister Abiy Ahmed. However, we have signals even at this early stage. It appears that a legal dispensation is ushered in, which might be named as *liberal legal pragmatic approach*. It seeks to build on pre-existing legal foundation; as it looks at the present and the future. It is a mixed bag of novelty and continuity<sup>6</sup> with an element of improvisation. I think, the following Amharic passage captures the heart of the paradigm in the making:

የመደመር ዋነኛ ዓላማ ሀገራችን ባለፉት ዓመታት ያስመዘገበቻቸውን የፖለቲካና የኢኮኖሚ ድሎች ጠብቆ ማስፋት፤ የተሠሩ ስህተቶችን ማረም፤ እንዲሁም የመፃሄውን ትውልድ ጥቅምና ፍላጎት ማሳካት ነው። በመሆኑም መደመር ከችግር ትንተና አንፃር ሀገር በቀል ነው። ከመፍትሔ ፍለጋ አንፃር ደግሞ ከሀገር ውስጥም፤ ከውጭም ትምህርት በመውሰድ የተቀመረ ነው።<sup>7</sup>

The main purpose of *Medemer* (*Synergy*) is to sustain and enhance the political and economic attainments of our country over the years, to correct mistakes that were committed thereby serving the interests and needs of future generations. *Medemer* is thus indigenous in terms of

<sup>6</sup> William Davison, 'From Meles's 'Dead end' to Abiy's 'New Horizon' (*Ethiopia Insight*, 10 June 2019) <[www.ethiopia-insight.com/2019/06/10/from-meles-dead-end-abiy-new-horizon](http://www.ethiopia-insight.com/2019/06/10/from-meles-dead-end-abiy-new-horizon)> accessed 12 May 2021.

<sup>7</sup> አብይ አህመድ (መስከረም፣ 2012 እ.ኤ.አ)፣ መደመር፣ አዲስ አበባ

problem analysis. In terms of problem solving schemes, *Medemer* is formulated based on lessons drawn from domestic and foreign experience.

The paradigm appears to get expressions in economic and legal fronts. For example, there is a drive towards economic opening up by expanding privatization. Free market, competition and entrepreneurship are being emphasized. Put in place are reformed laws on investment, commerce, privatization of key state owned businesses, movable property security, arbitration, and capital market, accession to the New York Convention and ratification of the Continental Free Trade Agreement. On the top of enhancing individual economic liberty, the period also underscores the mission of the state to ensure substantive equality.

## 6. Concluding Observations: *Sankofa*

I think the above brief account reveals that Ethiopia has been pursuing legal thinking which emanated from contradictory, competing philosophical foundations, each seeking to make and re-make Ethiopia differently under various regimes. A regime change implied a new beginning, a kind of clean slate start. There lacks a common national, shared development philosophy from which common legal conception must spring.

We have an ocean of learning out there. However, we should try hard to make collective reflection –focusing more on our common social, cultural, agro-ecological histories, relevant social and customary practices; we ought to minimize our obsession with looking elsewhere. A recent book rightly states “...ወደ ውጭ ያየነውን ያህል ወደ ውስጣችን ስላልተመለከትን ለሀገራችን ችግር ሀገር በቀል መፍትሔ [አልተገኘለትም]፣ ችግሮቻችን መልካቸውን ቀያየሩ እንጂ አልተወገዱም።”<sup>8</sup> (Since we did not pay due attention to introspection as much as we did to foreign experience, our problems have not been solved, but have merely changed forms). In this regard, wisdom may come from Sankofa:

...[Sankofa] is a gift from the Akan people who live in West Africa; it is] based on a symbol which represents a mythical bird with its feet firmly planted forward with its head turned backwards. [It] symbolizes the Akan people's quest for knowledge ... with the implication that the quest is based on critical examination, and intelligent and patient investigation: The symbol. ... Thus, the Akan believe the past serves as a guide for planning the future. To the Akan, it is this wisdom in learning from the past which ensures a strong future. The

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<sup>8</sup> አቢይ አህመድ ከዚህ በላይ የግርጌ ማስታወሻ ቁጥር 10 ገጽ vi ይመለከታል።

Akans believe that there must be movement and new learning as time passes. As this forward march proceeds, the knowledge of the past must never be forgotten.<sup>9</sup>

Sankofa is indeed a constant reminder to a community to critically scrutinize its own collective past for inspiration, humility, guidance and knowledge. Sankofa neither prevents a community from borrowing from other experiences nor does it demand a society to refrain from adapting its histories to the present and future changes.

Back to the Afar brother's response to my query, it was more of another question than an answer. I did not realize the importance of his answer for some time. The brother from Afar drew a distinction between a domestic animal and an animal in the jungle. He was not discounting the usefulness of wild animals. He was expressing his discontent relating to the absence of adaptation of state law to societal circumstances. He used a wild animal as a metaphor to explain the lack of domestication of state law. To him, state law was distant and lacked societal proximity, far away from lived reality; he was implying diminished importance of state law in achieving its intended purpose.

In conclusion, Ethiopia is in quest for an adapted, shared legal model that emanates from nationally shared development philosophy, and that suits her histories, present realities and aspirations.<sup>10</sup> Successive efforts to adopt a national development approach, though well-intentioned and consistently presented as home-grown, were not actually domesticated, and thus could not deliver the desired result –*development*. Ethiopia is still in search of an underlying legal principle which bodes well with her varied settings, that is not strange but that which is familiar; an enabler and broadly agreed upon; one which adds value to her social, economic, political and cultural progress. This is easier said than done. I feel that it has to be said, though. ■

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<sup>9</sup> The Power of Sankofa: Know History, <https://www.berea.edu/cgwc/the-power-of-sankofa/> (accessed 12 April 2021).

<sup>10</sup> Christopher Clapham (2006), "Ethiopian Development: The Politics of Emulation", *Commonwealth & Comparative Politics*, 44:1.

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