THE ETHIOPIAN CIVIL CODE PROJECT: READING A ‘LANDMARK’ LEGAL TRANSFER CASE DIFFERENTLY

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Abstract

The 1960 Ethiopian Civil Code is the largest legal transfer project into 20th century Ethiopia. Considered as one of the ‘landmark’ cases of ‘voluntary reception’ of western law in a non-western country, it has been studied by students of legal transfer, particularly in the 1960s and 1970s.

This thesis responds to calls for the re-examination of the legal transfer project that sailed through radically different times – times that saw the emergence in Ethiopia of successive political regimes with their own ideologically-driven legal modernisation projects. It critiques and provides an alternative account to existing scholarship on the Ethiopian Civil Code project. It examines how contests over the nature of state and society relationships in Ethiopia (1890s-2010) have shaped the project.

In order to undertake this study, I develop an approach that spatially and temporally relativises Ethiopia’s experience with the legal transfer project and, rejects the modernist assumptions, methodologies and questions, which informed existing scholarship on the Ethiopian Civil Code project. Drawing on the case of the codification and implementation of, and pedagogical approaches to, Book III and the inter-temporal and inter-spatial contests thereof, the thesis argues the Ethiopian Civil Code, a familiar ‘poster’ of legal transfer failure in a non-western nation, is not the failure it is usually depicted to be by existing scholarship. Indeed, my approach avoids the question of success or failure altogether. Adopted and incorporated by Christian Amhara landed elites engaged in their own local project of imperialism, the Ethiopian Civil Code was a product of Ethiopia’s contested semicolonial legal modernity. Despite persisting through three different historical times and continuing to influence local practices, the Ethiopian Civil Code project is still subject to ongoing contestation and reinterpretation. As such, it is a repository of Ethiopia’s competing and entangled modernisms and imperialisms.
Declaration

This thesis contains no material that has been accepted for the award of any other degree or diploma in my name in any university or other institution. To the best of my knowledge, it contains no material previously published or written by any other persons, except where due reference has been made in the text. The thesis is 77,333 words, exclusive of figures, tables, bibliography and appendices, as approved by the Research Higher Degrees Committee.
Linguistic Notes
Unless otherwise indicated, all translations of Amharic materials have been undertaken by the author of this thesis.
Acknowledgements

As I finally sit back and reflect on my four-year journey through this project, I thank all those people and institutions who supported me and my project directly and indirectly. I am very thankful to the University of Melbourne without whose funding I would not have ventured to read, as I now claim, the Ethiopian Civil Code project differently.

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PART ONE
CHAPTER ONE

1. INTRODUCTION

It is no longer sufficient to look only for evidence of how Western laws have been, and can be, transplanted all over the world.1

1.1. INTRODUCTION

The transfer of laws and legal institutions across states is as old as the state system itself.2 Scholars from legal and social science disciplines have been trying to understand the phenomenon almost exclusively from Eurocentric vantage points. In law, comparatists have long taken centre stage in legitimising the study of legal transfer. Aspiring to develop ‘a common law’ for the modern nation-states of Europe, comparative law as a discipline traditionally focused on harmonisation and unification of distinctive national legal systems.3 Studies focusing on the understanding of similarities and differences between legal systems thus dominated comparative law literature in the first half of the 20th century.4 Since the second half of the 20th century, comparative law literature has commenced ‘examining the fate of legal transplants and transfers’ in non-western nations.5 This follows the radical escalation of legal transfers following decolonisation.

Ethiopia has been exposed to European legal cultural hegemony since at least the middle of the 19th century.6 These, the importation of European laws and institutions reached its peak in the 1960s when six codes, including a large Romano-Germanic-style civil code, were enacted,7 and US-funded legal education took off.8 The impact of the imported laws – most importantly the 1960

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2 Ibid; see also Alan Watson, Legal Transplants: An Approach to Comparative Law (The University of Georgia Press, 2nd ed, 1993).
5 Nicholson and Biddulph, above n 3, 10.
Civil Code – on ordinary Ethiopians interested comparative lawyers and others (e.g. legal anthropologists). Widely believed to represent a ‘unique’ case of legal transfer from the West to a non-western state, the Ethiopian Civil Code has been a ‘fascination for students of the reception of Western law in non-western countries’ at least until the fall of imperial Ethiopia in 1974.9 As a result, there is a vast academic literature on the Ethiopian Civil Code10 dating back to the early 1960s when René David, the French drafter of the Code, took the initiative in describing the codification process and the material sources of the Code and its future possibilities.11

A review of existing literature on the Ethiopian Civil Code shows non-Ethiopians dominate research on the impact of the 1960 Civil Code.12 Moreover, the bulk of the legal transfer literature on the Ethiopian Civil Code emphasised either its impossibility or its failure. This is because they are generally framed by (legal) modernisation theory: theories that (1) classify states (their societies and their laws) as modern or traditional, (2) consider law-importing ‘traditional’ societies like Ethiopia as undertaking evolutionary progress to a more complete ‘modern’ society with ‘modern’ laws and institutions.

While the data from the rather limited and dated empirical research on the impact of the Code on the Ethiopian social fabric has perhaps been overused to exaggerate its failure, lack of enthusiasm in studying the Civil Code in recent times has also created the impression that the Code cannot be known in any other way than as a failed, impossible, or slowly penetrating legal transfer project (see Chapter Two). Commenting on the sorry state of recent scholarship regarding Ethiopia’s imported legal codes, Girma Wolde Selassie, an Ethiopian legal scholar, wrote in 2007 that:


12 Other than unpublished undergraduate and graduate thesis works in various Ethiopian law schools, published works by Ethiopians on the development of the Civil Code are hard to come by. Even when one comes by works authored by Ethiopians, a Eurocentric ‘transplanter’ bias is not uncommon (See, e.g., Aberra Jembere, An Introduction to the Legal History of Ethiopia 1434-1974 (Shama Books, 2012)).
Ethiopia’s legal system is still evolving despite [the fact] that we imported a massive body of ‘modern’ law over half a century ago. To date, no systematic study has been conducted to find out the extent of its application or the impact it has had, if any. That the bulk of the laws survived three governments with radically different political and economic outlooks, gives rise to an intriguing question as to their place in our society and the extent to which they have really been effective. This is important in light of the controversy raging among legal scholars regarding the question whether the transplantation of law from one socio-economic milieu to another can ever work.13

A symbol of Ethiopia’s legal modernity, the Ethiopian Civil Code was emblematic of Orthodox Christian Amhara landed elites’ assertion of hegemony in a former semicolonial cum imperial polity in the Horn of African region. As it is, the dated stories about the Civil Code still shape our understanding about Haile Selassie’s (in)famous legal modernisation project. Careful (re-) examinations of the legal transfer project in light of newer paradigms that expose the limitations of the methodologies and politics of earlier approaches to the Ethiopian Civil Code, are non-existent. And, as noted above, scholars call for the legal transfer project considering developments since the collapse of Haile Selassie’s regime in 1974.

This study critiques existing scholarship on the Ethiopian Civil Code project (what I here call the modernist story of the Ethiopian Civil Code project). It responds to outstanding calls for the re-examination of the legal transfer project that sailed through radically different times – times that saw the emergence in Ethiopia of successive political regimes with their own ideologically-driven legal modernisation projects and politics of legal transfer. It argues the Ethiopian Civil Code, a familiar ‘poster’ of legal transfer failure in a non-western nation, is not the failure it is usually depicted to be by the modernist story (reviewed in Chapter Two). As a legal transfer project, it was also neither inevitable nor impossible to succeed/fail, but contingent upon Ethiopia’s semicolonial legal modernity and Abyssinian imperialism. Adopted and incorporated by Christian Amhara landed elites engaged in their own local project of imperialism (what I here call Abyssinian imperialism), the Ethiopian Civil Code was a product of Ethiopia’s contested semicolonial legal modernity. Despite persisting through three different historical times and continuing to influence local practices, the Ethiopian Civil Code project is still subject to ongoing contestation and reinterpretation. As such, it is a repository of Ethiopia’s competing and entangled modernisms and imperialisms.

By modernity I am referring to socio-political processes unleashed by imperial Ethiopia’s encounter with the west in the ‘age of empire’.14 The salient features

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of Ethiopia’s modernity are the emergence of a modern nation state that maintained a largely indirect colonial relationship with European imperialist powers,\textsuperscript{15} the expansion of Abyssinian power beyond what I here call the \textit{rist}\textsuperscript{16} region within that state and the resultant transformation of state-society relationships that was beginning to be reflected in local but nevertheless Eurocentric discourses of modernisation since the beginning of the 20\textsuperscript{th} century (see Chapter Four). The unfolding of these temporal processes under conditions of European imperialism\textsuperscript{17} parallels Ethiopian modernity with the colonial modernities of non-western countries, particularly former semicolonial Middle Eastern and East Asian countries.\textsuperscript{18} I use the concept semicolonial to signify the largely indirect (but, nevertheless, strong) colonial relations between imperial Ethiopia and European imperialists powers, notably Italy, France, and Britain. In this thesis, I focus on two practical aspects of the legal dimension of Ethiopia’s colonial modernity\textsuperscript{19} – legal codification and legal education. Hence, semicolonial legal modernity.

The study does not approach the Ethiopian Civil Code project with the old question of ‘whether the transplantation of law from one socio-economic milieu to another can work [or work ‘effectively’]’ and the modernist methods associated with such a line of inquiry (see Chapter Two). For reasons set out in detail in Chapter Two, I do not reassess the effectiveness of the Ethiopian Civil Code project, despite having a broader retrospective gaze than former students of the Ethiopian Civil Code, who compiled their ‘early report’ on the reception of
western law in non-western Ethiopia in the 1970s. I agree with Werner Menski’s observation that ‘it is no longer sufficient to look only for evidence of how Western laws have been, and can be, transplanted’ into non-western settings. Consequently, and because post-codification Ethiopia went through two revolutions with significant implications for the imported code, I take what some would consider a ‘recipient perspective,’ and examine how competing state elites and their transnational clients shaped the Ethiopian Civil Code project in and through different historical eras in modern Ethiopia. I ask:

- How has the Ethiopian Civil Code project – the legal text and its post-codification (re)interpretation – been shaped by (inter-temporal) contests over the nature of state and society relationships in Ethiopia (1890s-2010)?
- And, what does this tell us about the modernist stories that still shape our understanding of the legal transfer project over time?

1.2. APPROACHES AND METHODS

To answer these questions and develop the argument outlined above, I first offer a critical reading of existing literature on the Ethiopian Civil Code (Chapter Two) and legal transfer in general (Chapter Three). The review of the legal transfer literature on the Ethiopian Civil Code in Chapter Two suggests the state of scholarship leaves much to be desired by way of spatial and temporal scope and methodological orientation. Produced before the collapse of imperial Ethiopia in 1974, the bulk of scholarly works on the Ethiopian Civil Code project have not dealt with the inter-temporal contests over the nature of state and society relationships and their impact, if any, on the Ethiopian Civil Code project. The related contest over the transfer of legal education (i.e. the issue of producing code-trained lawyers for code-importing Ethiopia) and its consequences has not been integrated into the story of the Ethiopian Civil Code. Further, almost all of the existing stories about the legal transfer project were framed using modernisation theory: a line of thought that shares some questionable assumptions about legal modernisation in non-western settings. My engagement with comparative law scholarship on legal transfer in Chapter Three indicates that there are now various useful approaches to reading legal transfer projects outside the modernist epistemology that defines most of the existing works on the Ethiopian Civil Code project reviewed in Chapter Two. Hence, there is a possibility of reading the Ethiopian Civil Code project differently from the

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21 Menski, above n 1, 54.
modernist stories, with their simplistic and problematic assessment, which still shapes knowledge of the legal transfer project today.

I have drawn particularly on the legal field approach to legal transfer to read the Ethiopian Civil Code project in terms of the contests between actors involved, rather than employing modernist suppositions (e.g. the eventual convergence between the ‘modernising’ Ethiopian legal system and the ‘modern’ legal systems of the West). As I have noted above, one of the questions that this study has sought to answer is how the contests over the nature of state and society relationships in Ethiopia (1890s-2010) – that is, the contests over Ethiopia’s modernity – shaped the Ethiopian Civil Code project in and through time. I start with the Bourdieu-inspired premise of legal transfer studies that the contests over Ethiopian modernity – and by implication, the Ethiopian Civil Code project – occur in social spaces that can be examined in terms of the practices of competing actors with differing social capital and power relations. I call that social space the field(s) of Ethiopian legal modernisation, which emergence I trace through the early decades of imperial Ethiopia (1890s-1930s) when Ethiopia was a semicolonial polity under the spell of European legal imperialism (see Chapter Four).

But the temporal scope of the fields examined is not limited to imperial Ethiopia, as I seek to include participants of the contests (over Ethiopian modernity) from the post-imperial eras into my story of the Ethiopian Civil Code project. I thus closely examine the inter-temporal contests between local articulators of (legal) modernisation who together shaped the specificity of the Ethiopian Civil Code project in and through three different but entangled historical times – temporalities – punctured by social revolutions in 1974 and 1991. The temporally significant social revolutions are used methodologically to place the analysis of the fields of Ethiopian legal modernisation in three separate historical contexts: imperial Ethiopia (1890s-1974), the era of ‘land to the tiller’ (1974-1991), and the federalist temporality (1991-2010). The contest between the ‘Ethiopian Japanisers’ (those embracing Japan as a model for the first non-European imperial power to graduate from semicoloniality), the Amhara landed elites, and their transnational clients define the field of Ethiopian modernisation during the first temporal layer, imperial Ethiopia (1890s-1974) (See Chapters Four to Six). Despite inter-temporal entanglements with the contests during the imperial era, the contest between two strands of the leftist Ethiopian Student Movement (1960s-1970s) dominated the field in the post-imperial eras (Chapters Seven and Eight).

The analytical separation of the temporal contexts (of the fields of Ethiopian legal modernisation) into apparently successive eras does not mean to advocate

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23Note that 2010 is a cutoff date for this study, not a signifier of a beginning of a new (but entangled) temporality.
periodisation or the linear (and teleological) temporalities implicit in what I call the modernist stories of the Ethiopian Civil Code project (Chapter Two). It is meant to assist a (temporally) focused analysis of the fields examined. Despite my use of such terms as ‘era,’ I acknowledge the entanglement and multiplicity of the temporalities of the fields of Ethiopian legal modernisation and, hence, the Ethiopian Civil Code project (see Chapters Two and Three).

I accept the inter-temporality of the fields of Ethiopian legal modernisation as well as their multiplicity. The fields of Ethiopian legal modernisation examined in this thesis are the field of codification/land law (Chapters Five to Eight) and legal education (Chapter Six). These fields of Ethiopian legal modernisation are distinct but interconnected in terms of the nature of the field-specific contests and the social capital/specialisations required for participation in them. For instance, because of the nature of the contest, for example, the contest over law curriculum, the field of legal education may exclude the (direct) participation of important actors in the field of Ethiopian legal modernisation (e.g. the Amhara landed elites, whose participation in the field of codification, was decisive).

The spatial scope of my study is limited to the field of Ethiopian legal modernisation where the struggle for the definition of Ethiopia’s future was carried out (for our purposes, the laws and the legal concepts that would constitute its ‘imagined sociality’24). My social space does not and cannot generally speak about Ethiopia as a (legal) geographical entity. For this study, Ethiopia as a physical space may usefully be depicted as composed of three geographies of property rights depending on, *inter alia*, how the capital Addis Ababa was foundationally related to its land-dependent agrarian and pastoral societies. These are (1) the *rist* region, (2) the highland peripheries, and (3) the lowland peripheries (see diagram in Chapter Four). The geographies of property rights are drawn from the ideas of John Markakis25 who writes about the make-up of the modern Ethiopian state. The geographies of property rights are an important aid in (1) the elaboration of what I call Abyssinian imperialism and (2) identification of the implications of the contest in the field of Ethiopian legal modernisation. Although Ethiopia as a physical space is a largely different world from the social space studied here, the contests in the latter can show the position of the state (and the various actors that dominated the field of legal

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24Inge Kroppenberg and Nikolaus Linder, ‘Coding the Nation: Codification History from a (Post-) Global Perspective’ in in Thomas Duve (ed), *Entanglements in Legal History: Conceptual Approaches* (Max Planck Institute for European Legal History, 2014) 67, 79

modernisation in various historical eras) on the geographies of property rights. This reflects the societies within, and therefore, the socialities imagined by (Book III of) the Ethiopian Civil Code.

The 1960 Ethiopian Civil Code consists of five books. These are: Persons (Book I), Family and Succession (Book II), Goods (Book III), Obligations (Book VI), and Special Contracts (Book V). This study focuses on Book III, which, according to the European drafter of the code, was an attempt to clarify (rather than change) existing Ethiopian customary rules on landed property. The selection of Book III is primarily motivated by the desire to limit the scope of the research. A narrowly focused study of the Ethiopian Civil Code project enables a detailed and nuanced analysis given the modest time and resources for this thesis project. There is also a strategic reason for studying the book dealing with land law. Property relations are a critical element in the discourse of Ethiopia’s (legal) modernisation throughout the 20th century and the inter-temporal contest in the field of Ethiopian legal modernisation.

Following non-modernist comparative lawyers, I accept that (transferred) legal concepts are capable of multiple meanings (and are hence contestable). Nevertheless, I approach legal concepts from a non-normative perspective. Specifically, this approach attends to (1) the creative and created nature of legal concepts, and (2) the conditions of Ethiopian semicolonial legal modernity that made their performative appropriation possible, and (3) the multiplicity of its spatiotemporal context. I do not consider property law concepts examined within the context of contests in Ethiopia’s legal modernity, such as individual landownership and agricultural communities, as models representing material realities of landed property in either Ethiopia or countries from where they were believed to have been appropriated. I present the Code and the concepts it introduced to the Ethiopian legal system as (1) repositories of experiences and desires from different times and places and (2) resources for the interpretation of Ethiopian realities and the imagination of its futures.

I have collected data through archival sources (e.g. the Library of the Ministry of Justice, Federal Democratic Republic of Ethiopia, Addis Ababa), semi-structured interviewing of key informants, and literature review. Most of the interviews were conducted during my three-month field research in Ethiopia in 2015. My reconstruction of the temporal complexity – that is, the three temporal layers – of

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27Here, I am heeding to the advice of Margit Cohen, ‘Legal Transplant Chronicles: the Evolution of Unreasonableness and Proportionality Review of the Administration in the United Kingdom’ (2010) 58 The American Journal of Comparative Law 583, 590 (who noted that one should only aspire to undertake a focused study aspects of legal transfer projects, which she rightly posits, are multi-event and multi-player processes with long-term dynamics.
28Interview conducted after ethics approval from the University of Melbourne Human Research Ethics Committee (Minimal Risk Application/Ethics ID number 1443530.1).
the period under consideration (1890s-2010) heavily relies on what may collectively be termed ‘Ethiopian studies’ scholarship. A closer but less legalistic (doctrinal) analysis of Book III of the Ethiopian Civil Code, as well as other Ethiopian legal scripts on landed property, also forms part of my method. Finally, my approach to the legal texts as well as other sources is influenced by what may generally be called postmodernist and postcolonial paradigms of recent decades, that call for reflexive interrogation, considered comparativism, and the conception of law as ‘performative’, and not only normative.29

1.3. WHY A NEW READING OF THE ETHIOPIAN CIVIL CODE PROJECT?

Now in its sixth decade, the Ethiopian Civil Code of 1960 is part of a massive legal transfer through codification, with few parallels in postcolonial Africa. Existing knowledge about this legal transfer is fragmentary and trapped in the now obsolete paradigm of (legal) modernisation: a paradigm that encouraged the analysis of legal transfer projects, like the Ethiopian Civil Code project, in terms of assumed progress towards uniform legal modernity (see Chapter Two). Earlier works have emphasised the role of the Code in transforming the allegedly ‘non-existent’30 Ethiopian legal system. The imported law (the text) was often treated as a value per se worth replicating in the receiving state, Ethiopia. As Chapter Two elaborates, I am concerned with a lack of progress and critique of the modernist story of the Ethiopian Civil Code project. Historical and interpretive studies on either the long-term effects or local (re)interpretation of the legal transfer project are absent. Despite significant shifts – in recent scholarship on legal transfer (see Chapter Three) – away from the constricted modernist paradigm, the still dominant narrative of the Ethiopian Civil Code has not been delinked from its modernist moorings. Hence, the continued weight of what I call the modernist story of the Ethiopian Civil Code project in what may be called a postmodernist era of comparative law.

This study hopes to contribute to the interpretive study of the Ethiopian Civil Code project. It offers a nuanced analysis of the legal transfer project with the use


of an analytical framework that rejects cultural essentialism and linear temporalities. My new reading of the Ethiopian Civil Code project is from a perspective which assumes the contestability of the legal transfer project (and the meanings of the legal concepts imported with the Civil Code) and the plurality of actors internal to what I call the field of Ethiopian legal modernisation. This will provide an alternative narrative of the Ethiopian Civil Code project.

That said, this study is not a polemic against earlier studies. Instead, it builds upon them. Further, it assumes that some of the earlier works on the Ethiopian Civil Code may remain insightful, if read within their frame of analysis. It is also not seeking to discredit the analysis of legal transfer for reasons different from mine. The contribution of this work should be seen in light of its attempt to take the analysis of Ethiopia’s ‘landmark’ legal transfer project in newer directions. Its merit may be discerned from its formulation of newer questions regarding the Ethiopian Civil Code which has traditionally been examined within the framework of a progressive evolutionist paradigm. This project draws attention to the ideological and temporal aspects of the legal transfer project. Its major significance is in reconceptualising the imported legal text and redirecting the analytical gaze away from the clichéd but not necessarily irrelevant question of whether the Civil Code has been successful in delivering Ethiopia from legal primitivism. More generally, the thesis contributes to the critical study of civil codification in non-western settings, particularly former semicolonial states that performed legal civilisation through codification, and the legal transfer literature that emphasises entanglements as opposed to either divergence or convergence of laws.

1.4. THESIS OUTLINE: HOW MY ARGUMENT PROCEEDS

In Chapter Two, I analyse the legal transfer literature on the Ethiopian Civil Code. Attention is drawn to works by comparative lawyers, legal anthropologists, and legal historians within and outside Ethiopia. The Chapter argues that the dominant strand of the story of the Ethiopian Civil Code project is modernist. As this modernist narrative still shapes our understanding of the project, the Chapter proposes delinking the story of the Ethiopian Civil Code from the limiting modernist narrative and countering it with an alternative story(or stories) that reveal untold aspects of the Ethiopian Civil Code. This, I suggest, illuminates (1) the limitations of the modernist story of the Ethiopian Civil Code project (2) the ideological scope and effect of the project, and (3) the role of local agency. Hence, it offers a new reading of and approach to the Ethiopian Civil Code project.

In Chapter Three, I set out the bases of my non-modernist approach to the Ethiopian Civil Code project. In doing this, I discuss emerging approaches to legal transfer which influenced my way of reading the Ethiopian Civil Code project. The Chapter shows that, although modernist perspectives still dominate
the study of legal transfer projects like the Ethiopian Civil Code, recent socio-
legal scholarship has improved theoretical perspectives and analytical tools. I
rework and combine select spatial approaches to legal transfer (particularly legal
field approaches) with a temporal approach to address the temporal complexity
of the Ethiopian Civil Code project. In rejecting the linear and teleological
temporality underpinning the modernist stories of the Ethiopian Civil Code
project, I pluralise the temporalities of the Ethiopian Civil Code project by
drawing attention to the reconfiguration of the field of Ethiopian legal
modernisation as a direct result of temporal processes such as social revolutions.
Put in other words, the Chapter outlines my approach that takes (1) the multiple
temporalities (instead of teleological temporalities underlying the modernist
stories), and (2) centres the pertinent actors across the (broader) historical
duration (1890s – 2010), and, hence, demonstrates (3) how the instrumentality of
the Ethiopian Civil Code as a resource for the imagination of Ethiopia’s future
can be impacted where time moves – i.e. brings to dominance previously
marginal actors with their own modernisms (interpretation of pasts and
resources for imagining different futures).

In Chapter Four, I begin my alternative narrative by delineating the first temporal
context for Ethiopia’s ‘voluntary reception of western law’. It revisits the first half
of the 20th century to accentuate the link between Ethiopia’s imperialism,
semicoloniality, and local discourses on Ethiopian legal modernisation in
triggering the Ethiopian Civil Code project. The chapter traces the emergence of
imperial Ethiopia (1890s–1974) and its ‘unequal’ entry into the international
political order dominated by European powers. Attendant modernisation
discourses circulated among the local literati regarding legal modernisation. It
anticipated the 1960 Ethiopian Civil Code as a marker of the broader historical
context within which the Ethiopian Civil Code project was initiated and
contested.

In Chapter Five, I examine the contest over the content of Book III and, by
implication, the interpretation of Ethiopia’s past and imagination of its future. By
drawing on the case of the drafting of Book III of the Ethiopian Civil Code, the
Chapter argues the Civil Code – the outcome of imperial Ethiopia’s late
performance of self-civilisation – is a repository of Ethiopia’s ambivalent
performance of semicolonial legal modernity. Book III of the Civil Code reflects
Ethiopia’s double-edged colonial legal modernity. First, it shows the legal
modernist outlook of the European drafter who (like ‘Ethiopian Japanisers’
before him) saw Ethiopia as a traditional polity suffering from legal primitivism
and, hence, was redeemable through the adoption of a unique ‘law of things’
replete with European legal categories. Second, the alterations made to the initial
draft of Book III echo the assertion of the landed Amhara Christian aristocracy
that frustrated René David’s (the European drafter of the Civil Code) as well as
other transnational and local actors’ ideas on land reform and tribal autonomy in imperial Ethiopia.

Chapter Six focuses on code-based legal education in post-codification imperial Ethiopia. This is a field of Ethiopian legal modernisation where the Amhara landed elites’ role was indirect, if not totally irrelevant. The aim of the chapter is to elicit the impact of the contests in the field on the Ethiopian Civil Code project, and particularly their inter-temporal implications. The production of code-trained jurists was identified by both David and the (modernist) students of the Ethiopian Civil Code project as indispensable to the translation of the ‘fantasy law’31 into practice in Ethiopia.32 And, imperial Ethiopia’s struggle to implement the code was, in part, blamed on a lack of local jurists trained in the technicalities of the imported code.33 Increased investment in legal education would, some argued, offset Ethiopia’s considerable (in comparison with similar cases of self-civilisation through civil codification) pre-codification disadvantage in ‘implementational facilities’.34 In this regard, the US-funded Law Faculty of Haile Selassie I University – a typical Cold War era ‘law and development’ project – was highly regarded as an instrument in the gradual success of what Antony Allott described as the ‘programmatic’ law, which is the 1960 Ethiopian Civil Code.35

While not denying the instrumentality of the national law school in the local production of code-trained legal elites, in line with continental legal traditions that the Americanised law school did not ignore, this chapter argues the project of producing code-trained legal elites had the double effect of (1) transforming the field of Ethiopian legal modernisation and (2) enabling alternative imaginations and a rearticulation of Ethiopia’s land law based on models drawn from places and times unknown to the 1960 Civil Code. The transformation of the field of Ethiopian legal modernisation was due to the arrival of a new generation of modernist actors engaged in Ethiopian variants of left legalism. These are the actors whose models became a greater resource than the 1960 Civil Code in the imagination of post-imperial Ethiopia’s future – after the 1974

34Beckstrom, above n 31, 582.
35Antony Allott, The Limits of the Law (Butterworths, 1980) 207.
The Ethiopian Revolution that resulted in the demise of the Amhara landed elites as an important political force in Ethiopia.

Chapters Seven and Eight focus on the Ethiopian Civil Code project in post-imperial Ethiopia where the Amhara landed elites were forced to concede a wider space for left-leaning elites. Focusing on what I call the ‘era of land to the tiller’ (1974-1991) and the federalist temporality (1991-2010), Chapters Seven and Eight demonstrate how the inter-temporal contest over Ethiopia’s semicolonial legal modernity resulted in the juristic rearticulation of land, society(ies) and state relationships based on the ideas of the new generation of Ethiopian intelligentsia – a product of Haile Selassie I University (including the national law school). The effect of such developments included the subversion of Book III’s project, at least in part. Similarly, the ascendance of proponents of the ‘nationalities question’ (greater recognition for distinct ethnic minorities) and the reimagination of Ethiopia’s future in the language of multinational federalism following the 1991 Ethiopian Revolution led to the continuation of inter-temporal contests over the 1960 Civil Code beyond the ‘era of land to the tiller’. The chapters interpret post-imperial Ethiopia’s marginalisation of Book III’s basic legal concepts as the active rejection of Rene David’s ideas in post-Haile Selassie’s Ethiopia. Yet, notwithstanding this rejection, Haile Selassie’s Civil Code proved resilient in the field of legal education, for example. The chapters show the codified laws, unlike the ‘piecemeal amendments to the Code’s provisions regarding private property’, command more respect among Ethiopian legal scholars of the post-imperial period, particularly the federalist temporality. In addition, they demonstrate the continuity of the contestation as a result of the further pluralisation of actors demanding more space for post-imperial Ethiopia’s laws that interpreted Ethiopia’s past and imagined its future more radically than René David’s Civil Code.

In Chapter Nine, I bring together the specific claims of each chapter to bear on the two research questions set out above. It argues the inter-temporal contests over the nature of state and society relationships has shaped the Ethiopian Civil Code project profoundly. It also reflects on the implication of this thesis on the modernist stories about Ethiopian Civil Code project and on future research on the Ethiopian Civil Code and/or comparable legal transfer projects. Crucially, it suggests a move away from the modernist paradigm that informed existing studies of the Ethiopian Civil Code project and the use of approaches that relativises the spatial and temporal contexts of legal transfer projects.

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CHAPTER TWO

2. THE (MODERNIST) STORY OF THE ETHIOPIAN CIVIL CODE: A PROLOGUE

[Images change depending on who is looking at them.]

2.1. INTRODUCTION

According to William Twining, Ethiopia is one of the few ‘exceptional’ 20th century cases of what he called ‘diffusion of law’. The Ethiopian Civil Code, which was included in the statute book of Haile Selassie’s Ethiopia in 1960, was the primary reason why Ethiopia was among the ‘landmark’ cases of massive legal transfer projects. Ever since its importation in 1960, the Ethiopian Civil Code, unlike the other legal codes imported by late imperial Ethiopia, has drawn the attention of scholars from various disciplines, notably comparative law, legal anthropology and sociology. Although scholarly interest seems to have waned in recent years (in part as a result of Ethiopia’s attention-diverting legal transfer projects of the post-imperial period), there is a substantial literature on the Civil Code (as a legal transfer project) spanning the six decades since 1960.

In this chapter, I examine the legal transfer literature on the Ethiopian Civil Code. I argue that the dominant story of the Ethiopian Civil Code, which still shapes our understanding of Haile Selassie’s legal modernisation project, is modernist and leaves much to be desired in terms of (1) temporal scope and (2) methodological orientation. By temporal scope, I am referring to the very limited historical gaze of the scholarship. It primarily deals with one of the three temporal layers (that is, imperial Ethiopia) examined closely in this study. By methodological orientation, I am referring to the paradigm underpinning...

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almost all of existing stories about the Ethiopian Civil Code project: legal modernisation theory. Legal modernisation theory (or simply modernisation theory) refers to a line of thought that shares some basic assumptions about non-western societies vis-à-vis western societies, namely: the differences in their legal systems (traditional vs modern), the phase of their modernity (temporally behind), and their evolutionary purpose (convergence).\footnote{My thoughts on legal modernization theory are influenced, among others, by David Linnan, 'The New, New Legal Development Model' in David Linnan (ed), Legitimacy, Legal Development and Change: Law and Modernization Reconsidered (Ashgate Publishing Company, 2012) 21, 38; and Robert Gordon, 'Critical Legal Histories' (1984) 36 Stanford Law Review 57, 59 et seq.; Mary Louise Pratt, 'Modernity and Periphery: Toward a Global and Relational Analysis' in Elisabeth Mudimbe-Boyi (ed), Beyond Dichotomies: Histories, Identities, Cultures, and the Challenge of Globalization (State University of New York, 2002) 21.}

Apart from summarising what I posit is the modernist story of the Ethiopian Civil Code project, this chapter serves as a springboard for subsequent arguments for my project and its analytical approach, which is set out in detail in the next chapter. Crucially, I will highlight the importance of paying attention to the multiple and entangled social spaces and temporalities of the Ethiopian Civil Code project that are missing from existing accounts of the Ethiopian Civil Code project.

The literature review in this section is almost exclusively based on scholarly works written in the English and Amharic languages. The writer acknowledges the existence of scholarly works on the Ethiopian Civil Code in various languages including, but not limited to, French\footnote{E.g., René David, Le Droit de la Famille dans le Code Civil Ethiopien (A. Giuffrè, 1967).} and German.\footnote{E.g., Peter H. Sand, 'Die Reform des aethiopischen Erbrechts, Problematik einer synthetischen Rezeption', (1969) 33 Rabels Zeitschrift für ausländisches und internationales Privatrecht / The Rabel Journal of Comparative and International Private Law 413.} While the author’s inability to read and reflect on French and German language literatures on the Ethiopian Civil Code project may be seen as a limitation of this study, English and Amharic are the dominant languages of legal scholarship on the Ethiopian Civil Code project and law practice in Ethiopia. This suggests that the central argument of this chapter remains valid notwithstanding the linguistic scope of the literature review.
2.2. THE ETHIOPIAN CIVIL CODE IN LEGAL TRANSFER LITERATURE

2.2.1. The Optimists’ View

The 1960s, when scholarly works on the Ethiopian Civil Code began to appear, was a decade of decolonisation and high hopes for legal modernisation in the global south, including Ethiopia. The then dominant scholarly tradition, modernisation theory, took postcolonial African states’ efforts to constitute homogenous national legal systems (based on the projected image of the West and its legal traditions) as modernisation attempts by ‘traditional’ societies. The study of ‘traditional’ societies ‘in terms of their relative resistance to the forces of modernisation’ before their anticipated disappearance at the end of the modernisation process was overriding. It was scholars who worked within that dominant – if not the only – paradigm who popularised the Ethiopian Civil Code as an object of legal transfer study.

This analytical gaze was most likely inaugurated by the French drafter of the Civil Code who, soon after the coming into force of the code, celebrated his work as a very important step in releasing Ethiopia from its traditionalism. For René David, it was impossible for Ethiopia to create a modern legal system without importing ready-made laws:

> With conditions in the modern world, where highly developed states exist, it is inconceivable that one might build in a country such as Ethiopia the road which has been built in western Europe in the course of centuries of groping. Ethiopia cannot wait 300 or 500 years to construct in an empirical fashion a system of law which is unique to itself, as was done in two different historical eras by the Romans and the English. The development and modernization of Ethiopia

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10What I here classify as optimist or sceptics’ views of the Ethiopian Civil Code project may in some ways correspond to what Kevin E. Davis and Michael J. Trebilcock’s work present as ‘optimists’ and ‘skeptics’, respectively (See Kevin E. Davis and Michael J. Trebilcock, ‘The Relationship between Law and Development: Optimists versus Skeptics’ (2008) 56 American Journal of Comparative Law 895). However, my classification of works on the Ethiopian Civil Code project, which fall generally into three broad categories, that is the optimists’ (2.2.1), the sceptics’ (2.2.2), and the view from inside (2.2.3), is based solely on my own impression of the general patterns in the Ethiopian Civil Code literature, not on Davis and Trebilcock’s ‘Optimists versus Skeptics’ thesis.


12See, eg, Singer, above n 4.


necessitate the adoption of a “ready-made” system; they force the reception of a foreign system of law.\textsuperscript{15}

Although, as will be seen below, some would later question the need for the ‘reception of a foreign system of law’, many added to René David’s unquestioned assumption of Ethiopia’s need for imported legal knowledge. In a long article written in 1967, an American student of Ethiopian legal modernisation reiterated David’s assessment of the need for modern law in Ethiopia.\textsuperscript{16} In a manner that clearly revealed the modernist paradigm he embraced, Robert Allen Sedler divided the world into two: those with developed legal systems and those without.\textsuperscript{17} And many, including Ethiopia, fell within the second category.\textsuperscript{18} Sedler then went on, seconding David, positing that the development of legal systems in ‘developing countries’ need not be evolutionary but \textit{revolutionary}.\textsuperscript{19} Predictably, Sedler emphasised the revolutionary nature of Haile Selassie’s legal modernisation projects and declared after the importation of the legal codes that ‘at this point in time Ethiopia’s history a modern legal system can now be said to have been established’.\textsuperscript{20} For Sedler, the only hiccup was the gap between the ‘revolutionary’ law and the yet-to-be tamed traditional legal reality of Ethiopia. Even then, he was confident the future was for the ‘modern legal system’ that he saw emerging:

\begin{quote}
[A]s a practical matter, an uneven application of the codes will take place, and though undesirable from many standpoints, this uneven application will cushion the impact of the new law. The simple fact is that in some parts of the country the judges will not be able to apply the codes, will not try to do so, and the parties will not be concerned with the codes but only with the customary law. This is not entirely undesirable...In some of the very remote areas where the imposition of the codes would have the greatest effect, there are no government courts. In time, these areas will be brought under effective government control, and as development progresses all people will be less resistant to the new laws. Moreover, more qualified persons will be staffing the courts, and they can apply the codes more effectively. What is suggested here is that the people will grow into the codes, so to speak. There will be a coincidence between the progress of the nation as a whole, with a greater readiness and desire to accept new ideas, and the application of the codes by judges capable of doing so.\textsuperscript{21}
\end{quote}

Writing in the late 1960s, a Belgian colleague of Robert Allen Sedler at Haile Selassie I University, Jacques Vanderlinden, also stressed (1) the revolutionary

\begin{itemize}
\item[Ibid, 188-189 (emphasis added).]
\item[Ibid 563-564.]
\item[Ibid 564 \textit{et seq.}]
\item[Ibid 565.]
\item[Ibid 635.]
\item[Ibid 607-608 (emphasis added).]
\end{itemize}
credentials of Haile Selassie’s legal codification projects and (2) the eventual emergence in Ethiopia of a legal system that he argued was mainly influenced by the two western legal traditions (the civil law and the common law):

The main characteristic of the contemporary Ethiopian legal system is that it does not yet exist as such. The revolution (and this author thinks one can really speak of it as a revolution) resulting from the introduction nearly at the same time, of a system of legal education and of six codes covering most fields of current legal activity in the country, has not yet borne its fruits. The setting in which that revolution occurred is such that one can still wonder what these fruits will be. Yet one thing is sure: out of that setting will arise the Ethiopian legal system, and what exists now in Ethiopia is only the foundation on which that system will be built.22

A dominant belief in the 1960s was, therefore, that the importation of the legal codes was (1) necessary, (2) revolutionary, and that (3) the ‘main characteristic’ of the modernising Ethiopian legal system will reveal itself in the distant future. Even though the optimists were sure the code would not immediately be applied in Ethiopia ‘in all its dispositions as the Civil Code can be applied in France’, they appeared to believe that was the ultimate goal of the project.23 This belief was also shared by commentators who reflected on the future prospect of the Ethiopian Civil Code long after the demise of Haile Selassie’s regime. For instance, the Scottish comparatist, Alan Watson, wrote in 1991 that the poor prospect of immediate reception of the code should not be exaggerated for history has shown reception of law may take centuries.24

The first attempt to empirically measure the reception of select sections of the Code was carried out by researchers from the Northwestern University and Haile Selassie I University towards the end of the 1960s (1969-1971). The findings of the research have been published along with two summaries of the project.25 Conceiving of the Code as Ethiopia’s attempt at transplantation of legal norms from ‘culturally distinct’ and economically developed Western

23See, eg, David, above n 14, 202.
nations, Professor John H. Beckstrom and his research team carried out what they called ‘an early appraisal of the extent to which Western laws and legal institutions have been absorbed in Ethiopia together with what the future may hold’. Realisation that there were no reliable performance indicators for transplanted legal systems did not dissuade the American comparative lawyers from trying to measure the impact of the ‘transplanted’ laws. They focused on select urban areas where, following a dominant American socio-legal perspective, they believed the performance of the imported legal system would be ‘more indicative of its development potential’. Despite its limited scope and acknowledged drawbacks in methodology, the project uncovered problems in the technical application of the received code. In one of his widely cited articles, Beckstrom concluded that:

The limited empirical evidence available suggests only that [Ethiopia’s modern legal system] is not yet working. That evidence shows a country hardly aware of the new codes and a judiciary still struggling to comprehend them in basic particulars – even in the major urban areas.

Beckstrom, who compared Ethiopia’s mid-20th century codification of laws with Turkey’s early 20th century effort to modernise its legal system, maintained that Ethiopia (unlike Turkey) lacked ‘pre-engagement implementational advantage’ (including a fitting ‘legal culture’). Nevertheless, he was optimistic that improved investment in legal education would offset Ethiopia’s considerable pre-codification disadvantage in implementational facilities. Curiously, Beckstrom, despite emphasising ‘handicaps of legal-social engineering in Ethiopia’, encouraged costly and time-consuming legal transfer projects which others (see section 2.2.2 below) were beginning to doubt:

We do not mean to suggest that ambitious legislation should never be enacted when engagement hurdles loom large. The best approach could be to enact ambitious laws and let the engagement facilities grow up to them. Some scholars have been wary of such a course. They warn of dangers to legal systems as a whole if parts of it lie dormant and unapplied for long periods, but these warnings are mostly intuitive and the dangers remain to be proven. However, if this course is pursued it should be with an awareness of, and a ready tolerance for, the likelihood that

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26Beckstrom on Transplantation, above n 25, 557-558.
27Ibid 558.
30Beckstrom on Transplantation, above n 25, 582 (emphasis added).
32Beckstrom on Transplantation, above n 25, 583.
the law in action will differ, in large measure, from the law as written for a considerable time.\textsuperscript{33}

Informed by American sociological jurisprudence,\textsuperscript{34} the early appraisals of the absorption of the Civil Code carried out by Beckstrom and his research team were, as noted, limited to urban areas. This has left the task of measuring the absorption of the imported law in rural areas to legal anthropologists who, despite sharing the optimism of the students of ‘social engineering through law’ regarding the evolutionary potential of the project, remained cautious not to suggest the appropriateness of continuing with the modernisation project without tuning it to the ethnic and religious pluralities of Haile Selassie’s empire.

An American legal anthropologist writing in the 1970s, Norman Singer is among the few socio-legal researchers who studied the reception of the Ethiopian Civil Code in rural areas. In focusing on the Cambata people of the peripheral highlands of Ethiopia, Singer asked, \textit{inter alia}, if the Civil Code was ‘being used with increasing frequency’.\textsuperscript{35} Although he observed members of the ethnic community largely avoided government courts in strong preference for their indigenous system,\textsuperscript{36} he ‘expected the continued functioning of this customary process inevitably will result in an acceptance of the code provisions’.\textsuperscript{37} He had observed ‘significant changes in the direction of the adoption of rules encompassed in the new Civil Code’ among actors with roles in the ‘traditional’ legal system of the studied ethnic group:

Significant changes have taken place within the last few years in the direction of the adoption of rules encompassed in the new Civil Code. For example, the divorce process has changed considerably; property settlements following divorce have been altered dramatically; and inheritance rights have been revised. Although they might not incorporate the technicalities of the code law to the minutest detail, the changes define the manner in which the Cambata understand the content of the new law.\textsuperscript{38}

\textsuperscript{33}Beckstrom on Handicaps, above n 25, 712 (emphasis added).


\textsuperscript{37}Singer on the Cambata, above n 35, 371.

\textsuperscript{38}Ibid 372.
While believing in the inevitability of evolutionary development, he, however, drew attention to the fact that the purportedly exclusive code did not bar the continuous application of traditional and religious laws in the wider part of the country. He predicted this to continue until such time that Ethiopia ‘has the basic infrastructure required for the satisfactory application of its newly modernized legal system’. True to his anthropological background, Singer placed emphasis on cultural and religious diversity as a challenge to the effective unification of the nation’s newly imported Civil Code. He also thought Ethiopia’s transition to modernisation would have been smoother had the various indigenous legal systems been given a greater role in imperial Ethiopia’s law reform programs.

A similar observation was made by David Sperry who, in the early 1970s, studied the impact of Ethiopia’s legal modernisation on a religious community in rural Ethiopia. The community, which established its own dispute settlement committee in response to the establishment of a government court in the locality, was interpreted by Sperry as reacting to ‘a situation of social change in which the multiplex relationships of traditional society are giving way to the simplex relationships of modern society’. Despite appreciating the ‘legal certainty’ which he argued the imported codes brought to Ethiopia, he praised the hesitation with which the locals resorted to government courts – the supposed custodians of the imported Civil Code – for dispute settlement:

I would judge that people are very happy with the potential for legal certainty provided for in the codified substantive law, but they hesitate, nevertheless, to take their interpersonal conflicts to the government courts for resolution. This is so because the uncertainty of legal procedure in the official courts prevents the potential for substantive certainty from being realized. At the same time, since the fundamental certainty toward which elders strive is to promote social harmony and preserve the social fabric, they can operate with great deal of flexibility in both substantive and procedural norms…[T]his may be the ultimate achievement of judicial excellence.

Apart from the impact of the Civil Code on dispute settlement processes in rural Ethiopia, the extent of incorporation of local custom(s) in the Code was

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42See Singer, above n 4, 537-556.
44Ibid 363.
45Ibid.
one of the widely discussed aspects of the Ethiopian Civil Code project. Numerous writers have taken the sweeping wording of Article 3347 of the Civil Code literally and argued that the Code brought an end to customary law in Ethiopia.46 The controversial article reads:

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 replaced.47

Writing in the 1960s, George Krzeczunowicz tried to save the Civil Code from what he considered was unjustified criticism based on the mistaken belief that the imported code threatened custom and equity.48 Despite his stand that the promotion of custom (or customary law) in post-codification Ethiopia would put ‘the legal clock back’,49 in his doctrinal works, the Polish jurist argued there are in fact multiple outlets for custom, article 3347 of the Civil Code notwithstanding.50 In the same way, René David who, as noted, posited that Ethiopia needed to import ready-made laws to escape from what he called ‘the vices’51 of customary law, nevertheless claimed some of the books in the code he drafted (including the subject of this study: Book III) were but clarifications of local customary rules.52 As we shall see in Chapter Five, David’s claim that the code clarifies local customary rules is unpersuasive. Still, some legal anthropological studies showed the values the imported legal code imparts were not necessarily incompatible with indigenous norms of select ethnic communities of Haile Selassie’s empire.53 As shall be seen below, the (perceived or real) disconnect between the imported code and local norms and ‘needs’ led some to hold skeptical view about the Ethiopian Civil Code project.

47Article 3347(1) of the Ethiopian Civil Code (Civil Code of Ethiopia, Proc. No., 165, 1960, Neg. Gaz., Year 19, No. 2) reads:
50Apart from ‘para-legal’ outlets, Krzeczunowicz identifies four legal outlets, which included (1) incorporation, (2) reference, (3) code vacuums and (4) judicial interpretation (Code and Custom, above n 48, 429-434).
51David, above n 14, 202.
53Singer, above 31, 119.
2.2.2. The Sceptics’ Views

As noted, a section of former students of the Ethiopian Civil Code held sceptical views about the legal transfer project, particularly its long-term ‘effectiveness’. On that point, they sceptics discussed in this section differed from the optimists who, as noted, were positive about the gradual success of the legal transfer project. Still, most of the students holding sceptical views about the Ethiopian Civil Code project remained modernist in the sense that they embraced some of the basic assumptions about non-western societies vis-vis western societies, including their legal system. The only notable sceptic who did not embrace the modernism of the sceptical students of the Ethiopian Civil Code was Brun-Otto Bryde (see below).

Among the most vocal critics of the Ethiopian Civil Code project were advocates of the ‘restatement’ of African customary laws as part of the reconstruction of postcolonial African countries and their legal system. Notably, the Briton Antony Allott and the American V.A. Arthur Schiller pushed for projects of restatement of customary laws with a view to countering the ‘modernising’ African states’ urge for the mass importation of laws. Several African countries including imperial Ethiopia adopted a policy that Manfred Hinz describes as ‘the model of strong monism’ – that is, the official abandonment of indigenous legal institutions in favour of either colonially imposed laws or new laws imported from elsewhere, particularly Europe. However, equally numerous African countries have initially adopted policies (or, rather, continued with colonial policies) that accorded official recognition to indigenous legal institutions. Proponents of state-sanctioned pluralism were, thus, hopeful their ‘restatement’ projects would have a future in the newly independent states – states which were all composed of (ethnically and religiously) divided societies brought together under a single jurisdiction as a direct result of the history of European colonialism.

V.A. Arthur Schiller, whose description of the Civil Code as a ‘fantasy law’ is widely cited, tried in vain to introduce to imperial Ethiopia a restatement of

59 V.A. Arthur Schiller, ‘The Changes and Adjustments Which Should be Brought to the Present Legal Systems of the Countries of Africa to Permit them to Respond More Effectively to the
customary law project, as was common in the rest of Africa in the 1960s. Schiller complimented David on making ‘a careful study of the customary law of the Ethiopian peoples’ and including Ethiopian legal principles into his draft code, but blamed the Imperial Codification Commission and the Parliament for rejecting a substantial part of David’s draft which, in his view, ‘would have permitted of an accommodation to the new law over the years’. Because of his belief in the desirability of legal pluralism and the continued application of what he called ‘customary land law’ in post-codification Ethiopia, Schiller proposed a restatement of customary law project - a modernist project in and of itself – with the ultimate goal of ‘circumventing the problem of Western influence [in Ethiopia]’ by using local legal texts that he thought ‘would have been free of [western] influence’.

For his part, Antony Allott (known for his involvement in the restatement of customary law projects in former British colonies in Africa) predicted that the Civil Code ‘cannot work even in the long run for it lacks a measure of popular understanding and acceptance’. Developments in the 1970s emboldened his critique of the ‘programmatic’, ‘elitist’, and ‘neo-capitalist’ Code which, he also claimed, was a purposive attempt by late imperial Ethiopia at social transformation through legal transfer. Writing after the fall of Haile Selassie’s regime in 1974, Allott described Ethiopia’s two decades’ experience with the Code as a unique case of a failed exercise in the unification of laws using a ‘translocated’ legal code:

[The Ethiopian Civil Code] may be described as the comparatists joy...As an intellectual achievement [it] ranks high. As a practical exercise it was a dismal failure. The law was programmatic in the most distant sense, in that it set a programme to which the nation and its disparate parts might eventually work and which might eventually succeed...The comparatists’ joy is the practitioner’s nightmare: it is too much to expect the fledgling or even the established Ethiopian legal practitioner to be able to handle material from so many different sources...The judges of the courts which should be applying the Code have not resorted to it. Worst of all, the population at large has been unaffected by the


61Schiller, above n 55, 2.

62This is because such projects were predicated on the problematic assumption that the ‘traditional’ sphere of non-western legal life can be kept intact and/or ‘modern’ by reducing it into a written form (for a critique of such approaches, see Chapter Five, section 5.4).

63Tuori, above n 60, 53.

64Allott, above n 54, 387.

65Ibid; Antony Allott, The Limits of the Law (Butterworths, 1980), 203-209.

66He preferred to use the term ‘translocation of laws’ to refer to what other students of the Ethiopian Civil Code called ‘legal transplantation’ (ibid, ch 4).
Code [in part due to the high rate of illiteracy67] ...Ethiopia is merely a special and extreme case of a general problem. How the problem compounded by politics is attested by the vicissitudes of the country since the fall of the Emperor in 1974, and the seizure of power by a revolutionary socialist regime.68

This rather unforgiving assessment of Ethiopia’s experience with the Code was in part due to Allott’s conception of the Code as an attempted translocation of law by a government of a country where the gap between the social context underpinning the imported law and local society was too large to be effectively overcome.69 Without the underlying European life and history, Allott saw very little hope for imported African laws to flourish and ‘retain the tough character’ they have in Europe.70 As he tied success to the replication of European legal history in Ethiopia,71 it is not surprising that Allott reached that conclusion – not least when writing after Haile Selassie’s government was deposed by an ideologically committed Marxist military junta. On a different note, his implicit suggestion that local politics influences the dynamism of the Ethiopian Civil Code project raises questions regarding the nexus of local politics and the legal transfer project which I pursue in the forthcoming chapters (Chapters Four to Eight).

The 1974 Ethiopian Revolution, which Allott considered to have ‘compounded’ Ethiopia’s ‘fit’ problem, was taken by some comparative lawyers as desirable. In particular, Paul Brietzke, a former professor of law and development at Haile Selassie I University, appeared to have welcomed the revolution. For Brietzke, Haile Selassie’s Ethiopia was not simply a traditional society trying to escape legal primitivism. Ethiopia was an indigenous colonial empire led by the Amhara elite, which successfully transplanted its (colonial) land laws to the country’s multiple peripheries before later trying to consolidate and transform its colonialism through legal modernisation projects.72 What for many appeared an encouraging nation-building endeavour was, for Brietzke, a contradictory project of local colonisation and nation-building that must be stopped.73 Brietzke, who approached the Ethiopian Civil Code project from the point of view of economic development, was as worried as the above discussed proponents of state-sanctioned legal pluralism about the lack of fit between the code and Ethiopian reality:

67He mentioned the high rate of illiteracy as one of the factors for the failure of the Ethiopian Civil Code project (ibid, 208).
68Ibid 207-209 (emphasis added).
69He described the Civil Code one of the two legal revolutions that hit 20th century Ethiopia, one being the 1974 Ethiopian Revolution (ibid, xii and 117).
70Ibid 110.
71Ibid.
73Brietzke on Revolution, above n 72, 31 and 89.
The predominant flavor of the Ethiopian [private] codes is French...[Indigenous] rules were ignored in favor of verbatim legal transplants that are irrelevant, in the sense that French private laws were not instrumental in securing a broadly-based development in France. There is little reason to believe that [they] would do better in Ethiopia. The prematurely ossified system of French legal premises represents a sharp reaction against matters which concern us but little today: what were felt to be the excesses of the Enlightenment and the French Revolution. The basis for an increasingly bourgeois... society was provided by the fierce protection of immovable (primarily land) within the family, whose role was defined by a Mediterranean Catholicism translated into law. The power of other groups standing between the individuals and the state (manors, guilds, the Church, provincial authorities, and municipalities) was proscribed because, inter alia, these groups hindered attempts at an imperial absolutism – Napoleon’s and Haile Selassie’s...[David’s Francophone model of a new society embodied in the civil code] is singularly inappropriate for [Ethiopia], where all of law is highly political and an active participant in struggles for power, stability, and development.74

Unlike orthodox law and development scholars who saw the Civil Code as a reliable instrument of social change, Brietzke deserves credit for expanding the discussions regarding Ethiopia’s imported private law. Apart from exposing the colonial legal thinking shared by many (including David) that Ethiopian traditional law cannot be a basis for codified law, Brietzke maintained that Ethiopia’s laws must respond to Ethiopia’s needs and demands.75 Nevertheless, he seemed to backtrack from his criticism of David when it came to suggesting an alternative to Ethiopia’s imported private laws. Despite being critical of earlier works on the Ethiopian Civil Code for ‘taking for granted’ 19th century legal positivist assumptions about laws exported to the ‘Third World’,76 Brietzke found it difficult to trust indigenous norms as viable sources of pro-development laws in what he considered was an ‘era of rapid change’.77 Consequently, he suggested post-revolutionary Ethiopia look for inspiration from ‘mixed’ civilian jurisdictions and socialist Eastern Europe.78 Still, he remained skeptical that laws, whether imported from the capitalist West or the socialist East, would perform the same function in different societies:

[Resistance to imported laws] can only be expected, and the result is a yawning gap between the law-in-action and the law-in-the-books. Western and socialist laws are also laws of England or France, or Russia or Yugoslavia, functioning in social force fields which differ markedly from each other and from those found in the

74Brietzke on Revolution, above n 72, 268-270 (emphasis added).
75Brietzke, above n 72, 150-153.
76Brietzke on Revolution, above n 72, 63.
77Brietzke, above n 72, 155.
78 Ibid 167.
Third World. It is only by chance that a legal rule (or political philosophy) will perform the same function in two different societies.79

Sceptical views were held also by scholars who believed the legal transfer project was primarily motivated by desires to bring about the social and economic change witnessed previously in the ‘developed’ world. In particular, for Robert Seidman, who developed a non-transferability thesis, the Ethiopian Civil Code, Imperial Ethiopia’s ‘uncritical’ borrowing of foreign laws, had no chance of bringing institutional change.80 In 1972, the American legal scholar wrote:

If there is any validated proposition in history of law, it is that the institutional transfer does not work. Atatürk introduced the French Civil Code into Turkey; Turkey does not resemble France. Anglophonic Africa, despite the reception of English law did not develop as did England. Ethiopia is still Ethiopia, Professor David’s code notwithstanding.81

Without embracing Seidman’s non-transferability thesis (and generally his modernist views), Brun-Otto Bryde shared his skepticism of the role of imported laws’ – particularly private laws – role in bringing about social change.82 ‘Traditions and attitudes’, Bryde posited, ‘cannot be transferred as easily as models’.83 Further, he persuasively showed that the importation of the Ethiopian Civil Code was less about social and economic change through law and more about symbolic replication of ‘the prestige of western social institutions as models for African societies’ for the purposes of impressing critical audiences, including ‘world public opinion’.84 Critical of both existing assessments of the effectiveness of the Ethiopian Civil Code project and the efficacy of (private) law in bringing social change, Bryde, the only notable non-modernist skeptics, called for a much more nuanced assessment of legal effectiveness before drawing any definitive conclusion on African legal transfer projects.85 Studies heeding his advice are, however, in short supply to date.

Finally, M.B. Hooker’s account of the ‘process of mutual adaptation’ involving the Ethiopian Civil Code may be added to the list of skeptical views on Haile Selassie’s legal transfer project.86 Conceiving the Ethiopian Civil Code project as ‘voluntary adoption of western laws’, Hooker compared the Ethiopian case with similar historical cases in Russia, China, Japan, Turkey and Thailand

79Brietzke on Revolution, above n 72, 62 (emphasis added).
81Ibid 280-281 (emphasis added).
83Ibid 74.
84Ibid 112 et seq.
85Ibid 189 et seq.
86Hooker, above n 3, 361.
where, he noted, westernisation of law occurred outside the framework of formal colonisation – hence, his notion of voluntary adoption.\textsuperscript{87} Further, Hooker embraced the instrumentalist view of legal transfer in the same way as most of the aforementioned legal scholars, that took the Civil Code as a means to an end: namely, ‘social and economic reform’.\textsuperscript{88} Based largely on the already available literature on the Ethiopian Civil Code project, he examined the impact of the Civil Code on indigenous laws (that is, religious and customary laws). Writing after the downfall of Haile Selassie’s regime, Hooker (like some of the skeptical commentators discussed above) stressed the vitality of legal pluralism and the temporal compounding accumulation of impediments in the implementation of the ‘legal administration in the derivative situation’.\textsuperscript{89} Hooker’s diagnosis of Ethiopia’s predicament in the implementation of the Civil Code included (1) the absence in Ethiopia of a group of elites in the shape of the ‘Young Turks’ of Atatürk’s Turkey and (2) ‘the lack of an intensive low-level administration...to translate government edict into actuality’.\textsuperscript{90} Hooker’s focus on the relationship between imported law and local (customary and religious) laws and the one-way impact of the former on the latter leaves his account largely similar in orientation to the works he relied on to reconstruct his story about Ethiopia’s ‘voluntary reception of law’.

2.2.3. The View from Inside

Ethiopians were not at the forefront of academic discussions regarding the Ethiopian Civil Code during the 1960s and the early 1970s when the works reviewed above were produced. Daniel Haile who, before the 1974 Ethiopian Revolution, wrote a piece on law and social change in imperial Ethiopia is to my knowledge the only Ethiopian legal scholar to have contributed to the scholarly debate regarding the Ethiopian Civil Code.\textsuperscript{91} Embracing the school of thought favored by his American professors, Haile was sympathetic to Haile Selassie’s attempt at ‘socio-legal engineering’ and, for that reason, he represents the earliest Ethiopian voice in what I have above called the optimists’ view of the Ethiopian Civil Code project.

Scholarly discussions regarding the Ethiopian Civil Code project declined following the 1974 Ethiopian Revolution and the severing of ties between Haile Selassie I University and its American partners. Few Ethiopian legal scholars bothered to reflect on either the pace of post-revolutionary Ethiopia’s absorption of the imported legal code or its interaction with post-revolutionary legal development. Silenced by the Marxist and anti-Haile Selassie spirit during

\textsuperscript{87}Ibid 360.
\textsuperscript{88}Ibid.
\textsuperscript{89}Ibid 361.
\textsuperscript{90}Ibid 390 and 409.
the first republic (1974-1991), Ethiopian legal scholars had to await the downfall of the socialist regime to begin to openly reflect on Haile Selassie’s legal modernisation projects. As the first generation of Ethiopian lawyers returned with vengeance to celebrate the emperor and the fruits of his legal modernisation, optimism evocative of the law and development movement of the 1960s resurfaced. In his seminal work on the legal history of Ethiopia, Aberra Jembere singled out Haile Selassie I (r. 1930-1974) as one of the most important emperors in Ethiopian legal history for, *inter alia*, ‘promulgating the six modern codes of Ethiopia.’ He also responded to earlier skeptical assessments of Ethiopia’s experiment with the modern codes. According to Jembere:

> [T]he codes were not implemented not because they were not oriented towards traditional laws…but rather because, due to the financial constraints prevailing in the country, neither the necessary machinery was set up nor adequately trained lawyers were in place for their implementation.

Another Ethiopian legal scholar went further than Jembere’s claim, arguing that the enforcement of the Civil Code, which he thought was one of the treasured achievements of Ethiopia’s 20th century forefathers, may no longer be constrained by such factors as a lack of resources or the free-market-unfriendly socialist state. As the half-centenary of the Code was commemorated with a few publications, the dialogue was rather more celebratory and defensive of the Civil Code project. More recently, and despite the federalist temporality that brought its own entanglements, Tsehai Wada Wourji restated the old optimism towards the ‘formal justice system’ that was in part made up of legal codes imported from Europe. Despite the comparably low rate of urbanisation that

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93 Ibid, 11.
Ethiopia has witnessed over the five decades since the importation of the Civil Code and research showing the resilience of what he called the ‘informal justice system’ into the 21st century, Wourji was confident the future is promising for the statist legal system:

[G]iven the high rate of urbanization witnessed in recent years as well as the different attempts made to reform the formal judicial system, it is hoped that the future is for the formal system to prevail over the informal. The same cannot be said about the informal system for there are no records that show any such tendency. It is therefore recommended that pertinent institutions should adopt…approach[es] to facilitate the transition to the ultimate goal of assimilation.

2.2.4. The Continued (Distant and Skeptical) Gaze

Interestingly, observers further afield do not seem to bother with what Ethiopian custodians of the Civil Code thought about their cherished inheritance from the middle of the 20th century. Foreign-based commentators continued to remind Ethiopians that the Civil Code was a failure. In his Codification as a Socio-historical Phenomenon, the Hungarian comparative lawyer Csaba Varga noted:

[For] Ethiopia…one of the most backward regions in the world…the direct transplantation of a western code would have amounted to have a leap over an unbridgeable gap [created by the diversity and complexity of tribal traditions]. To this end, an artificial, so-called ‘comparative’ code was enacted. Paradoxically, this code was enacted in the last years of imperial rule. This code got very weak approval. In effect, the chance was the same as it had been half a century ago in Turkey for the enacted text becoming mere ‘law of phantasy’, in other words, an idealistic construct with no hope of actual influencing.

This skepticism survived the 20th century and is best represented by the pro-pluralist comparative lawyer Werner F. Menski. Appalled by the Eurocentrism of comparative law approaches to legal transplants in Africa, Menski followed Allott in labelling the Ethiopian Civil Code as one of the most extreme examples of failed attempts at unification of law in postcolonial

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100Wourji, above n 97, 293 (emphasis added).

101Csaba Varga, Codification as a Socio-historical Phenomenon (Akadémiai Kiadó, 1991) 186 (emphasis added).

Africa. His limited reference even led him to assume that socialist Ethiopia abandoned the Code following the 1974 Revolution:

[T]he Civil Code represents a classic case of extreme legal positivism. It could never have succeeded in becoming the operative law of Ethiopia, and its demise is probably a blessing rather than a disaster. The hubris of the law-makers and their highly qualified European advisors received a severe knock in this case, but it does not appear that enough lessons have been learnt in the discourse on transplants.

Now, there appears to be a consensus that the Civil Code is a poster child of legal transfer failure in a non-western nation. Nevertheless, Ethiopia seems to have stuck with V.A. Arthur Schiller’s ‘fantasy law,’ and not many observers are as dismissive as Menski. Along with the existing federal constitution of Ethiopia, the Code is perhaps the most widely published and consulted Ethiopian legislative text in the post-socialist era. Although European jurists may doubt the attachment of Ethiopian jurists to the 1960 Civil Code, a professor of law at Addis Ababa University claims Ethiopian lawyers do not know (and engage with) other pieces of legislation (including those from post-Haile Selassie era) as much as they engage with the Civil Code and its contemporaries from Haile Selassie’s era.

2.3. MAKING SENSE OF THE MODERNIST STORY

This review reveals multiple stories about the Civil Code dealing with various questions which are unlikely to be asked, if it were not for a shared epistemological starting point: modernisation theory. The tenets of this epistemology are best represented by the concepts of traditional societies and their laws, modern societies and their laws, and evolutionary progress. From the perspective of this paradigm, the modern is France, from where the Ethiopian Civil Code was imported. It is assumed to be a place of rule of law

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103Ibid 480-484.
104Ibid 484.
108Interview with Professor Tilahun Teshome, Addis Ababa University (9 October 2015, Addis Ababa, Ethiopia).
and juristic plenitude. The traditional is Ethiopia, which apparently showed its intent to modernise with, *inter alia*, legal codification. Unlike France, it has been (and may still be) considered a place with ‘legal deficits’ – a lack of modern laws, institutions, and practices. Ethiopia’s mid-20th century codification was considered by the modernists to have triggered an irreversible, progressive Westernisation process that would inevitably transform traditional Ethiopia and result in the eventual convergence between the modernising Ethiopian legal system and its adoptive parent – the Romano-Germanic legal family. But, as noted, the sceptics maintained convergence is impossible and the attempt will fail.

As will be revealed, existing scholarship is mainly concerned with whether Ethiopia’s legal transfer project would/should succeed. Success has often been measured in terms of (1) the Ethiopian state’s capacity to colonise its urban and rural communities and their diverse legal culture, (2) ‘traditional’ Ethiopians’ propensity to assimilate into what are considered alien, but modern, values imparted by the imported code, and (3) the replication of modern nations’ experience with codified laws (e.g. consistent interpretation of legal concepts). Those who considered the legal transfer desirable for one reason or another were generally troubled by the very slow pace of Ethiopia’s inevitable progress to a more complete modern legal system. Even those who attempted to empirically verify what they believed was a huge gap between the law on the books and the law in action did not find it hard to believe in the evolutionary possibility of the Civil Code project. On the other hand, those who denied the Civil Code project’s possibility or desirability were not entirely divorced from the logic of modernisation theory. For instance, they maintained a strict dichotomy between traditional law and modern law. Some were openly sympathetic to indigenous laws which they believed were endangered by the introduction of the code, they therefore proposed traditionalism as a viable alternative to modernism in the yet-to-be modern Ethiopia. Some suggested the impossibility (though not necessarily the undesirability) of the legal transfer for reasons other than want of traditionalism in Ethiopia’s legal development. For instance, Seidman’s scepticism towards what he called the ‘modern positivist approach to law and development’ in Africa (which he believed was best exemplified by the Ethiopian Civil Code) largely relates to his rejection of an analytical positivist approach to institutional transfer.109 However, his non-positivist theory of non-transferability of law is predicated on the assumption that the Ethiopian Civil Code and comparable legal transfer projects in postcolonial Africa are genuine, but naïve, attempts by political elites to reproduce western institutions with their Eurocentric details. If we agree with him that this is the primary objective of legal transfer projects in Africa, it

109Seidman, above n 80, 279-281.
would be hard to fault Seidman for his prognosis of why the Civil Code, and African legal modernisation projects in general, must fail:

The failure of English law to recreate in Africa anything resembling English society and the English economy can now be explained. English law depended on contract as the principal institution of the economy. Contract law assumes that each actor will try to achieve whatever best serves his individual economic advantage. In England, the total set of institutions in the country induced entrepreneurs to make the most rapid economic development that the world had ever known. In Africa, the British entrepreneurs faced a different set of institutions, posing a different set of constructs and rewards. The most important difference was that when England was undergoing development, the local English market offered the greatest rewards for the entrepreneur. When Africa was being developed, not the local, African market, but the far-off market of the metropole offered the entrepreneur the greatest rewards. The export-oriented, dual economies of tropical Africa were the consequences of English entrepreneurs seizing their advantage.110

A problem with this (and other modernist) analysis is its assumption of the purpose of legal transfer in Africa in general and Ethiopia in particular. As will be elaborated in Chapter Four, political elites who were behind the importation of the Ethiopian Civil Code were more concerned with the prejudices that powerful western nations held against the Ethiopian legal system than the recreation of Ethiopia in the image of France. In fact, as I will argue, their practice suggests we should not mistake legal codification as an affirmation of commitment and consistency in institutionalising western legal values or practices. Similarly, Seidman’s simplistic representation of the history of English contract law and its relationship with entrepreneurship (or development) is suspect of what Robert Gordon considers an evolutionary-functionalist approach to legal history.111 In this tradition of legal history, contingent and heterogeneous historical processes are represented as an homogeneous affair involving institutional adaptations to social processes, including the one described above by Seidman as ‘the most rapid economic development that the world had ever known’.

Measuring the effectiveness of the Ethiopian Civil Code in the way the modernists did is also a dubious research agenda for other reasons. First, the attempt to investigate the relationship between law and social change based on the assumption that law is either autonomous or epiphenomenal is questionable.112 A study of the Civil Code as a tool of social engineering cannot

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110Ibid 282 (emphasis added).
111Gordon, above n 7, 59-63.
112Bryde, above n 82, 2-3.
escape the tricky ‘chicken or egg’ question. Second, existing reception indicators would often assign fixed, functionalist, ideal type but still ethnocentric roles for borrowed institutions, leaving out the possibility of learning through experimentation in the receiving jurisdiction. Besides, preoccupation with the measurement of the effectiveness of legal transfer might hide a pattern of domination, and contributes ‘little to the production of knowledge relevant to the struggle against the injustices of dominant systems of governance’. Although often unintended, the diagnosis of the modern Ethiopian legal system and/or its experience with imported laws as largely ineffective (or impossible) also reinforces what postcolonial theoreticians call legal orientalism. At times, such prejudices are the result of methodological inadequacies rather than lack of fit between Ethiopia and the imported law. As rightly pointed out by Brun-Otto Bryde, attempts to measure the impact of the Civil Code against such standards as illiteracy, attitudes, legal knowledge and language are suspicious. The methodological difficulty in proving a causal relationship between norm and behavioral change, coupled with the irrelevance of some standards of comparison in helping measure the efficacy of laws that do have various goals, casts doubt on the rigour and ethics (politics) of the modernists’ assessment of effectiveness of the Civil Code project:

Too general an approach is especially typical for the discussion of African legal phenomena...Gross disparities between industrialized and African countries are taken as conclusive evidence that identical rules will have (“save fortuitously”) different effects, even though one can detect comparable specific problems in very different countries. Similarly, it is dangerous to base hypotheses about the efficacy of a norm on a factor like a high illiteracy rate without establishing that we deal with a kind of law for which such a factor is relevant. In studies on

118Bryde, above n 82, 129.
Ethiopia, for instance, the high illiteracy rate of [the] country…cannot be cited as an obstacle to the effectiveness of written laws, if such studies address problems of the urbanized areas where the national average in literacy is by far surpassed. The same caution has to be applied when the traditional attitudes of the population, a low diffusion of legal knowledge or language difficulties are made the basis for skepticism about the impact of positive law in Africa. While such factors are important for some laws, they might be irrelevant for others… [I]t is [also] useful to point how little actual legal knowledge about law there is in western countries. And, here too, conciliation is by many groups preferred to the official court system. Assumptions about the ineffectiveness of imported laws in Africa are therefore sometimes based on wrong comparisons.119

Similarly, earlier studies of the Ethiopian Civil Code project were predicated on conceptions of space that uncritically attached imported law to every inch of Ethiopia’s territory and, as a result, overestimate the geographic scope of imperial Ethiopia’s sovereignty and its imported legal technologies. Such a conception of space has been so pervasive that it has induced students of the Ethiopian Civil Code project – particularly those with empirical orientation – to look for traces of imperial Ethiopia’s freshly-imported legal codes in urban and rural areas. Taking the physical territorial limits of Ethiopia as the outer boundaries of the space of the Ethiopian Civil Code project leads to a bias towards what Boaventura de Sousa Santos calls ‘the scale of the state’.120 Under these circumstances, it remains insensitive to coexisting and equally important spatialities of law (that is, ‘interlegalities’ and ‘entangled legal pluralities’.121 Moreover, approaching the study of the Ethiopian Civil Code project with a notion of space that privileges legal centralism misses the most dynamic sites of the Ethiopian Civil Code project – such as legal education and what Paul Brietzke called the ‘social force field’122 of code-importing Ethiopia. At these sites, as this study demonstrates, the effects of and contests over the project has been long-lasting.

If the analyses of most of the distant observers, both pessimist and optimist, were based on ‘wrong comparisons’ or the ideology of legal centralism, the few local responses to the failure thesis are equally problematic for they often translate into (1) empty celebration of the Ethiopian Civil Code project, (2) unfounded prognosis of the project’s assimilatory potential, and (3) uncomfortable silence over the double coloniality of the project and the contests that shaped it in multiple ways since importation. As much as they are

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119Ibid 2-3 and 129 (emphasis added).
122Brietzke on Revolution, above n 71, 62.
informed by the methodological nationalism of Ethiopian legal historians who defend Haile Selassie I as ‘uncolonised’ Ethiopia’s moderniser, code-trained Ethiopian jurists are inclined to look at their legal codes through the same modernisation paradigm. That paradigm emphasises the teleological temporality (that is, the passing and progressive nature of the temporal structure) of the Ethiopian Civil Code project and the inevitability of total legal centralisation based on Ethiopia’s imported laws.

The above literature review confirms that the Ethiopian Civil Code project should be read anew and cautiously, without assuming its role as a dependable instrument of social engineering, and in tandem with the spatiotemporal context in which it was initiated and performed. Embracing the spirit of postmodernist and postcolonial critics of modernisation theory, I reject the study of the Civil Code project in a way that does not ‘keep the embarrassment of the copy at bay’,123 or that falls prey to a diagnosis where Ethiopia is in the traditional-modern continuum. I would also suggest that the Ethiopian state, a massive importer of European legal technologies, must be conceived differently than as a passing ‘traditional society’ living in the historical past of the post-historical West. I am not as convinced as the modernists are of the appropriateness of asking whether the Ethiopian legal system (more specially the Ethiopian Civil Code project) would or should (slowly or rapidly) grow functionally less dissimilar from its western variants. Such an inquiry, *inter alia*, (1) affirms what Achille Mbembe calls ‘the uncompromising nature of the Western self and its active negation of anything not itself,’124 and (2) contributes little to the long-awaited launch of what Clifford Geertz in 1983 called ‘a new way of talking [about]…what is going on, legal wise, in the Ethiopias of the world’.125 Starting ‘a new way of talking’ about the Ethiopian Civil Code project is critical for several reasons. First, working through teleological notions of time, the modernist stories of the Ethiopian Civil Code project give little, if any, attention to its unique but entangled temporalities. It is these temporalities that help us understand the legal transfer project in more ways than as a dismal failure, a fantasy law, the law of the future, an instrument of social change, or the treasured achievement of Ethiopia’s legal modernisers. Second, the temporal scope of the major works on the Ethiopian Civil Code project is confined to what I here call imperial Ethiopia, 1890s-1974. The integration of the post-imperial temporal layers to the story of the Ethiopian Civil Code project offers a richer insight into one of the ‘landmark’ cases of 20th century legal transfer project. Third, the modernist story cannot endure emerging

perspectives on legal transfer and the Ethiopian state and its (legal) modernity (see Chapters Three and Four). Fourth, it reveals the meaning and contested nature of (legal) modernism in Ethiopia, a semicolonial polity with multiple social spaces and temporalities (see Chapter Three).

2.4. CONCLUSION

Writing two years after the coming into force of the Civil Code, René David reasoned that Ethiopia’s codification was necessary as the African state ‘cannot wait’ until its legal system ‘evolves’ to catch up with others in Europe. Similarly, Sedler, who classified legal systems into ‘developed’ (e.g. the USA) and ‘underdeveloped’ (e.g. Ethiopia), admired Ethiopia’s ‘revolutionary’ (as opposed to West’s evolutionary) encounter with legal modernism because he thought it will eventually deliver Ethiopia from underdevelopment. While some expressed their worries that the legal revolution was not something Ethiopia needed, enthusiasts went on suggesting to Ethiopia how to best deal with its ‘pre-engagement problems’ (or, simply, orientalist nature) hindering its revolutionary legal modernisation project. The predominant assumption was that the Ethiopian Civil Code was so modern (and useful) that it couldn’t fail. If it ever fails, the failure is attributed to the recipient polity which needs to ‘grow up into’ the modern code. As Ethiopia is often conceived in terms of its (horizontal and hierarchical) interaction with the West – the apparent alpha and omega of modern legalism – exact replication is thought to be the best outcome of the Civil Code project; even sceptics of the project embraced this view.

I am concerned by a lack of progress in scholarship on the Ethiopian Civil Code project. The Ethiopian Civil Code project can be understood in more ways than as a failed legal transfer. That identity of the Code is mainly the result of research that approached the study of the reception of western laws in non-western settings in certain ways – ways that reify and misunderstand the universal value of western laws and their Euro-specific histories, and that conceive the role of the receiving polity as that of ‘effective’ imitation. As Brun-Otto Bryde demonstrated, it was based on ‘wrong comparisons’. Perhaps, comparison is unavoidable for it is ‘an inevitable form of human cognition’.

126David, above n 14, 188.
127Sedler, above n 16.
128Brietzke, above n 72, 149.
129See, eg, Beckstrom on Transplantation, above n 25; Beckstrom on Handicaps, above n 25.
130Sedler, above n 16, 576.
131For the French drafter of the Ethiopian Civil Code, the ‘West’ – as opposed to the Orient – stood for ‘an ideal society ruled, as far as possible, solely by [modern] law’ (see, René David, ‘On the Concept of “Western Law”’ (1982) 52 University of Cincinnati Law Review 126, 130.
132Seidman, above n 80.
133Susan S. Friedman, ‘Why Not Compare’ in Rita Felski and Susan Friedman (eds), Comparison (The Johns Hopkins University Press, 2013) 34, 43.
The best that can be done is correcting the wrong comparison by, _inter alia_, embracing reflexivity, jettisoning the artificial hierarchy between developing and developed legal systems, and acknowledging the non-linearity and entanglement of local and global temporalities. Although their application to the study of the Ethiopian Civil Code has largely been limited, comparative approaches to legal modernity (legal transfer) have benefited from critiques similar to the one advanced by Bryde. Consequently, emerging approaches to legal transfer attempt to rise above the modernist paradigm. The next chapter elaborates how these approaches are (1) ‘widening’ the circles of legal comparativism,\(^\text{134}\) and (2) can usefully be employed in reading the Ethiopian Civil Code anew and in answering my research question: how has the Ethiopian Civil Code project – the legal text and its post-codification (re)interpretation (that is, selective rejection) – been shaped by (inter-temporal) contests over the nature of state and society relationships in Ethiopia.

CHAPTER THREE
READING THE ETHIOPIAN CIVIL CODE PROJECT DIFFERENTLY

Perspective is not only a cognitive or emotional defect or disposition that can be manipulated or cured by a ‘right’ ethic, attitude or reasoning. It is an integral aspect of every person’s history of learning.¹

3.1. INTRODUCTION

Chapter Two identified two major limitations of the modernist story of the Ethiopian Civil Code project: the narrow temporal focus, and the methodological orientation of the dominant storyline. It also underscored the importance of (re)reading the Ethiopian Civil Code project differently, that is, (1) with questions different from those asked by former students and (2) without reciting the ‘wrong comparisons’² of the earlier works (see Chapter Two).

As noted, the central questions this thesis is concerned with are: first, how has the Ethiopian Civil Code project (the legal text and its post-codification (re)interpretation) been shaped by (inter-temporal) contests over the nature of state and society relationships in Ethiopia? Second, what does this tell us about the modernist stories that still shape our understanding of the legal transfer project over time? The examination of the Ethiopian Civil Code project proposed here suggests taking seriously temporal breaks marked by the two Ethiopian revolutions of the 20th century. Also, as I have noted in Chapter Two, an analysis of the legal transfer project over time needs to consider not just the semicoloniality of Ethiopia but also local imperialism (Abyssinian imperialism). As will be seen in Part Two, the ‘Ethiopia’ of the Civil Code is neither a single time nor place because of the different permutations of Abyssinian imperialism in pre-codification imperial Ethiopia (see Chapter Four). These permutations informed the contests over the nature of state and society relationships – ‘imagined sociality’³ – and, hence, the Civil Code project. A challenge for this Chapter is, therefore, to set out an analytical framework that enables an analysis of the legal transfer project in a way that accounts for the temporal and spatial complexity of the ‘Ethiopia’ of the Ethiopian Civil Code project.

This Chapter delineates my theoretical and methodological approaches to the Ethiopian Civil Code project. It elaborates on how and why my approach is different from the methodological orientation of the modernist story of the

Ethiopian Civil Code project (See Chapter Two). By way of background, the next section discusses various theoretical and analytical approaches to legal transfer in comparative law. It demonstrates the modernist bias in both theoretical debates and approaches to legal transfer in non-western settings. The third part sets out my spatiotemporal approach to the Ethiopian Civil Code project, which partly draws on what I call the legal field approach to legal transfer.

3.2. LEGAL TRANSFER AND COMPARATIVE LAW

3.2.1. Modernist Theories on Legal Transfer: Possible, Impossible, Depends

In the language of comparative law, the Ethiopian Civil Code (the object of this study) is a case of ’legal transplant(ation)’ involving two countries/societies and their legal systems. A diagnostic and predictive metaphor, legal transfer is used by comparative legal scholars to signify their awareness of the importation of legal technologies by polities like imperial Ethiopia. Other metaphors including (but not limited to) legal transfer,5 legal transposition,6 legal irritant,7 legal borrowing,8 and diffusion9 are also used as a substitute for ’legal transplant,’ which is a concept that is criticised for its suggestion of teleological legal development.10 As may be inferred from the materials cited in Chapter Two, ’legal transplant(ation),’ a term often credited to the Scottish comparative

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4 This discussion about modernist theories on legal transfer could have taken in Chapter Two. But, as the gist of Chapter Two was to review the literature on the Ethiopian Civil Code and point out the dominance of modernist approaches in the study of the code, I opted placing my overview of modernist theories about legal transfer in Chapter Three. As will be seen, the optimist and sceptical views on the Ethiopian Civil Code project (see Chapter Two) are echoed in the works of comparative lawyers reviewed in this section. The purpose of the discussion on modernist theories on legal transfer is to provide a background to analytical approaches to legal transfer (3.2.2).


8See, eg, Penelope Nicholson, Borrowing Court Systems: the Experience of Socialist Vietnam (Martinus Nijoff, 2007).


lawyer Alan Watson,\textsuperscript{11} has commonly been preferred by students of the Ethiopian Civil Code project.\textsuperscript{12} While I refer to my object of study as the Ethiopian Civil Code project, I otherwise use the term legal transfer so as to avoid, in line with my critique of the modernist story of the Ethiopian Civil Code project, any suggestions of teleology.

As I have noted in Chapter One, one of the preoccupations of comparative legal scholars in the second half of the 20\textsuperscript{th} century was examining legal transfers, particularly in non-western settings. Influential theoretical works written on the subject by comparative lawyers during this period include Alan Watson,\textsuperscript{13} Pierre Legrand,\textsuperscript{14} Otto Khan-Freund,\textsuperscript{15} and Gunther Teubner.\textsuperscript{16}

For Watson, studying legal transfers (or legal transplants, to use his terminology) was useful in determining whether the view of the historical school of jurisprudence, that there exists a special relationship between a people and its laws, was valid. His historical research on the reception of Roman private law in Medieval Europe (and the reappearance of massive legal transfer projects in the 20\textsuperscript{th} century) led him to conclude: ‘there is no extremely close, natural or inevitable relationship between law, legal structures, instruments and rules on the one hand and the needs and desires and political economy of the ruling elite’ that in many jurisdictions decisively influence statutory law making.\textsuperscript{17} This Watsonian thesis, also known as the legal autonomy thesis, was anticipated by Daniel Haile who, in 1973, posited that Ethiopia’s codification ‘negated’ the views of historical jurisprudence.\textsuperscript{18} Watson, who showed sympathy towards legal evolutionary theory,\textsuperscript{19} also criticised historical

\textsuperscript{11}Alan Watson, *Legal Transplants: An Approach to Comparative Law* (The University of Georgia Press, 1974).


\textsuperscript{13}Watson, above n 11.


\textsuperscript{16}Teubner, above n 7.

\textsuperscript{17}Gillespie, above n 5, 673.

\textsuperscript{18}Daniel Haile, ‘Law and Social Change in Africa: Preliminary Look at the Ethiopian Experience’ (1973) 9 *Journal of Ethiopian Law* 380, 384.

jurisprudence for discouraging important law reform through legal transfer among law-importing nations of the 20th century.20

Writing in the 1990s (when the European Union was considering a single European Civil Code), Pierre Legrand developed his culturalist argument that is often represented as the antithesis of Watson’s legal autonomy theory.21 He disagreed with Watson over the simplicity of legal transfer for law is not autonomous from its cultural context.22 For Legrand, what is transferred through the Ethiopian Civil Code are ‘bare propositional statements’ devoid of any meaning.23 The culturally determined meaning of the law stays home; hence, the impossibility of legal transplant:

[E]very law remains an expression of the language, culture, and tradition that called it into being. There is always at work, if you like, an active agent of domestication, and that agent lives locally. At best, what can be displaced from one legal culture to another is, literally, a meaningless form of words. To claim more is to claim too much. In any meaningful sense of the term, “legal transplants” cannot happen (the idea of “transplant,” therefore, bespeaks far less the continued life of the plant than a displacement of its ground). As it crosses boundaries the original rule necessarily undergoes a change that affects it qua rule.24

Echoing what I have called the sceptical view of the Ethiopian Civil Code project in Chapter Two, Legrand also questioned the desirability of legal transfer in general and the harmonisation of private law through a uniform civil code in particular.25 His thesis on the undesirability of legal transfer is identified by some to be inconsistent with his belief in the impossibility of legal transplant.26 Still, some call for a temperate reading of Legrand’s thesis as he was ‘simply strongly objecting to the urge to make comparative law the white

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22Legrand, above n 14, 115.
23Ibid 113.
24Legrand on Translatability, above n 21, 37.
25Legrand on European Civil Code, above n 21, 44.
26Nelken, above n 5, 445.
knight in the quest for the unification of different legal systems in Europe as elsewhere.’

The preferred theoretical starting point in numerous legal transfer studies is Otto Khan-Freund, who in 1974 called for the study of the wider cultural (social and political) context of legal transfer. Khan-Freund sought to develop a set of yardsticks which may assist in predicting the degree to which a foreign law is institutionalised in the borrowing jurisdiction. Unlike Legrand, Khan-Freund does not deny the possibility of legal transfer. He contends that ‘there are degrees of transferability’. The receptiveness of legal institutions in a foreign setting is, however, believed to be determined by a number of ‘environmental’ factors identified by Montesquieu in the 18th century. Also, Khan-Freund distinguishes between mechanic and organic laws in terms of their relative autonomy from society. He placed laws in a transferability continuum based on their chances of ‘naturalisation’ in a foreign jurisdiction. Drawing on Montesquieu’s *lois politiques*, which stimulated institutional transfer research beyond comparative law, he posited that laws concerned with the organisation of constitutional, legislative, administrative or judicial institutions and procedures are ‘closest to the organic end of the continuum,’ and hence are difficult to transplant. In contrast, laws related to, for example, individual labour relations are thought ‘mechanical’ and therefore ‘easy to transfer’. Kahn-Freund’s perspective has recently been enhanced by Katharina Pistor and Curtis Milhaupt’s demand-adaptation theory of legal change, which posited

27Michele Graziadei, ‘Comparative Law as the Study of Transplants and Receptions’ in Mathias Reimann and Reinhard Zimmermann (eds), *The Oxford Handbook of Comparative Law* (Oxford University Press, 2006) 440, 470.
28Khan-Freund, above n 15, 6.
29Ibid 7-8.
30Ibid 17-23.
31Ibid 17. Kahn-Freund’s perspective has recently been enhanced by Katharina Pistor and Curtis Milhaupt’s demand-adaptation theory of legal change which posited demand for law and adaptation are the two most important determinants of successful legal transfer. Sufficient demand is said to exist when transplanted law fits with the host’s political economy (e.g. governance gap not filled by non-legal mechanisms) and legal system (e.g. familiarity with the borrowed law among the legal community). Also, demand must be complemented with adaptation in the sense that local constituencies must play a role in making the laws relevant to local circumstances, lest the transplant be ineffective. In this regard, the motivation for transplants (which can be political, signalling, and practical utility) is said to be important as ‘it affects the conduct of the legal community that subsequently interprets and enforces the law’. This account of effective legal transfer is thought to have drawn attention to both the demand and supply side of transfer, which in earlier theories on legal change are generally neglected. Curtis Milhaupt and Katharina Pistor, *Law and Capitalism What Corporate Crises Reveal about Legal Systems and Economic Development around the World* (The University of Chicago Press, 2008) 210 et seq.; John Gillespie and Pip Nicholson, ‘Taking the interpretation of legal transfer seriously: the challenge for law and development’ in John Gillespie and Pip Nicholson (eds), *Law and Development and the Global Legal Discourses of Legal Transfers* (Cambridge University Press, 2012) 6.
that demand for law and adaptation are the two most important determinants of successful legal transfer.

Gunther Teubner, whose system theoretic approach to legal transfer inspired the construction of other discourse-centred approaches to legal transfer (see 3.2.2 below), gives further credence to Khan-Freund’s ‘degrees of transferability’ thesis. Drawing on the work of Niklas Luhmann, an influential systems researcher of the 20th century, Teubner conceptualises law (the legal system) as one of the ‘autopoietic’ subsystems of communication that constitute society (a system of communication).32 Such a conception of law enabled him to talk about the relationship between law and other functionally differentiated subsystems like politics, economics, education, etc.33 The functionally differentiated spheres of communications are thought to be ‘cognitively open’ to each other but not causally linked.34 This approach embraces neither the Legrandian thesis, that national legal systems are entirely embedded in the culture of the nation, nor the Watsonian thesis, that national legal systems are autonomous from the society (or its various subsystems of communications). Instead, it adds to the theory of legal transfer that legal systems and specific areas of law differ in the way they are interconnected to the culture at large (particularly, to the realms of cultural norm production).35 Crucially, Teubner holds that the probability of successful harmonisation of law through legal transfer depends on whether the transferred legal concepts (Teubner uses the term ‘rules’) pertain to an area of law tightly coupled with the multiple but fragmented systems of discourses in a given society (country):

Some legal institutions [such as landed property] are so closely coupled to the political culture of a society that their transfer to another society would require simultaneously profound changes of its political system in order to work properly in the new environment...Others are tightly coupled to technology, to health, science, or culture. It is in their close links to different social worlds that we can see why legal institutions resist transfer in various ways. The social discourse to which they are tightly connected will not respond to the signals of legal change. It obeys a different internal logic and responds only to signals of change of a political, economic, technological or cultural nature. Transfer will be effectively excluded without a simultaneous and complementary change in the other social field.36

The theoretical perspectives summarised above, which are generally concerned with the same set of questions (e.g. the probability of success/failure,

34Ibid 9; Teubner, above n 7, 18.
36Ibid 22.
relationship between law and society) that preoccupied former students of the Ethiopian Civil Code project. They are also equally suspect of modernist perspectives that see legal transfer as a matter of two legal systems (donor and recipient) with similar functions to perform. The theories are predicated on the assumption that transferred legal codes and legal concepts are monosemic. Their concern with the divergence and convergence – or the impossibility and difficulties thereof – of recipient and donor legal systems, limits their utility for studies like mine that are not concerned with adjudicating the (im)possibility of the Ethiopian Civil Code project. Contemporary students of legal transfer who recognise the plurality and/or interlegality of regulatory regimes are as troubled as I am with most (if not all) of the above theoretical perspectives and, more generally, mainstream comparative law literature on legal transfer. For instance, Sean Cooney maintains:

[M]uch of the Western comparative law literature, insofar as it does not engage with questions of good regulation, is somewhat unhelpful...Its focus tends to be on relatively abstract debates about matters such as the nature of legal families, the classification of legal systems and/or the (im)possibility of successful transplants. Although this literature can be very useful when organizing wide-ranging comparative data about legal systems, it does not provide much guidance on how to address a specific problem, such as how law could best be shaped to reduce extreme working hours [in China].

Similarly, Umut Özsu, in his study of the Turkish Civil Code of 1926 – a legal transfer compared with the Ethiopian Civil Code of 1960 but widely celebrated as a success – finds comparative legal scholars’ theoretical debate on the impossibility of legal transfer as ‘problematic’ and of little relevance. This is particularly the case when studying, as I do, a legal transfer project for purposes other than either the celebration of the project as ‘legal change’ or the passing of judgement whether legal transfer ‘has in some sense occurred’. My purpose in reading the Ethiopian Civil Code project is not to ascertain whether the claim of historical jurisprudence regarding the relationship between law and society is valid. I am only interested in the role of local contests in shaping the legal transfer project – which, as I shall show in Chapter Four, was a variant of what Mathias Siems calls ‘transplants by pressure’ involving a ‘non-colonial’

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37 Note also that the Eurocentric comparative law literature does not deal transfer between west and non-western countries and transfer generally as distinct categories. Often, the issue of transfer generally and transfer between west and non-western countries are conflated.


40 Ibid.
African empire.41 Therefore, I do not find the above theoretical frameworks helpful.

Nevertheless, and despite my limited interest in the normative or regulatory role of transferred laws in the recipient state (that is, Ethiopia), I, together with Khan-Freund and many others, do not deny the possibility, but deny the inevitability, of the Ethiopian Civil Code project and its textual limb, Book III, that covers land. Further, I am not as troubled as some proponents of legal transfer are with Legrandian thesis that ‘rules’ (what I here refer to as legal concepts) undergo semantic transformation with space. Instead, I claim the same argument can be made regarding the temporal transferability of legal concepts. I do not assume the normativity and singularity of meanings of legal concepts, for they (as well as legal texts introducing them) can be performative (not only normative) and can undergo semantic transformation with time, not only with space as Legrand emphasises – an emphasis the spirit of which (‘resistance to… the ever-increasing technological standardisation of law’)42 I nevertheless fully share with Legrand. Otherwise, I am less convinced by comparative legal scholars’ insistence on cultural authenticity (or temporal inelasticity) of legal concepts and their attendant debate on the predictability and/or possibility of uncontaminated legal transfer.43

41Mathias Siems, Comparative Law (Cambridge University Press, 2014) 211-12. Note, however, Siems does not discuss the Ethiopian Civil Code as a variant of what he calls ‘transplants in non-colonial countries’. Despite noting Ethiopia’s non-colonial status, he prefers to place his discussion of the Ethiopian Civil Code within the context of transplants in colonial and post-colonial worlds (ibid 205-213).

42Legrand on Translatability, above n 21, 37.

3.2.2. Approaches to Reading Legal Transfer Projects

Scholars whose ambition it was to assess the performance of a legal transfer project within a defined temporal duration – thereby testing, directly or indirectly, the validity of the above discussed modernist theories of legal transfer – relied on a range of methodologies. Most notable in this regard is what I here call the cultural approach to legal transfer. In recent times, legal field and discourse-centred approaches to legal transfer are becoming customary. While culturalist approaches tend to take legal transfer as generally a matter of twoness, the second and some strands of the third approach attempt to transcend the modernist bias to legal transfer by taking legal transfer projects as a matter of multiple actors with competing agendas. As such, they open up new ways of reading legal transfer projects by foregrounding the multiple actors involved, rather than simply focusing on structural aspects of legal transfer.

A. Cultural Approaches to Legal Transfer

Traditional comparative law has been rule-focused and functionalist in orientation.44 Frailties of rule-focused functionalist comparative law have compelled some scholars to seek refuge in such concepts as legal culture to explain law-related developments from socio-legal perspectives.45 As far back as the late 1960s, the concept of legal culture (in its Friedmanian variety) was suggested as a variable in the explanation of legal change through legal transfer.46 In one of his earlier works on legal culture, Friedman proposed the analysis of legal systems in terms of three components, one of which was legal culture: ‘the values and attitudes which bind the system together, and which determine the place of the legal system in the culture of the society as a whole’.47 He also appeared to have shared the skeptical view of legal transfer by positing: ‘probably no law is effective that does not make some use of the culture of its society’.48 Critical of what he called ‘traditional approaches to foreign law’ by American lawyers who were engaged in the law and development movement of the 1960s, Friedman hoped the concept of legal


46Lawrence M. Friedman ‘Legal Culture and Social Development’ (1969) 4 Law and the Society Review 29; see also Lawrence M. Friedman, The Legal System: A Social Science Perspective (Russell Sage Foundation, 1975) 193 et seq. [Hereinafter Friedman on the Legal System]

47Friedman, above n 46, 34.

48Ibid 41.
culture would help research in the effectiveness of legal transfer projects in Africa and Asia be better handled. Used in emphasising (often abstractly) the importance of ‘compatible’ legal culture for a successful law reform program, the trope was (at least initially) considered a welcome addition to the lexicon of comparative law that was sterile in pro-pluralist concepts. Some of the American socio-legal scholars who attempted to measure the reception of the Ethiopian Civil Code in late imperial Ethiopia, were also aware of the Friedmanian concept of legal culture. However, they doubted its relevance for their project, which they said was concerned with ‘engagement pitfalls’. For them, legal culture as conceived by Friedman related to what they call ‘pre-engagement problems’ that, despite influencing the pace of the ‘penetration’ of the imported law (a la Friedman), did not imply the total impossibility of the project or the probability of rejection.

In recent times, more sophisticated culturalist approaches inform research into the reception of western law in non-western settings. One example is Pitman Potter’s selective adaptation. In his works focusing on China, the Canadian comparative lawyer has been developing what he calls selective adaptation and institutional capacity in order to capture the institutional and cultural contexts of the implementation of Chinese legal transfer projects. Selective adaptation is conceived as the process whereby (various) local actors interpret received norms in light of local belief systems or values. The notion draws attention to the ways in which the combined influences of global and local belief systems shape the implementation of law reform projects in non-western settings, such as China. Potter posits that the examination of three major factors – perception, perception, perception, perception.

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49Ibid 44.
52Ibid.
53Ibid, Friedman, above n 46, 43 (penetration, according to Friedman, is ‘the degree to which…law takes hold in its population’).
55Potter on China’s Periphery, above n 54, 17.
complementarity, and legitimacy – can help to understand the tension between imported rules and normative values, that is, selective adaptation. In other words, selective adaptation – the dynamics of perception, complementarity and legitimacy⁵⁶ – is employed to explain the extent of local reception ‘by reference to different levels of normative consensus’.⁵⁷

A different shade of culturalist approach is used by Penelope Nicholson in explaining divergence between donor and recipient states with shared political ideology. In her comparative research in Vietnam a decade ago, Nicholson⁵⁸ draws in particular on Clifford Geertz’s anthropological method to interpret the adaptation of Soviet court system in the Southeast Asian socialist state over time.⁵⁹ Assuming the transfer of the Soviet-inspired institutions into Vietnam (Democratic Republic of Vietnam), she asks whether the Vietnamese socialist legal system ‘replicates or diverges from the Soviet precedent’.⁶⁰ She uses the concept of legal culture to explain the divergence her research revealed. Accordingly, she has underlined the significant, if not exclusive, affect of legal culture in the development of ‘borrowed’ laws and institutions in the receiving country, particularly because her definition of culture included analysis of political/ideological receptivity to the legal transfer.⁶¹ Yet she, unlike Friedman,

⁵⁶Perception generally refers to ‘perspectives on local needs and conditions’ and ‘interpretive community norms’ that influence local actors’ interpretation of imported rules and standards. Complementarity is identified as ‘a circumstance by which apparently contradictory phenomena can be combined in ways that preserve essential characteristics of each component and yet allow for them to operate together in a mutually reinforcing and effective manner’. Legitimacy, Porter’s third normative dynamics, describes the support (or lack of it) for reception of globalised norms locally. The dynamics of perception, complementarity and legitimacy are employed in explaining the extent of local reception ‘by reference to different levels of normative consensus’ (ibid 12, and 17-18); Potter on the Reception of International Trade Law, above n 54, 11

⁵⁷Potter does not seek to explain the limits and possibilities of China’s legal reform only in terms of the normative dynamics of selective adaptation. The influence of structural (organisational) factors over local reception is not denied, hence structural dynamics of institutional capacity are also analysed. Potter’s (four) structural dynamics help draw how organisational factors that affect the implementation of received rule regimes in a particular local context (ibid 12-15).

⁵⁸Nicholson, above n 8.

⁵⁹Ibid 17-19.

⁶⁰Ibid 22.

⁶¹Nicholson prefers to define legal culture broadly: ‘[Legal culture] encompasses the notion of context: what are the philosophical/religious, cultural, economic, linguistic and geographic factors affecting regulation or institution…the jurisprudential basis of regulation; the sources upon which state governance is based; the articulation of regulatory authority, the degree of legitimacy claimed by regulation; and the ideological orientation and values of the state as expressed by its systematized framework…the context in which law operates…community perceptions of law and legal institutions.’ (Penelope Nicholson, ‘Comparative law and legal transplants between socialist states: an historical perspective’ in Tim Lindsey (ed), Law Reform in Developing and Transitional States (Routledge, 2007) 143-144; see also Nicholson, above n 8, 17). Not all definitions of legal culture are, however, as broad as hers. One may find description which equates legal culture with legal systems as recognized in functionalist
is sceptical of the usefulness of legal culture in helping predict legal transfer. In fact, she argues legal culture need not be prognostic but ‘a paradigm for exploration and depiction for crafting fictions’ about another country’s legal system.62 What makes her strand of legal culture suitable, as she has argued in one of her works, is its utility as a dependable approach to investigate law (and a country’s experience with legal transfer projects) but not its prognostic power.63

B. Discourse-Centered Approaches to Legal Transfer

This section discusses three different but related theoretical perspectives from the social sciences disciplines which are considered and applied by comparative law scholars approaching issues of legal transfer. The perspectives are discussed under the heading ‘discourse-centered approaches,’ for they generally represent what may be described as a discursive turn in legal transfer studies.

As argued above, system-theoretic approaches to legal transfer have in recent years contributed to the diversity of perspectives in comparative legal scholarship. Gunther Teubner, whose Khan-Freund-like theory of legal transfer is discussed above, is a leading contributor to comparative law literature on systems theory. In one of his influential works, Teubner employed a system-theoretic approach to show how a legal transplant – a cognitive interaction between operationally closed legal systems – leads to ‘the creation of new cleavages in the interrelations’ of the donor and recipient legal systems.64 Because of the different pasts and futures of the interacting legal systems, he remains skeptical of the probability of harmonisation despite the inevitability of legal change caused by what he calls irritation (resulting from legal transfer).65 Due to the many different ways legal transfers may affect the operationally closed social discourses of the receiving legal system, he prefers the term legal irritant to legal transfer in describing the phenomenon.66

While some reject this analysis as ‘it assumes a formal legal system operating in a capitalist economy’,67 Teubner’s analysis of legal transfer is considered ‘highly relevant’ to analysing the divergent production of legal regimes through legal

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63Ibid 101-102.
64Teubner, above n 7, 32.
66Ibid.
67Nicholson, above n 8, 24.
transfer in non-western settings. For instance, Sean Cooney and Richard Mitchell advocate a variant of system-theoretic approach in their study of the impact of transplanted labour law in East Asia. John Gillespie also draws on systems theory in building his discursive methodology.

A related development in the legal transfer literature in recent times pertains to the trend to analytically ‘locate legal transfer in a much broader regulatory context’. The insight is gained mainly from governance and regulation scholarship that recognises the plurality and multi-level nature of governance or regulation. The above discussed system theoretic approach can also be classified among regulatory approaches to law, although the major stand of regulatory theory literature does not embrace the assumption of the Luhmannian thesis that subsystems of communication are autopoietic. Comparative lawyers who draw on regulatory theory attribute the ineffectiveness of legal transplants to the structure of the transplanted laws which are, more often than not, unresponsive to the regulatory style of the recipient society.

The recent discursive shift in the conceptualisation of regulation in regulatory theory has further inspired comparative lawyers who were searching for new ways of studying legal transfer. Discourse, defined as the communicative interactions between actors involved in the regulatory space, is now taken as an important part of regulation. This discursive conception of regulation, which is comparable to the depiction of law as communication in systems theory (even though systems theory is structure oriented), has offered comparatists a new set of analytical tools. These tools were important for those who want to explain the (im)possibility of legal transfers in terms other than value-laden standards of neo-liberal legalism (e.g. rule of law or deregulated market) or cultural

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69 Ibid.
70 Gillespie, above n 5, 682.
73 Cooney, above n 38, 155.
74 Ibid 148.
75 See, eg, Gillespie, above n 5, 683.
factors. Notably, John Gillespie draws heavily on both systems theory and regulatory theory in developing a model discursive analytical framework for studying legal transfer in non-western settings. In a 2007 article that introduces his discursive methodology, he suggested the analyses of legal transfer in terms of ‘regulatory conversations’. Based on the insight from regulatory theory, legal transfer is claimed to occur in a ‘regulatory space’. In this approach, regulatory space represents a metaphorical space ‘with multiple planes, rather than the vertical channel of state-citizen command and control regulation, or a purely horizontal axis of private player interactions’. Gillespie proposes a set of discursive methodological tools to ‘remedy’ the weaknesses of other methodologies (e.g. system-theoretic approaches and cultural comparative law) in capturing legal transfer as it occurs in the wider regulatory space. These are dialogical negotiations, effective communication, interpretive communities, strategic agendas, power relationships, and fragmented meanings. This regulatory approach allowed him to explain the heterogeneity of Vietnamese corporate law reform – an appropriation of a neo-liberal legal script subject to negotiations between powerful state actors with socialist worldviews, ‘neo-liberal-oriented’ interpretive communities, and other actors dominating various regulatory spaces.

C. Legal Field Approach to Legal Transfer

As the intellectual mood swings away from cultural comparative law in recent times, many appeared to have resorted to approaches that allowed them to analyse legal transfer as a dynamic process (or processes) than an encounter between different cultural systems. Discourse-centered approaches, discussed above, may also be taken as representing such a move away from culturalist approaches to legal transfer. In this section, I focus on one non-culturalist actor-centered approach to legal transfer: the legal field approach.

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79 Gillespie, above n 5, 714-718.
80 Ibid.
81 Note, however, that some cultural comparatists would maintain the difference between legal field approach and Geertzian culturalist approach to legal transfer is marginal. In particular, Nicholson maintains that her culturalist approach to legal transfer is in par with legal field for it too ‘accord the law and its institutions dynamism, contingency and interaction with other aspects of social and economic life’ (Nicholson, above n 62, 96). Further, in its focus on dynamic, actor-centred processes of legal change, some strands of discourse centred approaches to legal transfer, particularly those drawing on regulation scholarship, are comparable with the legal field approach (see section C below).
The legal field approach to legal transfer is inspired by the French structural sociologist Pierre Bourdieu who, in 1987, introduced his investigative framework ‘juridical field’ (a.k.a. legal field) to legal science.°3 Sarah Biddulph,°4 Yves Dezalay and Bryant Garth°5 are among the very few socio-legal scholars who have advanced Bourdieu’s legal field as an analytical framework for studying (dynamic) processes of reform via imported laws.

Through their numerous collaborative works since the mid-1990s, Yves Dezalay and Bryant Garth have relied on Bourdieu’s juridical field as their framework to analyse how an activity (e.g. the import and export of law) ‘emerges and changes’ as a result of ‘conflict and competition’ among actors playing certain roles in the legal field.°6 Their approach emphasised the field of law and state power (in both exporting and importing nations) as a subject of research in legal transfer, as ‘developments in the fields of power help determine the value of particular exports and imports in relation to each other’.°7 The legal field (the structured social space) was studied in tandem with the ‘habitus’ (dispositions of individual actors within the field), often through semi-structured interviews with ‘members’ of the studied legal field (such as international commercial arbitration).°8 By drawing attention to local (as well as international) structures of power and how various actors compete and interact within that structure to transform it, Dezalay and Garth distance themselves from the dominant legal transfer research question, i.e. ‘whether the transplant fits or does not fit local legal culture’.°9 Instead, sceptical of methodologies of successful legal transfer, they believe in the primacy of research questions framed ‘to understand the position of law and how it is changing’ as a result of battles peculiar to a certain legal field.°10 Consequently, they, following Bourdieu, hypothesise:

[T]he reading and reception of texts outside their national space is strongly determined by internal battles specific to the field within which the text is

°4Sarah Biddulph, Legal Reform and Administrative Power Detentions in China (Cambridge University Press, 2007).
°5See, eg, Yves Dezalay and Bryant Garth, The Internationalisation of Palace Wars: Lawyers, Economists, and the Contest to Transform Latin American States (University of Chicago Press, 2002).
°8Dezalay and Garth, above n 86, 33.
°9Dezalay and Garth, above n 87, 253.
°10Bryant Garth and Yves Dezalay, ‘Introduction’ in Yves Dezalay and Bryant Garth (eds), Global Prescriptions: The Production, Exportation, and Importation of a New Legal Orthodoxy (The University of Michigan Press, 2002) 1, 3.
received. Those battles determine the possible usages of imported [laws], and notably the strategic resources that the potential importers-translators are able to mobilise - shaped in turn by the internal positions that they occupy.91

The analysis of legal transfer and its agents in a broader structural context (that is, legal field) has allowed them to present the import and export of laws as complex processes ‘contingent on several factors operating at many levels’.92

Like Dezalay and Bryant Garth, Sarah Biddulph incorporates Bourdieu’s legal field in her studies of legal transfer into China. In trying to construct an analytical framework for describing a legal reform project in China in terms other than evolutionary functionalism (i.e. what she calls ‘progress towards modernity’), Biddulph has relied on Bourdieu’s notion of field, which provided Dezalay and Garth with a valuable alternatives to formalist and instrumentalist conceptions of law (and legal change).93 In particular, she finds Bourdieu’s legal field ‘a useful analytical construct through which to examine legal change as it focuses attention on several factors that influence the process[es] of change’.94

Biddulph claims the emergence in China of a ‘distinctive legal field’95 following decades of reconstruction of the Chinese legal system since the late 1970s. An important aspect of the legal field is the multiplicity of actors who, despite shared ‘habitus’ and agreeing on rules of the game, struggle over such things as ‘the right to determine the law’.96 The boundaries of the legal field are conceived as variable. Also, the autonomy of the legal field from other social fields constituting a society is incomplete.97 As a result, changes in other social fields may influence the functioning of the legal field.98 On the other hand, the roles and positions of the actors in the legal field vary.99 Accordingly, the process as well as the outcome of the struggle is undetermined. Put literally,

92Dezalay and Garth, above n 87, 252.
94Biddulph, above n 84, 371. Note also that Biddulph has been inspired by David Garland’s notion of the field; see Sarah Biddulph, ‘The Field of Crime Control and Social Order: Prospects for Criminal Procedure Reform in China’ in Penelope Nicholson and Sarah Biddulph (eds), Examining Practice, Interrogating Theory: Comparative Legal Studies (BRILL, 2008) 114.
95Biddulph, above n 93, 215.
96Biddulph, above n 84, 28.
97Biddulph, above n 94, 113.
98Biddulph, above n 84, 369.
99Biddulph, above n 94, 114.
law reform by legal transfer (or otherwise) passes through processes which may not always be smooth but contradictory. The utility of the legal field in understanding the process of legal change has been demonstrated in her book *Legal Reform and Administrative Detention Powers in China*, where she concludes:

Analysis of the processes of legal change [through the use of the legal field] is not a substitute for evaluation of the outcomes of legal reform, whether judged against the standard of the rule of law or some other standard, but it provides an important adjunct to them. Analysis of the processes and dynamics of reform suggests that we may indulge in cautious optimism.

3.3. ASSEMBLING MY LENS: THE LENS OF CONTESTED SEMICOLONIAL LEGAL MODERNITY

The above three approaches to reading legal transfer projects, which have not been used in reading the Ethiopian Civil Code project, have improved my understanding of the transfer of laws that took place in what may be called the age of legal modernity. For instance, system-theoretic and cultural comparative works help correct the convergence thesis – the thesis about the (inevitability of) homogenisation of legal systems through legal transfer. Because their approach considers what would normally fall outside rule-based functionalist approaches to legal transfer, legal transfer research in the tradition of cultural comparative law and system theory shows the implausibility of claims pertaining to the (inevitability of) convergence between legal systems resulting from legal transfer. Similarly, research in the tradition of the legal field approach suggests that legal transfer is capable of having multiple meanings and thus multiple possibilities, not just replication without difference or failed replication.

However, as I am less interested in mapping the divergent or convergent impact of the Ethiopian Civil Code in various cultural and regulatory spaces, for which purposes the approaches are most suitable, I am not drawing on cultural approaches or some strands of what I have called the discourse-centred approaches, such as the system-theoretic approach. In rejecting these approaches, I am also affirming my conviction that legal transfers in non-western settings are more than ‘secondary’ and should thus be studied without resorting to the west as the ultimate point of comparison. In other words, in contrast to the modernist students of the legal transfer project before me, I am...

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100Biddulph, above n 84, 51.
101Ibid 372.
not treating the Ethiopian Civil Code as only secondary to the historically prior model(s). Because the Ethiopian Civil Code project occurred in its own time(s) and space(s) that cannot always be translatable to the time(s) and space(s) of the model(s) appropriated, I acknowledge the double quality of the Ethiopian Civil Code project. That is, although drew on historically prior experiences (hence, being secondary at that), the legal transfer project was embedded in Abyssinian imperialism and, therefore, remained its own thing. Hence, it could and should be studied in ways that keeps ‘the embarrassment of copy’ at bay, because, as the American anthropologist Donald L. Donham observes, ‘each modernity (like each culture in the traditional formulation) is, at base, incommensurable with [the original] others’.103 I therefore doubt the utility of most of the analytical approaches summarised above for the purposes at hand, as they suggest the consideration of the legal transfer project as only ‘secondary’ in relation to the modernities [or legal and cultural systems] that provided the material sources.104

This is not, however, to deny the importance of inquiry into the normative and regulatory effects of legal transfer based on these methodologies. Each methodology has its purpose and their employment in reading the Ethiopian Civil Code project would reveal what existing studies on the project do not show. I also agree any of these approaches may usefully be employed in explaining aspects of the legal transfer dynamics my study cannot and does not intend to capture. Besides, my discursive conception of law and less-legalistic attitude towards legal texts (e.g. the Ethiopian Civil Code of 1960) and law-related contests between the actors is partly shaped by these cultural and discourse-centred approaches. Yet, as I noted in Chapter One, ‘it is no longer sufficient to look only for evidence of how Western laws have been, and can be, transplanted all over the world’.105 It is also germane to look for how legal transfer projects have been used in legitimising non-western colonial modernism(s) and, in turn, been shaped by the contests over it.

Because of its focus on plural actors bounded by their contest in a structured social space, I found the legal field approach more suitable than others for reading the Ethiopian Civil Code project. Crucially, it allows the reading of the Ethiopian Civil Code project through the contests between historical actors over the nature of state and society relationships in Ethiopia.

As I have noted in the preceding chapters, I am interested in reading the Ethiopian Civil Code differently. By differently, I mean without the modernist suppositions about the legal transfer project. I also mean (1) accounting for the local imperialism in which the legal transfer project and the inter-temporal contests over it were embedded, and (2) integrating actors from the pre- and post-codification period into the story of the Ethiopian Civil Code. The field approach to legal transfer promises to be methodologically adequate. For example, in contrast to system-theoretic or most other strands of cultural approaches, it allows a reading of the Ethiopian Civil Code project in terms other than progress towards uniform legal modernity or differences from/similarities with the hegemonic west. The field approach, which does not draw much criticism from comparative legal scholars can also be used flexibly to integrate various actors with stakes and roles in Ethiopia’s legal modernisation projects such as the Ethiopian Civil Code of 1960.

I share the epistemological premise of field theory that (Ethiopian) modernity leads to the emergence of ‘social spaces with a specific legitimacy and functioning’ and, arguably, a ‘law’ field. I also assume spaces thus created may be examined in terms of the practice of (competing) actors bearing varying social capital and hierarchical relations. By modernity, I am referring to historical processes that in the case of imperial Ethiopia manifested itself in, among others, the increased encounter with hegemonic Europe, the creation of an Amhara-ruled empire with distinct geographies of property, and the consciousness and engagement of its political and intellectual elites in discourse and projects of modernism (e.g. Europeanisation of laws). I use the term

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108 But see Annelise Riles, ‘Comparative Law and Socio-Legal Studies’ in Mathias Reimann and Reinhard Zimmermann (eds), The Oxford Handbook of Comparative Law (Oxford University Press, 2006) 810 (criticising Garth and Dezalay’s model for its failure to (1) ‘explain why actors pursue the particular strategies the authors impute to them’ and (2) for its implicit assumption of interest which she believes is problematic when it involves ‘non-European actors’ with whom the researchers have ‘only short-term, interview-based interactions’). In the meantime, proponents of this approach lament the slow progress of research in that direction. Dezalay and Garth, above n 91, 385 (noting the limited impact of Bourdieu’s structural sociological approach in the socio-legal study of [hegemonic] processes of import and export of law).


110 Ibid.
semicolonic legal modernity\textsuperscript{109} to refer to these historical processes that are best represented by (1) the appearance of what I have elsewhere called semicolonial Ethiopia (1890s-1960s),\textsuperscript{110} (2) its encounter with the hegemonic west and subjection to European legal imperialism, and (3) its efforts to respond to European legal imperialism through projects of ‘self-civilization.’\textsuperscript{111} These effects, as I shall demonstrate in the forthcoming chapters, were the strengthening of the hegemony of the Amhara landed elites who, like their semicolonial contemporaries, were masters of the ‘double domination’\textsuperscript{112} of their subjects. While the leadership of semicolonial Ethiopia was subject to a colonial-like relationship with colonial Europe (notably, Italy, France and Britain), it remained a colonial power vis-à-vis at least non-Abyssinian subjects of semicolonial Ethiopia. I use the notion of Abyssinian imperialism to generally refer to the internal side of colonialism (and colonial modernisms).

As noted in Chapter Two, the Ethiopian Civil Code is conceptualised (as it was by some earlier students of the Ethiopian Civil Code) as an example of the voluntary reception of western law by a ‘modernizing’ non-western country. ‘Voluntary’ because the code-importing African state had not formally been colonised by Europeans. Here, I distance myself from such a conception of the Ethiopian Civil Code project. Instead, I take the Ethiopian Civil Code as a symbol and product of Ethiopia’s semicolonial legal modernity and Abyssinian imperialism. Such a conception means not only signifying the powers that created the conditions for the legal transfer project, but also heeding the methodological advice that the analysis of civil codifications in the age of state systems and the struggles relating to them ‘be placed in a historical context’ of their own, particularly their specific trajectory of modernisms (e.g. nationalisms).\textsuperscript{113}


\textsuperscript{111}Jackson, above n 109, 239.


\textsuperscript{113}Kanishka Jayasuriya, ‘Introduction: a framework for the analysis of legal institutions in East Asia’ in Jayasuriya, Kanishka (ed), Law, Capitalism and Power in Asia: the rule of law and legal institutions (Routledge, 1999) 1, 10; Kroppenberg and Linder, above n 3, 84.
Ethiopia’s semicolonial legal modernity led to the emergence of various social fields, including what I here call the field of Ethiopian legal modernisation. This is the contested social space the emergence of which I trace back to the beginning of the articulation and eventual adoption of a civil code modelled on civil codes of European modernity. It is a space defined by the contests of actors – Ethiopian and transnational – who competed over the determination of the ‘modern’ Ethiopian law, its ‘imagined sociality’, and what is included and excluded in the ‘modern’ law. It is a field bounded by the contests over Ethiopia’s modernity – i.e. the nature of state and society relationships in Ethiopia (1890s-2010). And, the field of Ethiopian legal modernization does not necessarily equate with what in comparable works are called the ‘legal field’. Unlike other proponents of the legal field approach to legal transfer, I do not intend to examine the extent of the legal field’s autonomy from that of the field of power. The field of Ethiopian legal modernisation as conceived here can pertain to both ‘the field of power’ and ‘the legal field’ in the strict Bourdieusian senses of the terms. But I do not want my field to be solely reduced to their Bourdieusian variants. I want my field to be seen primarily in terms of the social capital, the interest, and the predispositions of the actors with stakes and roles in Ethiopia’s semicolonial and post-semicolonial legal modernities.

The Bourdieusian field approach that I draw on is suspected of introducing a subtle version of essentialism and determinism through the notion of habitus that in some ways compares with the culture-based and system theoretic approaches to legal transfer. I do not embrace the ‘overtotalised’ and ‘objectified’ structural, and arguably ‘temporally flat,’ conceptions of society and social spaces implicit in the field approach. I am only content with a loose variant of the field approach that allows me to show how the Ethiopian Civil Code project – a product of Ethiopia’s semicolonial legal modernity – shaped and, in turn, has been shaped by the contests over Ethiopian legal modernity. Also, although the field approach does not entirely ignore temporality, its bias towards structural aspects of practice invites criticism from scholars who want to take time(s) and diachronic change(s) more seriously than Bourdieu-inspired students of legal transfer do.


115Ibid; Schulz-Forberg, above n 43, 43.

116The importance of adapting the field approach when applied to reading law reform in non-western settings has been stressed by proponents of the legal field approach (see, eg, Biddulph, above n 84, 40 et seq.).


118See, eg, Raewyn Connell, Southern Theory: the global dynamics of knowledge in social sciences (Allen & Unwin, 2007) 39-44; Sewell, above n 114, 111 et seq.; Sherry B. Ortner, Anthropology and Social Theory (Duke University Press, 2006) 5-18; Schulz-Forberg, above n 43, 43; Richard
inadequacy of the field approach to think temporally means I must engage with
time as a separate analytical factor (see below).

The temporal context I consider in my story of the Ethiopian Civil Code project
includes Ethiopia’s post-semicolonial layers. These layers impact on the field of
Ethiopian legal modernisation and other social spaces significantly. As will be
seen further in Part Two of the thesis, Ethiopia has gone through two
revolutions between the codification of Book III in 1960 and now. The 1974
socialist revolution and the 1991 ethno-nationalist revolution are often taken as
important historical junctures that set in motion new temporal trajectories
without necessarily obliterating other temporalities from previous eras. The
influence of these revolutions in the overall social and political life of the nation
that was engaged in the perpetual ‘politics of emulation’ is undeniable. And
it is common to take 1974 and 1991 as points of departure in Ethiopian legal
historical discussions. From the point of view of the present project, the ‘era
of land to the tiller’ (1974-1991) and the federalist temporality (1991-2010) are
the other two temporalities of the Ethiopian Civil Code project that add to the
temporal multiplicity of the Ethiopian Civil Code project – and the social spaces
– studied here. In addition to semicolonial legal modernity and imperial
Ethiopia, I use the analytical categories of the era of ‘land to the tiller’ and the
federalist temporality to disaggregate the otherwise entangled temporal
structures that I consider are important in telling my story: the story of how the
contests over Ethiopian legal modernisation shaped the Ethiopian Civil Code
project, and what these contests reveal about the modernisation project and the
modernist stories they generated.

My field of Ethiopian legal modernisation is thus inter-temporal. The inter-
temporal actors whose relationship defines the field of Ethiopian legal
modernisation include the ‘Ethiopian Japanisers’ of the early 20th century and
participants of the leftist Ethiopian Student Movement of the era of ‘land to the
tiller’ and the federalist temporality. These are the social forces that students of
Ethiopian modernity consider as ‘pioneers of change’ or the ‘midwife of
Ethiopian modernity’. Also, various transnational actors who participated in
imperial Ethiopia’s projects of semicolonial legal modernity (including the
French drafter of the Ethiopian Civil Code of 1960, René David, and the


American legal scholars, who helped establish imperial Ethiopia’s national law school in the 1960s) are considered actors in the field of Ethiopian legal modernisation. It is the inter-temporal contests between these actors of the field of Ethiopian legal modernisation that interests me in this study. I examine how their contests shaped the Ethiopian Civil Code project.

In view of that, the field of Ethiopian legal modernisation is placed in three separate temporal layers and further pluralised temporally. Specifically, my adoption of a field approach to the Ethiopian Civil Code project is meant to acknowledge the horizontal/spatial plurality of actors. This makes my study an examination of the Ethiopian Civil Code project within dynamic spaces within moving times – hence, my spatiotemporal approach to the Ethiopian Civil Code project. From a methodological point of view, the implications of such an approach are (1) the rejection of the teleological temporality that dominates the modernist story of the Ethiopian Civil Code, and (2) to buttress my spatial approach with explicit temporal metaphors that attend to the complex temporality (the multiple temporal layers some of which I have identified above) of the Ethiopian Civil Code project or the field of Ethiopian legal modernisation.

As much as it is constituted by temporal layers, the field of Ethiopian legal modernisation is composed of multiple fields: the field of legal education (defined by contests over legal curriculum – see Chapter Six) and the field of codification/legislation (defined by contests over legal modernisms, that is ‘imagined sociality’, discussed in Chapters Four to Eight). The examination of the contests in the field of legal education and the integration of the findings to the story of the Ethiopian Civil Code project refines our understanding of the legal transfer project, for it draws attention to an unexplored but very important arena of the legal transfer project.

From the foregoing, it is clear that my social space does not and cannot generally speak about Ethiopia as a (legal) geographical entity. For this study, Ethiopia as a physical space may usefully be depicted as composed of three geographies of property rights depending on, inter alia, how the capital Addis Ababa was foundationally related to its land-dependent agrarian and pastoral societies. These are (1) the rist region, (2) the highland peripheries, and (3) the lowland peripheries. The geographies of property rights are drawn based on the ideas of John Markakis122 who writes about the make-up of the modern

122John Markakis, Ethiopia: the Last Two Frontiers (James Currey, 2011). Apart from John Markakis, other scholars who have earlier developed a typology of Ethiopian cultural geography based on, inter alia, system of landholding prevalent in imperial Ethiopia influenced my conception of Ethiopian geographies of property rights. See, eg, Donald Donham, ‘Old Abyssinia and the new Ethiopian empire: themes in social history’ in Donald Donham and Wendy James (eds), The Southern Marches of Imperial Ethiopia: Essays in History
Ethiopian state. As stated, the geographies of property rights are an important aid in (1) the elaboration of what I call Abyssinian imperialism, and (2) the identification of the implications of the contest in the field of Ethiopian legal modernisation. Ethiopia as a physical space is a largely different world from the metaphorical social space studied here. Nevertheless, the contests in the latter can show what the state (and the various actors who dominated the field of legal modernisation in various historical eras) thought about the geographies of property rights, the societies within the geographies, and therefore, the socialities imagined through (Book III of) the Ethiopian Civil Code.

Finally, following non-modernist comparative lawyers, I accept that (transferred) legal concepts are capable of multiple meanings (and hence are contestable). Nevertheless, I approach them from a non-normative perspective. Specifically, this approach attends to (1) the creative and created nature of legal concepts, (2) the conditions of Ethiopian semicolonial legal modernity that made their performative appropriation possible, and (3) the multiplicity of its spatiotemporal context. I do not consider property law concepts examined within the context of contests in Ethiopia’s legal modernity, such as individual landownership and agricultural communities, as models representing material realities of landed property in either Ethiopia or countries from where they were believed to have been appropriated. As I noted in Chapter One, I present the Code and the concepts it introduced to the Ethiopian legal system as (1) repositories of experiences and desires from different times and places, and (2) resources for the interpretation of Ethiopian realities and the imagination of its futures.

It is through the use of this spatiotemporal lens, the lens of contested semicolonial legal modernity that I intend to read the Ethiopian Civil Code differently. As noted in Chapter Two, the Ethiopian Civil Code project has often been read within the modernist paradigm. This tended to view Ethiopia’s mid-20th century codification as a belated and inevitable (or alternately, improbable), if ‘revolutionary’,123 unification of the (statist) Ethiopian legal system with that of its ‘developed’ models – particularly what the drafter of the code called the Romano-Germanic legal family of the western legal tradition.124 Here, I read the Ethiopian Civil Code project without the modernist paradigm. Crucially, I

1) spatially and temporally relativise Ethiopia’s experience with modernity,

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2) do not insist on western ownership and the singularity of legal modernity,\textsuperscript{125} and
3) conceive of the imported legal code and its legal concepts as contestable, creative, but also created technologies for interpreting the past and imagining the future.

Further, I use the notion of field as my primary explanatory tool in my new reading of the Ethiopian Civil Code project. This is what I mean by reading the Ethiopian Civil Code project differently: differently from the modernist students of the legal transfer project.

3.4. CONCLUDING REMARKS

Esin Örücü labels the likes of China and Turkey, which, like Ethiopia, were forced to undertake legal modernisation in order to escape European extraterritoriality, as extraordinary places of comparative law.\textsuperscript{126} Compared to Turkey and China, Ethiopia has perhaps been the most underrated extraordinary place of comparative law. As noted, it witnessed two major breaks from the past (once in 1974 and once in 1991) within only four decades of what was believed to be its massive juristic revolution in the 1960s. Because of the (re)constitutive significance of the two social revolutions that followed the juristic revolution, a reading of the Ethiopian Civil Code project in tandem with the temporal dynamics of Ethiopian legal modernity is methodologically more challenging, not least when one wants to distance oneself from the tradition of earlier studies that approach the Ethiopian Civil Code from modernist cum Eurocentric vantage points.

As I have noted in the preceding chapters, I am convinced the Ethiopian Civil Code project can and should be studied for more reasons than the adjudication of its (im)possibility and normative impact (however divergent it might have been, seen from the point of view of the donor legal system/tradition). In an attempt to read the Ethiopian Civil Code project differently from the modernist stories and answer the central question, I adopt an actor-centred spatiotemporal approach that compares with the legal field approach to legal transfer. In a sense, my spatiotemporal approach to legal transfer is an adaptation of what I have above called the legal field approach. It is a methodological move motivated more by the desire to incorporate contending (but otherwise invisible) actors to my story of the Ethiopian Civil Code project. It does not seek to legitimise every bit of Bourdieusian approach to social spaces and the

\textsuperscript{125}My use of semicolonial legal modernity to refer to Ethiopian legal modernity is also meant to signify the difference but also entanglement of Ethiopian legal modernity with other legal modernities from other places and times.

attendant concepts, which are as suspect as cultural and discourse-centred approaches when applied in the study of law in non-western settings. Besides, spatial approaches for the analysis of legal transfer do not seem to do justice to the extraordinary Ethiopian past. Existing legal transfer approaches, including legal field, are limited utility to thinking temporally about the Ethiopian Civil Code project (and Haile Selassie’s legal modernisation projects in general) which, as noted, is not only a cross-cultural but also an inter-temporal transfer project. I, thus, rework and combine the legal field approach with a temporal approach, thereby placing my analysis of the Ethiopian Civil Code project within a wider spatiotemporal frame. By doing that, I offer an account of the Ethiopian Civil Code project that differs from the modernist storyline by, among other things, bringing to the fore what would have been in the margins of the modernist readings of the Civil Code project. With the aid of this spatiotemporal framework, the chapters that follow (Chapters Four to Eight) reveal the inter-temporal as well as multi-spatial contests over the nature of state and society relationship in Ethiopia, and demonstrate their impact on the Ethiopian Civil Code project.
PART TWO
CHAPTER FOUR

4. PLACING IMPERIAL ETHIOPIA’S ‘VOLUNTARY RECEPTION OF WESTERN LAW’ IN CONTEXT: IMPERIALITY, SEMICOLONIALITY, AND THE MODERNISM OF ‘ETHIOPIAN JAPANISERS’ (1890s-1950s)

All assertions of freedom and self-awareness require elements of mimicry and voyeurism.¹

4.1. INTRODUCTION

Ethiopia, with its present day territorial limits, emerged during ‘the Scramble for Africa’.² The then new empire-state avoided defeat by Italy at the Battle of Adwa in 1896 thereby remaining formally independent during the colonisation of Africa. Its first ruler was Menelik II (r. 1889-1913). Its longest serving and most famous ruler was Emperor Haile Selassie I (r. 1930-1974) during whose reign the Ethiopian Civil Code project was initiated. This chapter focuses on the temporality of imperial Ethiopia, particularly the period 1890s -1950s during which time imperial Ethiopia was in a (semi)-colonial relationship with European imperial powers that demanded the Europeanisation of the Ethiopian legal system. While I generally use the concept of imperial Ethiopia to refer to the temporality inaugurated by the creation of a modern empire-state under Menelik II (r. 1889-1913), I use late imperial Ethiopia to refer to the empire-state that existed after Italian colonialism (1936-1941) and before the 1974 Ethiopian Revolution.

The early 20th century Ethiopian state, like Japan and Thailand, was what students of European imperialism recognise as semicolonial: ‘informal empires’ of capitalist Europe.³ Despite escaping formal colonisation during what Eric Hobsbawm has called the ‘age of empire’,⁴ Ethiopia, like these Asian countries, was still subject to various ‘standards of civilisation’, if limited capitalist exploitation.⁵

¹Eve Darian-Smith, ‘Postcolonial Theories of Law’ in Reza Banakar and Max Travers (eds), Law and Social Theory (Hart Publishing, 2013) 253.
Seen from the point of view of two third of its subjects, semicolonial Ethiopia is also imperial like its European counterparts that had formal colonies in the Horn of Africa. As rightly pointed out by some of the (modernist) commentators of the Ethiopian Civil Code project, Ethiopia cannot thus be thought of only in terms of its ‘peripheral’ international legal personality. Its geographies of landed property (see section 4.2) reveals why code-importing Ethiopia is, like other former semicolonial polities (e.g. Turkey), also a ‘smaller empire’.

This Chapter establishes that imperial Ethiopia’s semicolonial relations with the West and its imperial relations with its non-Abyssinian subjects are the most important markers of the broader historical framework within which (1) the field of Ethiopian legal modernisation emerged and (2) the Ethiopian Civil Code project was initiated and contested. The contest this chapter focuses on involved what in Ethiopian studies are referred to as ‘Ethiopian Japanisers’ – the first generation of foreign-educated Ethiopians engaged in the modernist analysis and critique of Menelik’s empire. The other group of contestants were the ruling Amhara landed elites whose interest in the modernism of the ‘Ethiopian Japanisers’ were limited. The ideas of ‘Ethiopian Japanisers’ about the state and society relationship in imperial Ethiopia reflected the precarious semicoloniality and imperialism of the Amhara-ruled African empire. It also anticipated the ‘voluntary reception of western law’ in imperial Ethiopia, a polity whose ‘dualistic’ nationalism compared more with the semicolonial and imperial nations in other parts of the semicolonial than postcolonial Africa where similar legal transfer projects were unfolding. Although it did not materialise during their ascendance (i.e. the first third of the 20th century), late imperial Ethiopia’s ‘voluntary reception of western law’ reflected the modernism of ‘Ethiopian Japanisers’ that were pushing the ruling elites for Japan-style modernisation. The creation of imperial Ethiopia and its ‘unequal’ entry into the international political order dominated by European powers and the ideology of legal modernisation (e.g. Europeanisation of laws) were therefore, the primary


10 The Amhara are the largest and most dominant of the ethnic groups inhabiting what I here call the rift region, historic Abyssinia (the forerunner of imperial Ethiopia). See section 4.2 for more.


temporal conditions for late imperial Ethiopia’s induced (and contested) performance of self-civilisation through codification of laws and more (see section 4.4).

The creation of the modern Ethiopian empire-state under Menelik II (r. 1889-1913) is viewed in various ways by scholars of Ethiopian studies. For some, the emergence of an Ethiopian empire-state in the late 19th century signified the long-awaited unification of the historic Christian Abyssinian kingdom and its tributaries.13 For others, it simply represented the invention of a ‘dependent colonial state’ under Abyssinian hegemony.14 My portrayal of early 20th century Ethiopia as a semicolonial and imperial polity in this chapter brings me closer to the school that characterises Ethiopia as a ‘dependent colonial state’. But, the aim of this chapter is not to situate my reading of Ethiopian legal history within the wider debate regarding the formation of the modern Ethiopian state. Instead, the aim of this chapter is to explain and analyse the temporal context for what M.B. Hooker and others have considered an instance of ‘voluntary reception of western law’: the importation of the Ethiopian Civil Code of the 1960.15

Sections 4.2 and 4.3 elaborate on the imperiality and semicoloniality of law-importing Ethiopia, respectively. Section 4.4 traces the emergence of Ethiopia as an empire state in the Horn of Africa region towards the beginning of the 20th century and the resultant transformation of the state-society relationships within it, which were of great significance for the early 20th century local literati and their discourses on legal modernisation. Emphasis is given to the works of the ‘Ethiopian Japanisers’ who not only dominated the field of Ethiopian legal modernisation but also anticipated an Ethiopian civil code drafted by a European jurist.

### 4.2. THE EMPIRE-STATE AND ITS GEOGRAPHIES OF PROPERTY

As noted, the modern state of Ethiopia emerged at the turn of the 20th century. The distant forerunner of imperial Ethiopia was the Orthodox Christian kingdom (commonly known as Abyssinia) that dominated the highland plateau in north Ethiopia, what I here call the rist region (see Map 1). For much of the 19th century, a century that witnessed increased European intrusions to the Horn of African region, historic Abyssinia was preoccupied by regional rivalries between

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13For instance, Zewde (above n 2, ch 2) describes the empire building in the second half of the 19th century as ‘unification’.


principalities. While the rivalry left most of the Christian kingdoms in the northern half of historic Abyssinia exhausted, it allowed the ‘insulated’ Shewa (the southernmost principality of historic Abyssinia) to consolidate its power as well as expand the frontiers of the Abyssinian empire beyond the rist region where non-Christian and Muslim states and peoples existed. Before his contest with Italians at the Battle of Adwa in 1896, Menelik II of Shewa managed to conquer much of the lowland and highland peripheries (see Map 1). The sovereignty of Menelik II over what became to be known as the Ethiopian Empire (also known officially as Abyssinia for much of the first half of the 20th century) was sanctioned when the borders of the new empire were rigidified through treaties with Italy, Britain, and France which had imperial possessions in the areas surrounding Ethiopia.

Achieved during what in African historiography is labelled as ‘the Scramble for Africa’ (1884-1914), Menelik’s successful competition with Europeans for empire and the resultant emergence of the Ethiopian Empire had two major effects. First, it brought together Abyssinia (the rist region) under a central rule for the first time in centuries, thereby contributing to the ‘unification’ thesis. Second, it extended Abyssinian rule to the highland and lowland peripheries. It also transformed state-society relationships in the peripheries as exemplified by the emergence of the neftenya-gabbar system in the highland peripheries (see below). The colonial landholding system that ensured imperial Ethiopia kept Europeans out of its new peripheries. The neftenya-gabbar system also signaled the arrival of an empire-state with three distinct geographies of property (see Map 1 above) which remained central to the modernisms of the Ethiopian state and contesting actors in what I call the field of Ethiopian legal modernisation. This ‘geography of property’ is made up of the rist region, the lowland periphery, and the highland periphery.

16Zewde, above n 2, 11-16.
18Marcus, above n 3, 101-104.
19Zewde, above n 2, 27 et seq; See also Marcus, above n 3, ch 3-5.
20Keefer, above n 17, 470.
4.2.1. The Rist region

The *rist* region is a cultural geography comprising its own eccentricity. Orthodox Christianity (since the 4th century AD), plow agriculture, and class-based feudal society, rare in 20th century sub-Saharan Africa, are among the markers of this part of Ethiopia. It was settled mainly by Tigrians and Amharas, the two politically dominant ethnic groups, who share an Abyssinian heritage best exemplified by what Teshale Tibebu calls the Ge’ez civilisation. Peasants in the

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21Adapted by the author from Woolbert, above n 6, 694.
23Tibebu, above n 2, 14-18.
rist region enjoyed extensive rights over the land they cultivated. Rist, a ‘general social arrangement in which farmers had an inalienable right to farm land and to pass that right on to their children’,24 afforded them with most if not all of the rights in the bundle of property rights a landowner would enjoy under modern European codes.25

According to the American anthropologist Allan Hoben, rist can be understood in terms of the concept of corporation.26 The ‘land-holding decent corporation’ (which is kin-based), he posits, ‘is the central institution of the rist system’.27 It enforces rist claims of the peasantry who Hoben conceives as shareholders of the corporation.28 Rist rights ultimately rested on belonging to the corporation – that is, belonging to ‘a descent line of an original father who happened to be the first to occupy the land’.29 Cognatic descent (the possibility of transmission of land along both parents’ lines of descent) coupled with a third avenue of claim through a spouse’s credentials meant rist could be claimed over a large number of farmlands scattered in different localities (or corporations, as Hoben would argue).30 Nevertheless, actual possession of land depends on the willingness of the corporation (acting through their representatives who could also double as local agents of the reigning emperor who theoretically owns the land) to recognise the claim.31 If backed by the representatives of the corporation, an Orthodox Christian gebbar (a peasant with cultivable land) in the rist region may individually possess and pass down as many parcels of cultivable land as possible. Once in possession, the farmlands generally remain within a family lineage in perpetuity even though inheritance could not forestall competition over rist land and an unsustainable fragmentation of farmlands.32 The wide scope of rist right in land and the depth of its meaning for Orthodox Christian Abyssinians (now ethnic Tigrians and Amharas) has been described by Donald Crummey as follows:

[Rist] has several different layers of meanings...Christian Ethiopians apply the term quite broadly and it reflects a very deep value for them. When it came to land, they also used it in a general sense to refer to any inherited right, but more narrowly it referred to the inalienable right of farming people to inherit the land

24Donald Crummey, Land and Society in the Christian Kingdom of Ethiopia: From the Thirteenth to the Twentieth Century (University of Illinois Press, 2000) 9
25Rist right may even be broader than private ownership under European private law system as the former was not, for example, subject to any rule of acquisitive prescription (see Chapter Five, section 5.5.1).
27Ibid.
28Ibid.
29Tibebu, above n 2, 74.
31Hoben, above n 26, 572.
32Markakis, above n 30, 76-80.
which they till. This was a right held equally by men and women and it derived equally from their mothers and fathers. In this narrower sense, the [rist] system referred to a general social arrangement in which farmers had an inalienable right to farm land and to pass that right on to their children. Farmers who possessed [rist] land did not hold it as tenants of anyone else... [T]he system functioned in [some provinces until] the later years of Haile Selassie’s rule.33

Although Ethiopian legal scholars characterise the rist system as ‘communal’,34 social scientists had trouble, and rightly so, in describing rist landholding as either communal or private.35 As noted, rist entailed an irreversible36 individual possession of cultivable land. It is simply incorrect to equate it with a communal type of landholding where permanent individual possession is not the point. What in the rist region was less controversially ‘communal’ was the landholding system pertaining to pasture lands.37 Pastures were common property resources and their utilisation was subject to separate institutional arrangements.38 Depending on the demand for farmland, communally held pasturelands may be converted to rist land and vice versa.39

The gender-neutral rist right of Christian highlanders of northern Ethiopia is credited for preventing landlessness among Abyssinians proper.40 Religious (e.g. Muslims and Jews), ethnic, and occupational minorities and members of various caste groups could not assert a rist right and hence needed to rent land for cultivation.41 Nevertheless, rist entitlement did not preclude the subordination of the Abyssinian peasantry to the non-productive ruling class in a tributary relationship. The authority of the emperor, the theoretical owner of all lands in Abyssinia, and her/his grassroots representatives were acknowledged through the payment of tribute and tithe. The payment of tribute, tithe and other levies on land supported the non-productive class – the nobility, the king, the

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33Crummey, above n 24, 9 (emphasis added).
35Hoben, above n 26, 566 - 570; Tibebru, above 2, 78.
36Rist land may only be lost only when rist claim is lost through litigation or due to failure to pay tribute. Treason or rebellion was among the excuses for royal confiscation of rist land. See Edmond J. Keller, Revolutionary Ethiopia: From Empire to People’s Republic (Indiana University Press, 1988) 52.
38Ibid.
40Markakis, above n 30, 80.
priesthood, and the soldiers – which held various servitude-like rights over the land cultivated by the peasantry. These rights are generally referred to as **gult**.

The institution of **gult** is one of the primary reasons the Abyssinian society was described as feudal.\(^{42}\) **Gult** is often compared to fiefs in the European feudal system. In fact, the old Amharic word **gult**, according to a leading student of the **gult** system, ‘carries the meaning of “fief”’.\(^{43}\) Still, commentators maintain the burden of **gult** on the Abyssinian peasant is less cumbersome than the burdens on peasants in feudal northwest Europe with which the Abyssinian peasant was likened.\(^{44}\)

**Gult** presupposes the ultimate sovereignty of the emperor over cultivable land in its jurisdiction. The emperor assigns **gult** to nobilities, churches, and soldiers in return for specific obligations such as conducting religious services or leading troops in battle.\(^{45}\) Conquest (e.g. the southward expansion of Abyssinia in the late 19th century) ‘provided the richest occasions’ for rulers to grant **gult**.\(^{46}\) Although **gult** is arguably less secure than **rist** rights, since the emperor can always revoke it,\(^{47}\) it is common for **gult**-holders to eventually convert it into a more secure **rist**- like right over at least part of the land to which the privilege was initially attached.\(^{48}\) With the bureaucratisation of imperial Ethiopia (especially after the Second World War), **gult**-estates in some localities were reorganised as the lowest administrative units with former **gult**-holders or their heirs becoming administrators and/or local judges (see also section 4.4.3 below).\(^{49}\)

As will be seen, the Civil Code recognises **rist** – but not **gult** – and courts in imperial Ethiopia enforced **rist** claims.\(^{50}\)

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\(^{42}\)See, eg, Crummey, above n 22.
\(^{43}\)Crummey, above n 24, 10.
\(^{44}\)Writing in 1980, Crummey attributed the lack of peasant movements in pre-20th century Ethiopia (as opposed to in Europe) to the relative weakness of Ethiopian **gult** right holding feudal class vis-à-vis the servient tenement **rist** right holding Abyssinian peasantry. See Crummey, above n 22, 137-138. See also Keller, above n 36, 58 (observing that the Abyssinian version of feudalism could only be described as proto-feudalism for it ‘never matured to classical (European) feudalism’).
\(^{45}\)Crummey, above n 24, 11.
\(^{46}\)Ibid 10.
\(^{47}\)Ibid 12; Markakis, above n 30, 83.
\(^{48}\)This was particularly the case in the highland peripheries. See section 4.2.2 below.
\(^{50}\)Markakis, above n 30, 76; John Markakis and Nega Ayele, *Class and Revolution in Ethiopia* (Red Sea Press, 1986) 41.
The highland peripheries can be compared to the *rist* region in that it was settled by societies engaged in sedentary agriculture. However, the highland peripheries were virtually free from Orthodox Christianity which, in the *rist* regions, provided ideological legitimacy for feudalistic land and society relations. Property institutions in the highland peripheries were not generally constructed around the notion of *rist* and *gult*, although indigenous land law systems in the highland periphery could be compared to Abyssinian variants.

For centuries, Abyssinian imperial rationality – aspects of which was inscribed in the *Fetha Negast*, a legal code imported from Coptic Egypt before the advent of European imperialism in Ethiopia, – held that land in conquered territories will be distributed equally among (1) the emperor, (2) the Ethiopian Orthodox Church, and (3) the chiefs of the conquered people. This rule, also known as the *siso* rule, allowed peasants in conquered territories to retain access to land, however, limited that might have been. Also, direct contact between the conquered people and the conquering power was by tradition limited to the local chief (known as the *balabat*) who was usually allowed to retain the power to extract tribute from his or her subjects, which tribute was then shared with their Abyssinian overlords. This must have left some space for various indigenous property institutions to play roles in determining, among others, access to cultivable and pasture land within a third of the land placed in the jurisdiction of the chief of the conquered people.

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53 A rule in the *Fetha Negast* prescribed that ‘Let every soul be subject to the higher powers. For there is no power but God; the powers that be are ordained of God…For this cause ye pay tribute also: for they are God’s ministers …Render therefore to all their dues: tribute is to who tribute is due…fear to who fear; honor to whom honor.’ (Quoted in Gebru Tareke, *Ethiopia: Power and Protest Peasant Revolts in the Twentieth Century* (Cambridge University Press, 1991) 67).
55 Jembere, above n 34, 130.
56 For an interesting example of a (female) *balabat* that for decades mediated between its people and the imperial government during the period under discussion, see Judith Olmstead, *Women between Two Worlds: Portrait of an Ethiopian Rural Leader* (University of Illinois Press, 1997).
57 Ibid; Charles McClellan ‘Perspectives on the Neftenya-Gabbar System: the Darasa, Ethiopia’ (1978) 33 *Africa: Rivista trimestrale di studi e documentazione dell’Istituto italiano per I’Africa e l’Oriente* 426, 439. See also the various case studies on the encounter between imperial
The imposition of Abyssinian land law on the sedentary agrarian societies of the highland peripheries was, as Brietizke rightly puts it, ‘similar [in its impact on indigenous rules] to that of the laws transplanted to other parts of the Third World under European colonialism’.58 Except in areas where a level of autonomy was retained, despite incorporation (e.g. the Kingdom of Jimma),59 land with gebbar (tribute-paying farmers with cultivable land) to work on it was allocated as gult (fief) to members of the conquering army, ‘from generals to simple soldiers’.60 According to Charles McClellan, a common naftagna (Abyssinian soldiers stationed in the highland peripheries) could be assigned as many as fifteen to twenty gebbar.61 The revival of the Abyssinian fief in the highland peripheries and its effect is summarised by Richard A. Caulk as follows:

[Fiefs...might include the setting aside of some of the land within the jurisdiction of the gult holder to be worked by taxpayers for his exclusive benefit (whereas the tithe from their other lands, as throughout the province, was to be transferred to government storehouses). The harvest of this personal estate was tax free. The gult holder also enjoyed rights to payments in kind and to personal services (for example, cutting firewood, thatching, fetching water, grinding grain). This work for him by taxpayers was additional to the corvée required on behalf of the state (for example, porterage for officials in transit, road building, transport of grain raised by the tithe). Cash gifts or a sheep were customarily owed to the enfeoffed at [various] high feast days. When the holder of the fief ...was also charged with hearing disputes, he enjoyed court fees and bribes. The equivalent of non-commissioned officers and, in some cases, ordinary soldiers were assigned the supervision of small groups of [gebbars].62

This was how imperial Ethiopia ensured its presence among the conquered people of the highland peripheries, particularly during the first third of the 20th century.

On the surface, the imposition of an Abyssinian fief-holding class upon the gebbars of the conquered agrarian societies of the highland peripheries was no
different from the situation in feudal Abyssinia, where a similar fief-holding class
had existed for centuries. Yet, the insecurity of the property rights of the gebbar
in the periphery can be contrasted with the security of the property rights of the
gebbar in the rist region:

The situation in which the gebbar in the conquered region found himself differed
significantly from that of the Abyssinian peasant who was also designated as
gebbar. In the Abyssinian homeland [the rist region], the term referred to the
tributary status of the free peasant who has secure rist rights over his land. The
peasant in the periphery who found himself on land expropriated by the state and
allocated to others, lost whatever rights he had over such land, and was reduced
to the status of a tenant ‘quartered on the land of another’…Furthermore, the
burden imposed on the cultivator in the periphery was much heavier than that
borne by the Abyssinian peasant, whose rights and obligations were prescribed
and protected by traditional law and custom shared with his governor. The gebbar
in the periphery had no recourse against an alien landholding class, and could not
refuse [a powerful alien] landlord demand.63

The different spatial permutations of the Abyssinian tributary system in imperial
Ethiopia is mainly a function of the colonial relations between the empire-state
and its agrarian subjects in the highland peripheries. The neftegnya-gebbar system,
the emergence of which coincided with the advent of European imperialism in
the Horn of Africa, has struck some observers as ‘a rather thoroughgoing
occupation’.64 As elsewhere in colonial Africa, military superiority of the
conquerors was a very important element of the colonial landholding system. As
Charles McClellan has noted:

Stemming from the military superiority of the northerner…fear always remained
an integral part of the neftegnya-gabbar relationship and aided the indigenous
official in his maintenance of local peace. Just as firearms were an important factor
in the subjugation of the area, so they have remained a constant threat…Balabats
[co-opted indigenous chiefs] were given guarded access to firearms and
distributed some to their most loyal retainers, but the bulk of [the gebbar] were
denied them.65

4.2.3. The Lowland Periphery

The rist region and the highland peripheries were home to about 90% of the total
population of the country that cultivated less than a tenth of the empire’s
‘potentially cultivable land’.66 The remaining 10% were believed to live in the
lowland peripheries where pastoralism and shifting cultivation were widely

63Markakis, above n 51, 100 (emphasis added).
64McClellan, above n 57, 429.
65Ibid 435-6.
66Tareke, above n 53, 57.
practiced. In the lowland peripheries (that constitutes over half of Ethiopia’s landmass), indigenous communities’ perspectives on property rights are informed by, among other things, the culture of a non-sedentary way of life. A totalising description of landed property among Ethiopian pastoralist communities may not do justice to their diversity and heterogeneity. Nevertheless, the following assessment in 2011 by John Markakis offers a plausible picture:

Extensive use of land and freedom of movement over it...determines the pastoralist perspective of land rights. Theoretically, land and water are ‘the gift of God’, and all people have the right to use them. Private ownership rights are not recognised, unless labour is invested to improve resources. Access to improved water sources – wells, ponds, dams, tanks – is controlled by those who invest labour or money in them, and they can demand payment for water...While group claims over areas are recognised, they are vaguely defined in territorial terms, often overlap and, most importantly, shift over time: they are neither mapped nor registered.

Unlike the highland peripheries, the lowland peripheries were generally unaffected by the neftegnya gebbar system. The absence of a community of settled gebbar that could be exploited through the neftegnya gebbar system in the lowlands is believed to have contributed to the ineffectiveness of the neftegnya gebbar system in the lowland peripheries. Thus, the property rights institutions of pastoralist communities of the lowland peripheries apparently maintained their autonomy in the shadow of the imperial state. Despite claiming absolute sovereignty over the land over which they maintained their livelihood, the imperial state rarely managed to impose its direct presence. Addis Ababa’s penetration into the lowland peripheries only improved when, after the Second World War, it began to grant concessions to foreign investors interested in large scale commercial farming. Hence, the distinction between highland peripheries (where land alienation was as extensive as the impacts of imported Abyssinian

68 Markakis, above n 51, 29.
69 Ibid 27; Larebo, above n 67, 43; Donald Donham, ‘Old Abyssinia and the new Ethiopian empire: themes in social history’ in Donald Donham and Wendy James (eds), The Southern Marches of Imperial Ethiopia: Essays in History and Social Anthropology (Cambridge University Press, 1986) 3, 42.
legal notions of property) and lowland peripheries (where land alienation and imperial Ethiopia’s penetration was delayed, if not absent 72).

4.2.4. Beyond ‘Village Ethiopia’73

Dotting the three major geographies of property were small urban centres the significance of which was not as vital as ‘village Ethiopia’ where the most representative aspects of Ethiopian social history was unfolding. Urbanism as we know it today was only a twentieth century phenomenon in Ethiopia.74 For centuries, Abyssinian ruling classes and the subordinated peasantry lived in rural Ethiopia without any significant exposure to permanent metropolitan trappings; the royal capitals of historic Abyssinia were mobile until the establishment of Addis Ababa.75

Genealogically, towns (including Addis Ababa) were ‘feudal camps’ that served as ‘centres for the extraction of rural surplus’.76 Similarly, towns in the highland peripheries were initially military garrisons from where the attention of the colonial subjects was directed to the new imperial power centred in Addis Ababa.77 They were not centres of finance and commerce where the bourgeoisie – the principal addressee of civil codes in Europe – dominated economic life. Using Addis Ababa as a window, this section (very broadly) recounts some of the changing patterns of property relations that appeared to imbricate the three geographies of property since the late 19th century.

As noted above, Addis Ababa was initially a temporary royal camp for the empire building of Menelik II (r. 1889-1913) who eventually abandoned the idea


73I am appropriating Tareke, above n 53, 58. Although Tareke employs ‘village Ethiopia’ to refer to what in this study is termed the rist region and highland peripheries, I am using it to generally refer to the three geographies of property.


77Wolde Michael, above n 75, 5.
of moving out of his last mobile capital situated outside of the rist region. As a typical feudal town, life in the late 19th and early 20th centuries’ Addis Ababa largely depended on the ‘royal palace’ (gebbi).78 The feudal nobilities together with their vast followers settled around the imperial palace and lived on the gult extracted from farming communities around Addis Ababa.79 As the settlement grew in size and permanence, the nobilities’ rights over the land they and their followers resided on was redefined in the language of European law. For instance, a law enacted in 1908 (also known as the Law of Addis Ababa City) introduced urban Ethiopia to private ownership of land in the Romano-Germanic sense of the term.80 Similarly, Haile Selassie’s first constitution (1931) included a provision that stated: ‘Except in cases of public necessity determined by the law, no one shall have the right to deprive an Ethiopian subject of any movable or landed property which he owns’.81 This change in land law was compared, by a notable Ethiopian historian, to 19th century developments in European absolutist states where the transition from feudalism to bourgeois capitalism was said to be accompanied by the privatisation of (land) ownership.82

4.3. SEMICOLONIALITY

Imperial Ethiopia, which, as noted, was a complex imperial polity with three distinct geographies of property, was a semicolonial empire of the west, and a precarious one at that. Capitulation treaties allowing most-favoured nation treatment and extraterritorial jurisdiction to European powers had qualified Ethiopia’s autonomy since 1908 when the Treaty of Friendship and Commerce between Ethiopia and France (also known as the Klobukowski Treaty) was signed.83 Predicated on the legal orientalist idea that legal systems of non-European states are inferior and incapable of protecting European citizens and subjects, article 7 of the treaty inaugurated the era of ‘mixed courts’ in Ethiopia. The relevant parts of the article in part read:

Until such time that the Ethiopian legal system is Europeanised, criminal or civil disputes involving French citizens or its protégés will remain under French consular jurisdiction. However, ‘mixed cases’ (civil or criminal) involving French

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78 Horvath, above n 74, 45.
80 Jembere, above n 34, 99.
81 Article 27, the Constitution of 1931, 16th July 1931 (Addis Ababa).
and Ethiopian subjects will be tried by an \textit{Ethiopian judge working in consultation with the French consul} or his agent (Emphasis added).\textsuperscript{84}

The ‘mixed court’ system was established based on this provision – the Special Court of Ethiopia (1922-1936) – was weaker in comparison with mixed courts witnessed in other parts of the semicolonial world.\textsuperscript{85} Nevertheless, the semicolonial existence of Ethiopia was precarious. Because of its geographic location in Africa, where informal European imperialism ended following the Berlin Conference (1884-85) and the subsequent partition of the continent among European colonial powers occurred,\textsuperscript{86} Ethiopia’s semicolonial status was more precarious than other semicolonial nations of the early 20\textsuperscript{th} century. Of course, like other semicolonial states of the ‘age of empire’ such as Japan, Ethiopia was a member of the League of Nations. Yet, it was subject to additional ‘standards of civilisation’ other than the acceptance of European extraterritoriality pending the Europeanisation of its legal system.\textsuperscript{87} Crucially, the requirement by the League of Nations for Ethiopia to abolish slavery was Ethiopia-specific ‘standard of civilisation’.\textsuperscript{88} Furthermore, France, Britain and Italy concluded a tripartite treaty (1906) to create their spheres of influence in semicolonial Ethiopia and, later, colluded\textsuperscript{89} to facilitate its formal colonisation (1936) in what appeared to be a violation of pre-Second World War international law.\textsuperscript{90}

Despite maintaining its semicolonial status for much of the period under discussion, Ethiopia’s semicolonial relationship with the West transformed into a colonial one in 1936, when Italy invaded Ethiopia. A subject of European extraterritoriality and additional inter-European imperial designs, Ethiopia was considered a potential colony of European powers, particularly Italy, which Ethiopia defeated at the Battle of Adwa in 1896.\textsuperscript{91} Despite being forced to recognise Menelik II’s sovereignty over Ethiopia in the aftermath of the Battle of Adwa, Italy was not content with a semicolonial Ethiopia. Italy was keen, particularly in the 1930s, to incorporate Ethiopia into Italian East Africa, a colonial empire that included Eritrea and Italian Somaliland (both of which had been colonised since the 1890s). Consequently, for a brief period between 1936-

\textsuperscript{84}Author’s translation from the Amharic version of art 7 of the treaty appended to Edwards, above n 83, 373.
\textsuperscript{85}Feyissa, above n 5, 113-119.
\textsuperscript{87}Gong, above n 3, 119 et seq.
\textsuperscript{88}Ibid.
\textsuperscript{90}But see, Parfitt, above n 8, 850 (arguing the Italian invasion of Ethiopia ‘might have resulted from actions that were in accordance with, rather than in violation of, interwar international legal norms’).
\textsuperscript{91}Feyissa, above n 5, 117.
1941, Ethiopia was a colony of Italy. The ‘primitive state of legal development’ in Ethiopia was among Mussolini’s Italy excuse for their brief but consequential colonial excursus in Ethiopia (see 4.4.2 for some major effects of Italian colonialism in Ethiopia). Not spared from being colonised by Italy, a ‘civilised’ member of the family of early 20th century nations, imperial Ethiopia was, therefore, a precarious semicolonial and imperial polity. And, the discourse of legal modernisation in the pre-codification period (discussed below) reflected that.

4.4. CONJURING UP SEMICOLONIAL LEGAL MODERNITY: ‘ETHIOPIAN JAPANISERS’ AND EMPEROR HAILE SELASSIE I

4.4.1. The Modernism of ‘Ethiopian Japanisers’

Imperial rule in early 20th century Ethiopia was essentially a non-bureaucratic affair. The imperial state relied on a surplus appropriating class to administer its vast empire. Perhaps because of the capacity of the new empire to ‘absorb’ the interests and ambitions of the ‘traditional’ ruling elites, Japanese-style Europeanisation (which was the obsession of the emerging intelligentsia) was not on a priority of the rulers. Exposed to western education and lifted by emergent print-Amharic, early 20th century local intelligentsia, dubbed romantically as ‘Ethiopian Japanisers’ (for embracing Japan as a model for Ethiopian modernisation), argued Ethiopian laws were not ‘in line with the normative order’ of the early 20th century. In contrast, despite the 1908 the Klobukowski Treaty strongly suggesting imperial Ethiopia’s release from European extraterritoriality was subject to its importation of European legal codes, Menelik’s Ethiopia, which differed on the establishment of the mixed court
sought by Europeans, was content to incorporate only the *Fetha Negast* into the emerging statist legal system.99

The *Fetha Negast* which, as will be seen below, the ‘Ethiopian Japanisers’ argued should be replaced with a law imported from Europe, was a code of law the importation of which was an outcome of Orthodox Christian Abyssinia’s long engagement with the Egyptian Orthodox Church.100 Originally in Arabic, the code was likely to have been brought into Ethiopia by Egyptian Coptic priests visiting Abyssinia.101 Purportedly in use in Abyssinia since at least the 16th century, the *Fetha Negast*102 contained rules on property and was reportedly applied by imperial courts during the pre-codification era.103 The code, the Egyptian roots of which Ethiopians seemed to have forgotten, was also a source of pride for imperial Ethiopia and its nationalist leaders who had had hard time convincing Europeans it possessed a ‘civilised’ legal system. The nationalists and Ethiopian(ist) jurists had made it their habit to portray the *Fetha Negast* as an Ethiopian legal code and the reason for Ethiopia’s juristic exceptionalism in Africa.104 Some even reasoned that Ethiopia, as a result of the *Fetha Negast*, embodied ‘elements of Western [legal] civilisation’ and must be considered outside ‘a purely African customary context’.105

As European legal imperialism reached its peak in the semicolonial world and ‘smaller empires’ like Ethiopia were trying to forge a nation out of old empires and also achieve freedom from European extraterritoriality,106 the *Fetha Negast*, Ethiopia’s ancient link to European law,107 was found inadequate by the emerging nationalist intelligentsia. In particular, Gebrehiwot Baykedagn (1886-1919) drew attention to the urgency of (legal) westernisation in what he considered backward Ethiopia.108 Baykedagn was critical of Menelik I (r.1889-1913) for not doing enough in following the Japanese pattern of Europeanisation

99Jembere, above n 34, 109; Feyissa, above n 5, 113-9.
100Abba Paulos Tzadua, *The Fetha Nagast: the Law of the Kings* (Faculty of Law Haile Selassie I University, 1968) xvii.
101Ibid.
102Jembere, above n 34, 190.
104Imperial Ethiopia’s last emperor himself was an active participant in the construction of *Fetha Negast* as a symbol of his nation’s juristic exceptionalism. See, eg, Haile Selassie, ‘Preface’ to the *Fetha Negast* (Tzadua, above n 100, vi).
107The *Fetha Negast* is widely considered as the first ‘link between ancient laws of Rome and Ethiopia’ (see Peter Sand, ‘Roman Origins of the Ethiopian “Law of Kings” (Fetha Nagast)’ (1980) 11 Journal of Ethiopian Law 71.
108Ibid; see also Gebre Heywet Baykedagn፣ የኢትዮጵያ ካትል ከበቁ ክርክር [State and Public Administration] (Tafari Mekonnen Printing Press, 1924) [Hereinafter Baykedagn on State].
which he argued was indispensable if Ethiopia was to remain independent from European imperialism:

The function of the Ethiopian state today is different from its predecessors. The Ethiopian state has been backward. Today, it has a formidable foe: it is called European mind (intellect). Who opens up for it, will be empowered. Who rejects it, will vanish. If our Ethiopia receives it, its adversaries respect her. If not, it disintegrates and will be enslaved.109

The German-educated and, perhaps, most widely studied ‘Ethiopian Japaniser’,110 also called for civil codification in European-style:

Our *Fetha Negast* is not in line with today’s normative order. As a result, the government should hire jurists and enact a *Fetha Negast* that is compatible with European laws. For this, we need jurists that are familiar with European laws. A state without written law could not last longer.111

Although Eurocentric legal modernisation was his prescription for imperial Ethiopia’s various economic, political and social ills (e.g. the gult system discussed in section 4.2), Baykedagn appeared to have embraced a level of legal transfer scepticism. He maintained, ‘a law that served a society well may not necessarily serve another with a similar success’.112

On a different note, Baykedagn’s call for the Europeanisation of Ethiopia’s laws and public administration had Abyssinian nationalism written all over it. As rightly noted by some of his defenders, his was a desire for ‘sovereign modernity’ in imperial Ethiopia.113 But seen from the point of view of imperial Ethiopia’s peripheral subjects, his prescription seemed less about sovereign modernity than a double-edged colonial modernity. His writings are explicit about his disdain for Ethiopia’s non-Abyssinians (whom he considered more uncivilised than the Abyssinians he derided for being unreceptive to European thought).114 Most importantly, he expressed his fear that non-Abyssinians would continue disrespecting imperial Ethiopia unless it rationalised its public administration hurriedly. For him, the contemptable non-Abyssinians respected Addis Ababa because of Menelik’s military might, not because of the sophistication of its legal

109Baykedagn on Menelik, above n 98, 24 (author’s translation).
111Baykedagn on Menelik, above n 98, 22 (author’s translation).
112Baykedagn on State, above n 108, 15.
113Salvadore, above n 110.
114See, eg, Baykedagn on State, above n 108, 38; Baykedagn on Menelik, above n 98, 8-9.
Baykedagn, who valued a small state with a ‘well-developed’ legal system more than a big military empire (like Abyssinia) with a ‘backward’ legal system, was clear that Europeanising the state machinery would secure imperial Ethiopia the respect it was owed by both its ‘uncivilised’ peripheral subjects and ‘civilised’ partners:

Neither civilised nations nor [non-Abyssinians] would consider Ethiopia’s government self-determining. They think the state will collapse if the Emperor dies. They are right; there is no distinction between the Emperor and the state in uncivilised state...Uncivilised people knows no law. A nation with no law has no real power. The source of a state’s real power is not the size of the military...The non-Abyssinians are thus right in respecting Menelik but disrespecting his state.

At a time when ‘the civilised-non-civilised distinction expelled the non-European world from the realm of law and society’, Baykedagn was calling on his nationalist Ethiopian emperors to take what Antony Anghie has called the ‘dynamic of difference’ more seriously than they did. In other words, he was contesting the apparent lack of desire on the part of the ruling elites to comply with the standards of membership in ‘civilized international society’ set by European powers such as the Europeanisation of laws.

The Russian-educated Tekle Hawariat Tekle Mariyam and the Belgian-educated Tedla Haile were the other two notable local intellectuals of what Christopher Clapham called the ‘Japanese period’. Tekle Mariyam, who wrote Haile Selassie’s first constitution (1931), noted the importance of abolishing indigenous land tenure before embracing capitalism, socialism, or communism. On his part, Haile wrote that Ethiopia must aspire to assimilate its non-Abyssinians (particularly the largest of the non-Abyssinian groups, the Oromos) into Amhara rather than allowing them ‘to maintain their own traditional chiefs, customs...institutions, and...their language’. He explained his indifference to what may be called a policy of ‘indirect rule’ in terms of the geographic advantage the Amharas (unlike, for example, their European equivalents in the rest of Africa) enjoy in assimilating their colonial subjects. The Amhara literati, who also noted the role of law in the assimilation of non-Abyssinians, argued

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115 Baykedagn on Menelik, above n 98, 9.
116 Ibid.
117 Ibid 8-9.
119 Ibid 58; Gong, above n 3, 5.
121 Bahru Zewde, Pioneers of Change in Ethiopia: the Reformist Intellectuals of the Early Twentieth Century (Ohio University Press, 2002) 127.
123 Ibid 88.
‘Amhara soldiers …be granted land freely’ in the highland peripheries. Bothering little about the loss of identity and dispossession of non-Abyssinians with the implementation of his plan (which, as seen in section 4.3, was already underway), Tedla also reasoned that non-Abyssinians should become Amhara ‘for the later possess a written language, a superior religion [Orthodox Christianity] and superior customs and mores’. Picturing Amhara-ruled imperial Ethiopia as wanting ‘to modernise herself’, Tedla showed support for Ras Tafari (the future Haile Selassie I) whom he thought would make Ethiopia another Japan – a respectable ‘civilised’ non-European power.

Seen more broadly, Tedla Haile’s modernist view that imperial Ethiopia must achieve linguistic homogenisation through Amharic (the language of ethnic Amharas) was a call for a less inclusive Abyssinianism as well as Ethiopianism wrapped into one official nationalism. As students of Ethiopian nationalism claim, the national identity of imperial Ethiopia is Abyssinian at the core. To that extent, it is ‘trans-ethnic’, if drawn exclusively out of the culture of the rist region. But with the ascendance of Menelik’s Shewa over the rest of Abyssinia as well as beyond, Amharic had become the exclusive vernacular for the expression of the national culture and Ethiopian nationalism. Haile’s prescription for linguistic homogenisation (which obviously asks for a reproduction in various social fields including law) was a call for the Amharisation of the Ethiopian state against both non-Amharic speaking Abyssinians and the non-Abyssinian others of imperial Ethiopia. As such, Haile’s can be read as a call, inter alia, for the imposition of Amharic written legal codes in an empire controlled by Shewa Amharas. In other words, it is a cry for the imitation of official nationalisms of multiethnic empires of the semicolonial world such as Turkey.

In sum, the writings of ‘Ethiopian Japanisers’ reflect the uneasiness of the local intelligentia about imperial Ethiopia’s semicoloniality and fragile peripheral imperality, which they suggested can be raised through projects of assimilation

124Ibid 89.
125Zewde, above n 121, 132.
126Pankhurst, above n 122, 92.
129Ibid.
130The hegemony of Shewa Amharas in imperial Ethiopia was a concern for some of the ‘Japanisers’ though. Particularly, the Tigrian Baykedagn was critical of the growing marginalisation of other Abyssinians from imperial Ethiopia’s politics. See Baykedagn on Menelik, above n 98, 15.
and Europeanisation of the imperial state and its law. The literati who joined their counterparts in the semicolonial in engaging in a modernist critique of state and society relationships in non-European places, in some ways foreshadowed René David’s excuse for his extravagant modernist Civil Code (see Chapter Five). But their influence on the Amhara ruling elite remained low. This was particularly the case during the reign of imperial Ethiopia’s first ruler, Menelik II (r. 1889-1913). Despite making the Orthodox Christian empire ‘more powerful than it had been’ in centuries, Menelik II (r. 1889-1913) and his administration were more ‘conservative’ about the modernisms of the ‘Ethiopian Japanisers’, an expression of frustration by a modernist over the ‘complacent optimism’ of the ruling elites, is a testament to the contrasting positions and the limited influence of the modernists over the political elites.

The contest between the modernists and the ruling elites appeared to have shown improvement with the ascendance to power of Emperor Haile Selassie I. A nephew of the empire’s first Shewa Amhara ruler, Menelik II (r. 1889-1913), Haile Selassie I was a young member of the ruling class who joined palace politics following the death of Menelik II in 1913. Portrayed by some as an ‘Ethiopian Japaniser’, he was only 24 when he started sharing power with his cousin Empress Zewditu Menelik (r. 1916-1930) as Ras Tafari Mekonnen. Ras Tafari Mekonnen, that is, the young Haile Selassie I, had apparently been more interested in Japanese-style modernisation than his uncle or the less pro-Japanisation Menelikians that dominated the inner circle of the ruling class in the immediate post-Menelik II period. He retained some of them as his close advisors and others as his legal drafters and used them in his internal power struggle with the old guard that modernists saw as the force derailing ‘progress’ in Ethiopia. Ras Tafari Mekonnen, the future Haile Selassie I, was, thus, the best hope for the ‘Ethiopian Japanisers’ who, as noted, were calling for codification, land reform, and Amharization.

Nevertheless, Haile Selassie I was not an Atatürk (that is, an ideologically committed westerniser) or a Chulalongkorn (an emperor who participated in the

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132Baykedagn on Menelik, above n 98.
133Caulk, above n 131, 713.
136Before formally becoming emperor in 1930, Ras Tafari was considered ‘a de facto ruler’ of the empire since 1916 (Adejumobi, above n 134, 52).
138Ibid; Marcus, above 3, 116-29.
intellectual articulation of westernisation in the semicolonial). 139 With slight exposure to western education, 140 he was not as enthusiastic as some of the other ‘Japanisers’ (e.g. Baykedagn) were in a broad overhaul of the imperial state. Although he shared their nationalist sentiment and did not mind their service (when it suited him), Haile Selassie was a cautious moderniser and did not always approve the critical outlook of the local intelligentsia. 141 He seemed to be self-conscious of his sluggishness in pursuing the causes of the ‘Japanisers’ with Atatürk-style energy. In an autobiography published while he was still in power (1973), he offered an explanation for his government’s tardiness to embrace across-the-board modernism during the ‘Japanese period’. Sweeping modernisation of deep-rooted ‘traditional’ institutions, particularly the gult system, he reasoned, ‘would have resulted in unrest’. 142 The only major legal transfer project that brought the ‘Japanisers’ and Haile Selassie together during his first spell in power (1930-1936 143) was his 1931 Constitution. Mainly modelled on the 1889 Constitution of the Empire of Japan, Ethiopia’s 1931 Constitution was drafted by Tekle Hawariat Tekle Mariyam – the only known ‘Japaniser’ to have left his mark on codification. 144

4.4.2. Italian Colonialism in Ethiopia (1936-1941) and its Effects

Imperial Ethiopia’s defeat to Italy in 1936 meant the suspension of the social critique of ‘Ethiopian Japanisers’, the transformation of state-society relationships and a different modernisation discourse (see Chapter Six). The intellectuals of the early 20th century were either exiled or ‘liquidated’ during Italian colonialism in Ethiopia (1936-1941). 145 In the meantime, during their brief rule of Ethiopia in the 1930s, the Italians spurred to imperial Ethiopia’s colonial legal modernity. With the goal of promoting capitalist farming by Ethiopian peasants and Italian settlers, the colonial administration implemented a policy of ‘dividing the Ethiopian Empire into sectors to be granted to Italian concessionaries who would have the right to buy and market certain [agricultural] items of Ethiopian produce’, albeit with limited success. 146 Also,

140Adejumobi, above n 132, 52.
141Zewde, above n 137.
142Haile Selassie, My Life and Ethiopia’s Progress Volume 1 (Berhanena Selam Printing Press, 1973) 54.
143Interrupted by the Italian invasion in 1936.
144Zewde, above n 137, 106.
the urban population grew rapidly (Addis Ababa’s population reaching about 100,000 by the start of the 1940s) creating a demand for urban land. Among others, the Italians responded by assigning land (some of which was confiscated from members of the feudal nobilities) to incomers from rural areas. The Italian attempts to restructure the Ethiopian property system along capitalist lines predictably gave impetus to European conceptions of property in Ethiopia.

A significant effect of Italian colonialism in imperial Ethiopia was the abolition of the neftegnya-gebbar system. As noted, aspects of Italian colonial land policy in Ethiopia included promoting capitalist development, and hence, redirecting peasants in various parts of the country away from a colonial property regime overworked by the growing number of the neftagnya class and later northern land migrants (mainly ethnic Amhara and Tigrian). Dismantling the neftegnya-gebbar system was also instrumental for Italians who, following their invasion of Ethiopia, wanted to delegitimize Abyssinian rule tout court. The Italians knew that Ethiopian society was divided on ethnic, religious and class lines and encouraged the deconstruction of Ethiopian imperial nationalism by, ‘rejecting northern land claims to the [highland peripheries] and by militarily eliminating many of the neftegnyas’. Consequently, gebbar in various parts of the highland periphery were relieved from the neftegnya-gebbar system, at least temporarily. This was a significant development considering patchy attempts by some Abyssinian governors of peripheral provinces to reform the neftegnya-gebbar system before the Italian invasion encountered strong resistance from the politically significant gult-holder class.

148Horvath, above n 75, 44–45.
151The desire to benefit from the land bonanza in the conquered south led northern fortune hunters who, backed by the imperial state, managed to possess and eventually establish rist claims over cultivable southern land. The pattern of migration appears to have been resilient for much of the 20th century and beyond as it has significantly changed the demography of rural and urban parts of the highland peripheries. During the last two decades of Haile Selassie’s regime, over a million northerners were estimated to have migrated to the south due to, ‘insufficient or degraded land and drought’. See, Charles McClellan, ‘State Transformation and Social Reconstitution in Ethiopia: the Allure of the South’ (1984) 17 The International Journal of African Historical Studies 657, 666-71; Baker, above n 76, 235; Kloos and Adugna, above n 67, 113.
152McClellan, above n 57, 439.
154McClellan, above n 57, 438; Caulk, above n 62, 489-93.
The Italian rule in Ethiopia also witnessed the end of what I have elsewhere called the ‘weak’ regime of European extraterritoriality in semicolonial Ethiopia. The formal colonization of Ethiopia by a European power made the pre-Italian colonialism regime of European extraterritoriality (see 4.3 above) unimportant.

The restoration of Haile Selassie I’s rule in imperial Ethiopia was quick. Following Italy’s declaration of war on Britain and France in June 1940, the British invaded Italian East Africa and, in the process, transferred Ethiopia from one European imperialism to another – Italian to British (1941).

4.4.3. Post-Italian Colonialism Ethiopia and its Modernisation Projects

In the post-Italian period, during which time Ethiopia were under ‘British paramountcy’, the ‘restored’ Emperor sought ‘modernity’ in various sectors including property law. A chain of land tax laws and land grant schemes from the 1940s and the 1950s were thus enacted. The first among these laws, the Land Tax Proclamation of 1942 (amended in 1944) which enacted Haile Selassie’s government new found faith in the importance of replacing the traditional intermediaries between itself and the gebbar with a new actor (the Ministry of Finance), signaled a departure from the pre-Italian period that, as noted, left imperial Ethiopia’s property regime (and by implication its geography of property) unchanged.

While the primary aim of the Land Tax Proclamation was to rationalize powers of appropriation, its influence was more marked in redefining imperial Ethiopia’s geography of property set out above. Of course, the Land Tax Proclamation did not try to do away with traditional typologies of land that were institutionalised by imperial decrees since the late 19th centuries. Most importantly, it distinguishes between rist regions and other gebbar regions (that is highland peripheries). Accordingly, the rate of tax payable on each parcel of cultivable land varied with the geographies of landed property. But, a major effect of the new land tax system relates to the legal and social status of former functionaries of the imperial state who used to enjoy service tenement (gult rights) over lands cultivated by the gebbar in the highland peripheries.

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155 Feyissa, above n 5, 113.
156 Ibid 118.
157 See, eg, Potholm, above n 5.
Addressed to a landowner who is defined as ‘the person whose title to ownership of the land is recognized by law’, the proclamation capitalized on Italy’s attack on the neflegnya-gebbar system by abolishing gult rights of its former grassroots intermediaries in the highland peripheries. As per the new land tax law, what a landowner now pays would be a fixed amount of annual tax and tithe (not ‘taxes, services and fees’ as it was the case in the pre-Italian period).

The only exception to imperial Ethiopia’s assault on gult rights of traditional beneficiaries was the Ethiopian Orthodox Church. The Land Tax Proclamation excludes lands over which the Ethiopian Orthodox Church exercised gult rights (also known as semon gult) from its scope. Another piece of legislation, Regulation for the Administration of All Church Lands of 1942, reaffirmed the continuity of the Church’s traditional servitude right. According to some estimates, cultivable land within the jurisdiction of the Ethiopian Orthodox Church constituted about 20 % of the cultivable land of the empire.

The imperial state that abolished the gult rights of its traditional functionaries felt obliged to compensate them. Consequently, it was engaged in a practice of ‘land grant’ which allowed former functionaries to convert part (in some cases more) of the land over which they used to exercise income rights to private property. Although the government’s land grant scheme apparently aimed to benefit ‘every’ Ethiopian most notably ‘those who till the land’, former functionaries of the patrimonial state were by far the most noticeable beneficiaries of it. In fact, some powerful nobilities showed their insatiable appetite for land by harassing gebbars off farmlands and subsequently acquiring huge tracts of agricultural and forests lands.

The new land tax regime and ‘land grant’ schemes facilitated the conversion of the gult-holding class, which the empire had to support since its emergence in the late 19th century, into a powerful landlord class that dominated politics in late imperial Ethiopia. The net effect of the institutionalization of individual landownership for tax purposes was thus the galvanization of the social inequality created by state formation and the resultant colonial landholding that the imperial state pretended to eliminate through the centralization of land tax

160Article 3, Land Tax Proclamation.
161Ibid.
162John Cohen and Dov Weintraub, Land and Peasants in Imperial Ethiopia (Van Gorcum & Comp., 1975) 43.
165Markakis, above n 30, ch 5.
166Ibid; Cohen and Weintraub, above n 162, ch 2.
power and programs of land grant. As the estates of the predominantly Amhara landlord class of ‘the era of landlordism’ \(^\text{167}\) was concentrated in the highland peripheries, Cohen and Weintraub preferred to depict the highland peripheries of the late imperial period as Ethiopia’s geography of ‘private tenure’. \(^\text{168}\) The high incidence of tenancy in imperial Ethiopia’s geography of ‘private tenure’ (see the table below) suggests that the transition from the neftegnya-gebbar system to ‘private tenure’ was a painful process for the gebbar in the highland peripheries that, as noted, was temporarily relieved from the neftegnya-gebbar system during the Italian rule. As shall be seen in subsequent chapters, Ethiopian modernists of the post- ‘Japanese period’ were critical of such developments in late imperial Ethiopia.

**Table 1**

<table>
<thead>
<tr>
<th>Province</th>
<th>Tenant population with wholly rented land (%)</th>
<th>Tenant population with Part-owned &amp; part-rented land (%)</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arussi</td>
<td>45</td>
<td>7</td>
<td>52</td>
</tr>
<tr>
<td>Gemu Goffa</td>
<td>43</td>
<td>4</td>
<td>45</td>
</tr>
<tr>
<td>Hararge</td>
<td>49</td>
<td>5</td>
<td>54</td>
</tr>
<tr>
<td>Illubabor</td>
<td>73</td>
<td>2</td>
<td>75</td>
</tr>
<tr>
<td>Keffa</td>
<td>59</td>
<td>3</td>
<td>62</td>
</tr>
<tr>
<td>Shewa</td>
<td>51</td>
<td>16</td>
<td>67</td>
</tr>
<tr>
<td>Sidamo</td>
<td>37</td>
<td>2</td>
<td>39</td>
</tr>
<tr>
<td>Wollega</td>
<td>54</td>
<td>5</td>
<td>59</td>
</tr>
<tr>
<td>Wollo</td>
<td>16</td>
<td>16</td>
<td>32</td>
</tr>
</tbody>
</table>

The ‘restored’ imperial Ethiopian government also appeared to have finally remembered the juristic articulation of the relationship between the empire, its pastoralist communities in the lowland peripheries, and the land between them. As noted, the form of ownership and the mode of production in place in the lowland peripheries had for long precluded them from the purview of the land laws of imperial Ethiopia that were biased towards sedentary agrarian life. Imperial Ethiopia, which had targeted the pastoralists of its lowland peripheries

\(^\text{167}\)Dilebo, above n 150, 222.

\(^\text{168}\)Cohen and Weintraub, above n 162, 30.

through cattle tax laws and, before that, cattle raids, included a provision in its Revised Constitution of 1955 that read:

All property not held and possessed in the name of any person, natural or juridical, including all land in escheat, and all abandoned properties, whether real or personal, as well as all products of the subsoil, all forests and all grazing lands, watercourses, lakes and territorial waters, are State Domain.

One interpretation (which was also supported by late imperial Ethiopia’s practices) held that the whole of Ethiopian pastoral land, which as noted above, were spared from the nefagna gebbar system, were now placed in the ‘State Domain’ over which the imperial state’s sovereignty was assumed to be juridically superior. Accordingly, Ethiopia’s pastoralists’ territories, a very vast but arid land that supported the lives of at least 10% of the total population of the empire, belonged to the state that could, however, decide to hold it as a ‘private domain’ to be granted for users in concession. Further, as the supreme law of late imperial Ethiopia additionally declared ‘all future legislation inconsistent with it shall be null and void’. As will be seen, one such ‘future legislation’ was the Ethiopian Civil Code of 1960 that arguably avowed the validity of the communal claims on tribal lands. After years of indifference imperial Ethiopia had, thus, finally come of age to extinguish ancestral rights and constitutionally expropriate pastoral territories over which the livelihood of various Ethiopian communities depended.

While the rist region and its relationship with imperial Ethiopia remained largely intact, towns in the highland peripheries, including the capital Addis Ababa, a major centre of demographic and cultural colonisation, reproduced the

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171The Constitution of 1955, Proclamation Promulgating the Revised Constitution of the Empire of Ethiopia, art 130 (d) (emphasis added).

172Helland, above n 70, 49.

173See, eg, Bondestam, above n 71, 423.

174Article 122, the Constitution of 1955, above n 171.

175For more on the ancestral rights of Ethiopian pastoralist communities and their predicament during the imperial regime, see Gufu Oba, Nomads in the Shadow of Empires: Contests, Conflicts and Legacies on the Southern Ethiopian-Northern Kenyan Frontier (Brill, 2013).

176Crummey, above n 24, 9.

177Generally, towns in the highland peripheries were centres of demographic and cultural colonization. See, eg, Markakis, above n 30, 169-171; Palen, above n 74, 213-216; Robert Cooper
inequalities in landed property relations that prevailed in the geographic region it belonged to. According to some statistics, seventy percent of the land in the city was ‘owned’ by the aristocracy (retired officials, military people, and absentee landlords (owning land in rural Ethiopia) and the Ethiopian Orthodox Church. Land owned by other groups reportedly stayed below eight percent. Also, Haile Selassie’s government’s attempt to reorganise the emerging non-agrarian centres by establishing municipalities (1944) showed the increasing departure of land use (and priorities) in non-agrarian towns that dotted the empire and the broad geography of property I presented before. As will be seen, generations of actors with positions in the field of Ethiopian legal modernisation including the drafter of the 1960 Civil Code took the different land uses and concerns in rural and urban Ethiopia into consideration in assembling their legislative texts.

Post-Italian colonialism Ethiopia that, as noted, was busy transforming its geography of property was also under the steady influence of the British-sponsored system of extraterritoriality. The 1942 Anglo-Ethiopian Agreement (revised in 1944) enhanced the regime of European extraterritoriality in the black African empire which ‘premature’ independence from Italy (1941) the British seemed to have regretted aiding. Worried about the protection of some 40,000 Italians caught stranded in ‘prematurely independent’ Ethiopia, the British were very reluctant to recognise the unqualified sovereignty of Haile Selassie I over post-Italian occupation Ethiopia as much as they were unwilling to realise the wishes of France to reinstate the Special Court of Ethiopia based on the 1908 Klobukowski Treaty. The British considered Ethiopia a former colony of an Axis power the fate of which would be decided by the superpowers after the end of Second World War. As such, post-Italian rule Ethiopia was subjected to a protectorate-like relationship with the British for at least the duration of the Second World War. That relationship is exemplified by the imposition on Ethiopia of (1) the mixed benches of the High Court and Supreme Courts of


177Ibid.
178See A Proclamation to Provide for the Control of Municipalities and Townships, Proc. No., 7, 1944, Neg. Gaz., Year 4, No. 7
180Ibid 124.
181Feyissa, above n 5, 119-121.
182Ibid 124.
Ethiopia, and (2) a ‘Consultative Committee for legislation’. Both the courts and the consultative committee were dominated by jurists from Great Britain or its former colonies. Also, they functioned well beyond the expiry of their mandate following the renegotiation of the Anglo-Ethiopian Agreement in 1944. The mixed benches of the High Court and Supreme Courts of imperial Ethiopia existed until the middle of the 1960s thereby (1) ensuring the protection of Europeans from ‘repugnant’ Ethiopian laws and their custodians (lower Ethiopian courts) and (2) persuading Ethiopia’s legal self-civilisation (‘voluntary reception’).

The ‘westernisation’ of Ethiopia’s legal system reached a new height in the middle of the 20th century when it was given a constitution and six codes by the ‘restored’ emperor: the 1955 Revised Constitution of Ethiopia, the 1957 Penal Code, the Maritime Code (1960), the Commercial Code (1960), the Civil Code (1960), the Criminal Procedure Code (1961), and the Civil Procedure Code (1965). Furthermore, ‘westernised’ legal education was launched with the establishment in 1950 of the University College of Addis Ababa (later Haile Selassie I University). The majority of the legal codes were prepared by European jurists. The Civil Code was prepared by the French comparatist René David, who, like Ethiopian ‘Japanisers’ before him, was a modernist that saw Ethiopia as a traditional polity suffering from its legal primitivism. As noted in Chapter Two, these developments have been dubbed by some as ‘revolutionary’.

This ‘revolutionary’ break from a pre-codification Ethiopian past was achieved without much (1) involvement from the ‘Japanisers’ of the early 20th century and (2) demand from their post-Italian occupation successors. When he finally fulfilled Baykedagn’s wish for a Europeanised Fetha Negast, Haile Selassie I was entering what Bahru Zewde calls ‘the reactionary phase’ of his reign and distancing himself from foreign-educated Ethiopians in preference to the ‘traditionally educated’ and foreign advisors. So much so that he had only two foreign-educated ministers by 1953 – one being the French-educated legal technocrat Aklilu Habtewold who finally talked the Emperor into codifying

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186 See Feyissa, above n 5, 126 et seq.
188 Vanderlinden, above n 103, 257.
189 See Chapter Five for more.
191 Zewde, above n 137, 107.
laws.\textsuperscript{192} Despite writing Haile Selassie’s first constitution, Tekle Hawariat Tekle Mariyam as well as other Japanisers had fallen out with the Emperor. As Bahru Zewde explains, the fall out had a lot to do with Haile Selassie’s uneasiness with the critical intellectuals that demanded more modernisation from his government:

\textbf{[A]lready before [Italian colonial rule in Ethiopia], it becomes apparent that, as [Haile Selassie] achieves his objective of political supremacy, his need for the intellectuals diminishes. His world now has room only for the loyal functionary, not for the critical intellectual. The locally educated, often combining traditional church education with a touch of the modern, gain precedence over the foreign-educated.\textsuperscript{193}}

Before the revival of a social critique of imperial Ethiopia and its politics by radical Marxist students of Haile Selassie I University in the 1960s (see Chapter Six), Ethiopian educated elites remained largely ‘loyal and dedicated servants’ of the empire.\textsuperscript{194} Local intellectual pressure for legal modernisation was politically less significant when the long-awaited codification was initiated in the 1950s. Japan as a model was largely forgotten even though the local intelligentsia was growing in both frustration and size – the 1960 attempted coup orchestrated by foreign-educated elites and the left-leaning \textit{Ethiopian Student Movement} (see Chapters Six and Seven) being cases in point.\textsuperscript{195} Bereket Habte Selassie’s remark regarding the relationship between the 1955 Revised Constitution and the local intelligentsia’s demand for it was, I believe, equally true of Haile Selassie’s Civil Code:

\textbf{A comparative study of the origin of written constitutions shows that in nearly all cases they come to be as a result of momentous events in the country, usually after some upheavals preceded, accompanied or followed by certain basic demands. These demands are moreover backed by some tangible sanctions. In Ethiopia, there was no such event...There was of course a growing number of educated people with radical ideas, but their number at the time was too insignificant to constitute a force to reckon with and to justify the use of a scapegoat for a change of outlook. The army [a significant force capable of imposing its will on Haile Selassie] was loyal and the country was quiet.\textsuperscript{196}}

\textsuperscript{192}Ibid 106. On the role of foreigners in post-Italian rule Ethiopia, see, eg, Perham, above n 149, 92-95.
\textsuperscript{193}Ibid 105.
\textsuperscript{194}Zewde, above n 121, 211; see also Assefa Bequele, ‘The Ethiopian Elite and Intelligentsia’ (1967) 1 \textit{Dialogue} 1.
One may, thus ask, what triggered the ‘reactionary’ Haile Selassie to finally Europeanise the *Fetaa Negast* if it was not the ‘Japanisers’ or their post-Italian occupation successors? The answer should be sought in the legal codes’ capacity to symbolise Ethiopia’s theatrics of self-civilisation and official nationalism. Haile Selassie’s Ethiopia, during the period under discussion, was engaged in what Edmond Keller calls ‘late nation-building’ as much as it was preoccupied with ‘producing the appearance of progress’. Haile Selassie, who, like the local literati of the early 20th century, saw his empire as ‘Abyssinia writ larger’, needed to fight image collapse in a temporal setting that was bringing unwelcome attention. The 1942 Anglo-Ethiopian Agreement, which, as seen, established a mixed court system in Ethiopia, required the government of Haile Selassie to undertake legal westernization as predicted by the ‘Ethiopian Japanisers’. Ignoring this would mean prolonging European extraterritoriality in Ethiopia. Even more, it would attract an unfavourable image from the international community, which now included postcolonial Africa (e.g. Eritrea – the future territory of the Amhara-ruled empire) that had recognisable western legal texts. Ethiopia’s foreign minister Aklilu Habtewold (1943-1961), who had advised Haile Selassie to revise his 1930 constitution and import new legal codes, wrote:

I persistently advised the Emperor to replace the 1930 constitution because of the following reasons: (i) As the society advances, the state must be a step ahead revitalising its governance in a timely fashion; the old constitutions had served its purpose, but it is presently outdated. (ii) After the Second World War, the state of affairs had changed dramatically throughout the world that we had to attune ourselves for such changes. (iii) Having a modern, democratic constitution could earn us a favourable image from the international community, that impression would give impetus for our request [which included territorial claims over Italy’s former colony Eritrea] (Italics added).

In his preface to the Ethiopian Civil Code of the 1960, the Emperor himself noted:

The Civil Code has been promulgated by Us at a time when the progress achieved by Ethiopia requires the modernisation of the legal framework of Our Empire...so as to keep pace with the changing circumstances of this world today...In preparing the Civil Code, the Codification Commission convened by Us...has been inspired its

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198Levine, above n 195, 12.
200Feyissa, above n 5, 121 et seq.
202Ibid 206.
labours by the genius of Ethiopian legal traditions and institutions as revealed by the ancient and venerable Fetha [Negast].

The quoted assessments make clear Ethiopia’s codification was related to its subjection to European extraterritoriality (hence implication in ‘premature independence’) and desire to resist semicoloniality through performative self-civilisation that, it hoped, diffused the unfavourable image attached to a lack of ‘modern’ law.

Nevertheless, Ethiopia’s mid-20th century codification was not just an anti-semicolonial nationalist response to charges of legal primitivism. Codification, which elsewhere offered aspiring nation-states a means to construct the fiction of the monolithic nation, had a crucial role to play in the ideology of Ethiopia’s dualistic nationalism. By the Emperor’s own admission, codification allowed Ethiopia not only ‘to keep pace with the changing circumstances of the world’ and but also adapt its ‘ancient’ and ‘venerable’ Fetha Negast. An important implication of Haile Selassie’s rhetoric, and thus also the Ethiopian Civil Code project, was, thus, what Esther Arroyo Amyuelas refers to as the ideological effect of codification, which is ‘national affirmation’. It is an affirmation of the 1960 Ethiopian Civil Code as, René David himself described, as the ‘new’ Fetha Negast. The new Fetha Negast, which, as will be seen in Chapter Five, did not make concessions to non-Amhara and non-Christian Ethiopians, is a pronouncement of ‘Amhara Christian paramountcy’ in imperial Ethiopia. It is an official statement that what counts as modern and Ethiopian are legal texts from historic Abyssinia or their Europeanised versions. Hence, the duality of imperial Ethiopia’s legal nationalism: both anti-semicolonial (externally) and imperial (internally).

4.5. CONCLUSION

With the expansion of the historic Abyssinia to new territorial limits during the Scramble for Africa, a new political entity emerged in the Horn of Africa. This polity was semicolonial and imperial. Semicolonial, because it was subject to European extraterritoriality and other ‘standards of civilisation’ until after the first half of the 20th century. Imperial, because its expansion into the highland and lowland peripheries produced colonial geographies of property. As noted, imperial Ethiopia succeeded in imposing its rule over diverse agrarian and

204Ibid.
205Esther Arroyo Amyuelas, ‘From the code civil du bas Canada (1866) to the code civil Quebecois (1991), or from the consolidation to the reform of the law: a reflection for Catalonia’ in Hector L. MacQueen, Antoni Vaquer and Santiago Espiau Espiau (eds), Regional Private Laws and Codification in Europe (Cambridge University Press, 2003) 284.
pastoral societies through, *inter alia*, the *neftegnya-gebbar* system. While the *rist* region was generally a region of free peasantry, the conquered south (notably the highland peripheries) was imperial Ethiopia’s colonial jurisdiction where colonial land law – the *neftegnya-gebbar* system and later its ‘modernised’ variants – applied.

As noted, the discourse of ‘Japanising’ Ethiopia was topical among the Abyssinian literati in the first half of the 20th century. Considering imperial Ethiopia’s semicoloniality and imperialism, it is no surprise that Japan – the first non-European imperial power to graduate from semicoloniality – impressed Ethiopia’s nationalist intelligentsia, who were looking for models for black Africa’s sole semicolonial and imperial power. Imperial Ethiopia’s rulers were, however, slow in responding to the local intelligentsia’s call for rapid (legal) modernisation. Although achieved after the ‘Japanese period’, Ethiopia’s mid-20th century codification projects echoed the modernism of ‘Ethiopian Japanisers’ who, as noted, were concerned with the threats of European imperialism in Ethiopia. The Ethiopian Civil Code of 1960 can thus be understood as the conclusion of Ethiopia’s first generation modernists’ quest for a legal document that would approximate Ethiopia with other semicolonial and imperial powers which had succeeded in emulating Europe and its legal technologies.

Codification in imperial Ethiopia was embedded in an official nationalism bent on expanding the Abyssinian image of Ethiopia into the juristic realm in much the same way as was articulated by its early 20th century literati. As such, Ethiopia’s approach to codification can be contrasted with the approaches of some postcolonial African nations where anti-colonial nationalism energised codification of customary law projects and/or grassroots consultation regarding law reform. If one accepts David’s theory that the Civil Code is Ethiopia’s ‘new’ *Fetha Negast* (which in some ways it is), the various cultural and religious groups in the highland and lowland peripheries were victims of what Pierre Legrand would have called the politics of exclusion through codification. Despite being subjected to it, they could not inhabit the code without first renouncing their non-Amhara and non-Christian identity. My aim in the next Chapter is to follow the politics of exclusion during the codification process that

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208 Gong, above n 5, 30.
brought the Amhara landed elites in contest with Réne David, the sole drafter of the Ethiopian Civil Code of 1960.

Thus, the ‘voluntary reception of western law’ in Ethiopia must be seen in tandem with the multiple temporalities that provided the contexts: the semicoloniality, and imperialism of code-importing Ethiopia and the modernism of ‘Ethiopian Japanisers’. In other words, the modernist thesis that the Civil Code was a ‘voluntary reception’ of western law in non-western Ethiopia must be dismissed or qualified. Also, semicoloniality and imperialism define the broader historical context within which the Ethiopian Civil Code project was initiated and contested. The contests between ‘Ethiopian Japaniers’ and their ruling elites, who needed an experience with Italian colonialism and ‘exalted European extraterritoriality’\textsuperscript{212} to finally embrace the modernism of ‘Ethiopian Japanisers,’ demonstrate that the Ethiopian Civil Code project was a contested project from the very outset that, intensified, with the time and social space (see Chapters Five to Eight).

\textsuperscript{212}Feyissa, above n 5, 119.
CHAPTER FIVE


In the political and historical imaginations lies the key to the understanding of codification as a form of legal modernity.¹

5.1. INTRODUCTION

As noted, I adopt a loose variant of the field approach to legal transfer. As seen in Part One, the field is a social space defined by the contests between different actors. For our purpose, these actors are the inter-temporal actors that competed to determine the modern Ethiopian law, its concepts, its scopes, its sources, etc. This Chapter focuses on the field of codification (1952-1960), a field of Ethiopian legal modernisation involving between the French drafter, René David, and the landed Amhara elites that dominated politics in late imperial Ethiopia. As such, I examine the contests over the nature of state and society relationships in 20th century Ethiopia during the drafting of Book III of the 1960 Ethiopian Civil Code. The study of examination of the contests between the two actors in the field of codification will help answer the two question set out in chapter one: How has the Ethiopian Civil Code project been shaped by (inter-temporal) contests over the nature of state and society relationships in Ethiopia (1890s-2010)? And, what does this tells us about the modernist stories that still shape our understanding of the legal transfer project over time?

The Ethiopian Civil Code was promulgated in 1960.² The process of codification started in 1952 when, following the decision to import legal codes, the Imperial Codification Commission was set up and experts with the required social capital – that is continental jurists (e.g. René David) – were retained.³ A lengthy civil code that, according to the French drafter, ‘present[ed] itself as one of the longest contemporary civil codes’,⁴ was the final outcome of the codification process. It contained five books: persons (Book I), family and succession (Book II), goods (Book III), obligations (Book VI), special contracts (Book V). As stated, this Chapter focuses on Book III. In other words, it focuses on the contests over the determination of the ‘Law of Things’ of the 1960 Ethiopian Civil Code.

¹Inge Kroppenberg and Nikolaus Linder, ‘Coding the Nation. Codification History from a (Post-) Global Perspective’ in Thomas Duve (ed), Entanglements in Legal History: Conceptual Approaches (Max Planck Institute for European Legal History, 2014) 67, 90.
The Chapter argues, although the legal concepts it introduced to Ethiopia are generally borrowed from major law-exporting legal systems of the 20th century, the 1960 Ethiopian Civil Code is not a mere copy of its Romano-Germanic predecessors as often told in modernist stories. The Ethiopian ‘Law of Things’ departs from these models in the society it imagined for late imperial Ethiopia. That departure can be explained in terms of the actors involved and their predispositions and interests. Crucially, the sociologically inflected legal comparativism of the French drafter of the Code, and the Ethiopian political elites that read the continental European jurist’s draft with an eye on their interest in landed property, are suggested as explanations (at least in part) why Book III of the Ethiopian Civil Code looked odd to commentators accustomed to Romano-Germanic civil codes and their forms of legal modernity. Effectively, the Amhara elites, who dominated both the Codification Commission and imperial Ethiopia’s parliament excised and adapted part of the initial draft of Book III. As I shall demonstrate, this can be explained in terms of two factors. The first factor is the elites’ continued opposition to the ‘Europeanisation’ of laws against property norms specific to the rist region (historic Abyssinia). Second, the excision of parts of David’s eclectic Book III by the Ethiopian actors of the field of codification were meant to symbolically write out imperial Ethiopia’s peripheral peoples from its modern laws. In other words, it was a reflection of Abyssinian imperialism.

The chapter proceeds as follows. First, I elaborate on the implications of the appointment of René David as the sole drafter of the Ethiopian Civil Code. Second, I document the drafting process and its outcome from the point of view of René David, an actor with modernist predispositions comparable to the ‘Ethiopian Japanizers’ discussed in Chapter Four. Before concluding the chapter, I take a closer look at the vetting by the Imperial Codification Commission and Ethiopia’s parliament and its effect on the content of the Book III.

The Imperial Codification Commission was composed of Ethiopian and transnational actors (particularly British-sponsored lawyers that helped Haile Selassie I carry out his post-liberation legal reform). But, given discussions in commission meetings were carried out in Amharic, actual participation was limited to the Ethiopian members – all of whom were male Orthodox Christian

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5Note that one of the reasons Emperor Haile Selassie I had given for his slowness in embracing the call for overhauling the gult system in the ‘Japanese period’ was his fear of reaction from the Abyssinian landed class (see Chapter Four, section 4.4).
6Jembere, above n 3, 195-196;
Amharas. The draft reviewed by the Commission was further reviewed ‘article by article’ by imperial Ethiopia’s parliament where Amhara landed elites, the primary beneficiaries of the colonial neftagnya-gebbar system, were overrepresented. As records of the Commission and parliamentary debates were not published, the story of the making of the ‘law of things’ – or the story of the contests in the field of codification – in this Chapter is mainly based on secondary sources.

5.2. RETAINING A CONTINENTAL JURIST AS A DRAFTER FOR IMPERIAL ETHIOPIA’S CIVIL CODE

Although, as noted, a tiny indigenous intelligentsia with a taste for European legal and political systems yearned for codification, it is hardly possible to identify a group of local jurists that compared to the “les Lausannois” of pre-codification Turkey. Pre-codification Haile Selassie’s Ethiopia depended on jurists from Britain and its colonial territories to run its emerging metropolitan legal system. Backed by the Anglo-Ethiopian Agreement of 1942, these jurists appeared to have had ‘the first and the last word’ on legal matters in semicolonial Ethiopia. They presided over imperial Ethiopia’s two highest courts; advised various government agencies; drafted its laws; taught law in Ethiopia; authored scholarly texts on Ethiopian laws and judicial systems. Some of them were even appointed to the Imperial Codification Commission (1954-1960) and participated directly in the drafting of two of imperial Ethiopia’s six codes. Although some of Ethiopia’s educated elites were graduates of European law schools, their

8Although this process concerned all of the five books of the Civil Code, the subject matter of Book III made it the most contested part of the Code (see Jembere, above n 3, 195 et seq.).
10These are foreign educated Turkish jurists that carried out the Turkish codification project of the 1920s. K. Lipstein, ‘Conclusion’ in the International Social Science Bulletin: The Reception of Foreign Law in Turkey, Vol IX, No. 1, 74.
13Feyissa, above n11, 126.
14Ibid; Jembere, above n 3, 195-196.
15For instance, the Minister of Justice Mamo Tadesse and the Foreign Minister Aklilu Habtewold, both of whom were graduates of the Faculté de droit de Paris la Sorbonne. On the very low number of university-educated Ethiopians during the 1940s and the 1950s, see John Markakis, Ethiopia: Anatomy of a Traditional Polity (Clarendon Press, 1974) 154-155.
numbers remained insignificant to challenge the position of jurists from the British Empire, who could have been relied upon to draft imperial Ethiopia’s civil code. But, Haile Selassie’s government did not take that option. Instead, it opted to retain the services of a continental legal scholar with huge social capital vis-à-vis the epistemic material through which Ethiopia desired to perform its legal self-civilisation.

Many speculated about why David (as well as the other continental European drafters\(^{16}\) of Haile Selassie’s legal codes) was chosen by the Ethiopian government. Many (including David) believed his employment was in part related to Ethiopia’s politics of counteracting excessive Anglo-American (particularly British) legal influence in post-Second World War Ethiopia.\(^{17}\) David argued:

> It is probable that the final decision was motivated not so much by juridical arguments as by considerations of a political or cultural order: the desire to counter-balance, by an appeal to other sources, an English or Anglo-American influence which they feared was becoming excessive. The Ethiopian situation on this subject is not without analogy to that of Latin America, where countries are preoccupied with maintaining close cultural ties with Europe to counter-balance the pressure exercised on the economic level by the United States.\(^{18}\)

This is a possible explanation, considering 1950s Ethiopia was yet to fully cut itself off from the vestiges of the 1942 Anglo-Ethiopian Agreement and Haile Selassie’s government was reportedly growing ‘anxious to get rid of the British advisors provided under the [Anglo-Ethiopian] Agreement of 1942’.\(^{19}\) Yet, counteracting British legal influence with legal codes drafted by a continental jurist does not seem the sole reason for the retention of René David as the drafter of the Ethiopian Civil Code. In fact, Ethiopia used a British jurist to draft the 1961 Criminal Code.\(^{20}\)

A strong French influence existed in the foreign-educated groups of Haile Selassie’s cabinet. To this group continental codification appeared the natural way to carry out legal self-civilization. The American John H. Spencer, a long-time legal advisor to Haile Selassie I and a participant in the selection process, wrote,

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\(^{16}\)These are Jean Escarra of Université de Paris (Maritime Code), Alfred Jauffret of the University of Aix-en-Provence (Commercial Code); Jean Graven of University of Geneva (Penal Code).


\(^{18}\)David, above n 4, 192 (emphasis added).

\(^{19}\)Feyissa, above n 11.

\(^{20}\)Jembere, above n 3, 208-209.
French influence remained strong in the educated groups, despite British ascendancy over the courts following the Liberation. [The Foreign Minister] obtained his law degree in Paris. French was the working language for [the Minister of Justice and Interior] and the foreign language best understood by His Majesty [Haile Selassie I]. The French law on corporations adopted before the Fascist occupation, was still being applied. The compression and economy of the French codes appealed to both [the foreign minister and minister of justice]. The consequence was that, without exception, the Ethiopian officials with whom I dealt were constantly seeking concise, almost codified responses to the legal questions they addressed to me...A second consideration was the knowledge that continental codifications had been exported with considerable success...Finally, there was the consideration that continental [Italian] law systems were being used in Eritrea [federated with Ethiopia in 1952]. Some degree of coordination was essential if there were to be federal judicial review and trade and intercourse between the two regions were to be developed.  

At this time, Spencer tried to deliver Ethiopia from ‘overcommitment to [the] continental system’ by employing Scandinavian rather than French jurists. The unavailability of the Scandinavians meant another search for civil law jurists in Europe. An alumnus of the Faculté de droit de Paris la Sorbonne, Aklilu Habtewold (Ethiopia’s foreign minister) went to his European alma mater to look for and finally find what he hailed as ‘world class specialists’ (René David being one of them) to draft Ethiopia’s legal codes. This move realized the wishes of the ‘Ethiopian Japanisers’ who, as noted in Chapter Four, called for (or rather predicted) the retention of an European jurist with similar social capital as René David for the task of Europeanizing imperial Ethiopia’s Fetha Negast.

While the appointment of René David reflected a number of the factors noted above, the limitation of the search for drafters within Europe (including Scandinavia) demonstrates what modernity in (semi) colonial contexts may in the end represent. It suggests that imperial Ethiopia, a ‘modernizing’ empire without its own ‘les Lausannois’, could only achieve legal modernity through the retention of the services of a specific group of specialized professionals with social capitals specific to the Euro-American world. Be that as it may, the selection of René David – an embodiment (at least partly) of the modernist predisposition of the ‘Ethiopian Japanisers’ in the post-’Japanese period’ field of codification – contributed to the unconventionality (see below for more) and spectacular nature of the legal transfer project.

22 Ibid.
23 Ibid.
25 The attention given to it by students of legal transfer may in part reflects the social capital of the European drafter whose involvement added to the theatricality of late imperial Ethiopia’s legal self-civilisation.
5.3. RENÉ DAVID, HIS MODERNIST IDEAS, AND THE DRAFTING OF THE ETHIOPIAN ‘LAW OF THINGS’ (BOOK III OF THE 1960 ETHIOPIAN CIVIL CODE)

According to Aberra Jembere, the Ethiopian codification process involved (1) preparation of a ‘case digest’ (old judgments interpreting, inter alia, the Fetha Negast), (2) formation of a commission that reviews the drafts prepared by continental jurists, (3) parliamentary debate and (4) promulgation.26 The entire process took almost a decade. The preparation of the Amharic ‘case digest’ which was not consulted by David who could not read Amharic, was apparently initiated in 1950.27 The avant-projet (the draft) containing 3504 articles was prepared by David in Paris (1954-1958).28 After the parliamentary debate, the draft was promulgated as the Civil Code of the Empire of Ethiopia Proclamation No. 165 of 1960. In the process, some 137 articles, most of which were in the initial version of Book III, were cut out by either the Imperial Codification Commission or the Imperial Parliament.29 Hence, the official version of the 1960 Ethiopian Civil Code contains 3,367 articles, instead of 3,504. In this section, I set out how the modernist outlook of the drafter influenced his approach to drafting a code for the African empire. After a brief survey of the world of Book III and its imagined communities in section 5.4, I return (in section 5.5) to the parliamentary stage of the codification process that witnessed the revision and excision of parts of the unique ‘Law of Things’ that David thought best suited to ‘modernizing’ Ethiopia.

When assigned to draft Ethiopia’s Civil Code, René David was a professor of comparative law at the Faculté de droit de Paris la Sorbonne (1943-1968) where two of the few educated ministers of this period attended their classes.30 Best known for his artifice of ‘legal families’,31 David was a supporter of the Europeanisation of Ethiopian law. A staunch advocate of legal harmonisation at the international level, David’s preferred template for harmonisation was ‘Western law’, especially French law.32 ‘Western law’ (Romano-Germanic and common law families) had a special place in the lexicon of David’s scholarship, i.e. comparative law. It did not only represent ‘one great family of law’,33 but also

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26Jembere, above n 3, 194-209.
27Ibid 195.
28David, above n 3, 197; Singer, above n 17, 86.
29Ibid.
33David and Brierley, above n 31, 25.
embodied the idea of the rule of law to which non-western nations (such as Ethiopia) rallied:

The idea of the “rule of law,” the supremacy of law, the Rechtsstaat, is a notion common to nations in the West. This is the idea to which the countries of Africa and Asia rally when, giving effect to their wish to “Westernize” themselves, they draw inspiration from models supplied either by the nations of Western Europe or by the nations of the common law.34

If the West is the model for rule of law society, the rest appeared for David to suffer from what Takao Tanase called ‘the sin of not being modern’.35 One such sin is leaving the law uncodified. This, David believed, will leave citizens of non-western societies without a guide to their laws and obligations, open the door wide to arbitrariness, and wash away all security.36 David concluded, as Baykedagn had done in the 1910s, that a modern system of law was needed to deal with the problem of ‘not being modern’. There was a need to ‘force the reception of a foreign system of law [‘Western law’] as quickly as possible’.37

David shared the views of ‘Ethiopian Japanisers’ regarding (1) the civilizational hierarchy between peoples within Ethiopia (Abyssinians vs non-Abyssinians), and (2) the need for the qualified Europeanisation of Ethiopian laws. In an article written a few years after the official promulgation of the Ethiopian Civil Code in 1960, the French drafter saw his mission as drafting a civil code ‘for the more developed populations, those which inhabit the plateau of Ethiopia and Erythia [sic]’.38 These are the people of the rist region whose landed property institutions (1) had always been recognised by imperial Ethiopia and (2) whose culture the ‘Ethiopian Japanisers’ thought was superior to that of the non-Abyssinians – peoples of the highland and lowland peripheries.

David also seemed to embrace the view that the foreign laws Ethiopia was forced to receive must not concern themselves with civil relationships peculiar to non-European societies. In a conference paper he presented at the 1964 Ibadan Conference on Integration of Customary and Modern Legal Systems in Africa, he emphasized the need to distinguish between modern and traditional relationships before constructing a legislative response to modern relationships (which he suggested must always be based on European models).39 He also noted ‘traditional’ realms of life, such as land tenure must not be interrupted

36David, above n 4, 188.
37Ibid 189.
immediately and extensively by laws predicated on European individualism.\textsuperscript{40} That said, David did not make clear how and when a drafter knows a civil relationship is modern or traditional (i.e. ‘relationships between individuals in which conflicting interests are not definable and clearly opposed’\textsuperscript{41}). His suggestion for a \textit{tempered} reception of European laws in Africa (and by implication in Ethiopia), at least partly, resonated with that of Baykedagn who doubted the possibility of unqualified reception.

Embracing the antiformalism of his time, David was suspicious of naturalism, legal positivism, and uninhibited faith in the completeness and universal cogency of Romano-Germanic codes, if not necessarily western legal traditions.\textsuperscript{42} Also, David who, as will be seen, drew on Italian anthropological materials on Ethiopian land tenure and Soviet land law in drafting part of Book III, appears less parochial than the Amhara landed elites who were his clients. Apparently, David was conscious of the fact that he was drafting Book III in a century that witnessed the divergence of political-philosophic thought regarding the supremacy of private property conceived as ‘unlimited dominion of the owner over the property’.\textsuperscript{43} David, who wrote, ‘no rule of any foreign law whatsoever went into the Ethiopian Civil Code without [me] asking whether it was suitable for Ethiopia’, would perhaps belong to the few reluctant modernists who did not promote individual ownership against indigenous African property systems (which were widely and at times incorrectly conceived to be incompatible with European notions of individual ownership).\textsuperscript{44} In that regard, he could be compared with western jurists calling on imperial Ethiopia to codify its customary land laws, instead of importing an extravagant legal code.\textsuperscript{45} Hence,

\begin{itemize}
\item \textsuperscript{40}Ibid 47-49.
\item \textsuperscript{41}Ibid 47.
\item \textsuperscript{42}Esquirol, above n 30, 222-223.
\item \textsuperscript{44}As shall be seen David himself was not however far from legal modernists in colonial and postcolonial Africa that tended to project European property concepts on African land tenure systems and, as a result, take them as the antithesis of European private property systems. See, generally, Thomas J. Bassett, ‘Introduction: The Land Question and Agricultural Transformation in Sub-Sahara Africa’ in Thomas J. Bassett and Donald E. Crumme (eds), \textit{Land in African Agrarian Systems} (The University of Wisconsin Press, 1993) 3; Max Gluckman, ‘Property Rights and Status in African Traditional Law’ in Max Gluckman (ed), \textit{Ideas and Procedures in African Customary Law} (Oxford University Press, 1969) 252; John W. Bruce, ‘A Perspective on Indigenous Land Tenure Systems and Land Concentration’ in R. E. Downs (ed), \textit{Land and Society in Contemporary Africa} (The University Press of New England, 1988) 23.
\item \textsuperscript{45}For example, A. Arthur Schiller, ‘Customary Land Tenure among the Highland Peoples of Northern Ethiopia: A Bibliographical Essay’ (1969) \textit{1 African Legal Studies} 1.
\end{itemize}
his was not only a contest with the Amhara landed elites. It was also a contest with educated elites in late imperial Ethiopia who, according to Allan Hoben, widely believed in the appropriateness and immediacy of extensively overhauling indigenous land laws in terms of western concepts of individual landownership.46

In view of David’s antiformalism and stated belief in a tempered reception of western law in Africa, one would have expected David to follow the trend of European jurists that during the period under discussion were engaged in the ‘restatement of African customary laws’.47 However, David was under no illusion that African customary law could be a basis for codification (modern law):

> In seeking to convert customary rules into legislative rules, no matter how faithfully one seeks to adhere to customs one strips them of their true nature; one gives them a fatal rigidity by seeing in them rights and by injecting into them a principle of individualism opposed to the notion of community solidarity and to the community of interests on which they are based. This deformation is magnified when legislators seek to create a regional or national customary law out of customs which, by tradition, are and must remain local and distinct. Unification of customary law is possible and will, no doubt, come about by spontaneous evolution; it cannot be accomplished by the brutal and artificial action of the legislator, who runs the risk of destroying the very principle on which the authority of custom is based.48

Consequently, David’s tempered reception of western law ultimately meant eclecticism (see section 5.4 for more) – the imagination of imperial Ethiopia’s future society based on diverse, but exclusively, European materials. The material sources he used for the code are reportedly diverse. According to David, the Civil Code is a ‘work of synthesis’, in the sense that it is not ‘a reproduction of some particular national law.’49 International statutes (draft or otherwise), civil codes of various countries of civil law tradition, and common law materials were considered in drafting it.50 Also, ‘creative legislation’ appears to define some provisions of the Code.51 Although he might have been expected to consult the ‘case digest’ prepared as part of the codification project and, perhaps, stay in Addis Ababa, to work closely with relevant local actors in the field of codification, he avoided Addis Ababa during the codification process. After a


48David, above n 39, 47.


51David, above n 49, 348.
very brief stay in Addis Ababa (to attend the Imperial Codification’s meeting with the Emperor\textsuperscript{52}), David retired to Paris in 1954. His excuse for not staying in Ethiopia for the duration of the codification was the inability of Addis Ababa to offer ‘the resources in documentations and the possibility for contacts and discussion’.\textsuperscript{53} David preferred to contact the local actors in the codification process through the Imperial Ministry of Justice.\textsuperscript{54} He did not consult the ‘case digest’ which he claimed ‘can be neither easily nor freely consulted’ (because of his poor Amharic).\textsuperscript{55} In fact, it would appear that David did not consult the 1955 Revised Constitution of Ethiopia (available in English) that included strong statements vis-à-vis the curious concept of agricultural communities he used for imagining Ethiopia’s future (see section 5.4 for more).

I suspect David’s unconvincing excuse for not constructing a civil code based on Ethiopian custom(s) is predicated on Eurocentric sentiments that modern law cannot be founded on non-European customary laws and practices. If not, it is probably a reflection of David’s failure to consider either the history of codification in Europe which involved the reduction of existing custom in the language of Roman law,\textsuperscript{56} or indigenous legal practices in pre-codification Ethiopia that set norms in relation to what he considered western-type relations.\textsuperscript{57} Also, David’s claim about the link between codified customary law and the consequent rigidity of laws does not seem to be supported by post-codification juristic realities in Europe or elsewhere.\textsuperscript{58} David’s thesis regarding the inappropriateness of Ethiopian custom in codification must be understood as a legal modernist tendency (e.g. the ‘Ethiopian Japanisers’\textsuperscript{\textendash}) of denigrating African legal traditions or his inability to reimagine and take codification beyond mere reproduction of overrated and widely disseminated (hence easily accessible) European legal texts.

5.4. THE WORLD OF BOOK III AND THE COMMUNITIES IMAGINED

The Ethiopian ‘Law of Things’ (Book III of the Ethiopian Civil Code) that David prepared based exclusively on European materials was three times the size of the corresponding book of the French Civil Code. The size of the book is a reflection

\textsuperscript{52}Though I couldn’t verify his participation in the official inauguration of the Imperial Codification Commission to which he was a member, it is highly likely his 1954 Ethiopian trip was related to it. See Singer, above n 17, 81.
\textsuperscript{53}Esquirol, above n 30, 230.
\textsuperscript{54}David, above n 4, 197.
\textsuperscript{55}Ibid 188; Jembere, above n 3, 195.
\textsuperscript{56}Peter Stein, Roman Law in European History (Cambridge University Press, 2004) 114-115.
of his eclecticism (that led him to look beyond the traditional Romano-Germanic codes in drafting the Ethiopian Civil Code) as much as it was a reflection of his modernism (that led him to exaggerate the legal vacuum in ‘lawless’ Ethiopia). Contained within a total of 548 articles, the official version of Book III of the Ethiopian Civil Code was organized in six titles. These are:

- Title VI: Goods in General and Possession (Articles 1126-1150)
- Title VII: Individual Ownership (Articles 1151-1256)
- Title VIII: Joint Ownership, Usufruct and Other Rights in Rem (Articles 1257-1443)
- Title IX: Collective Exploitation of Property (Articles 1444-1552)
- Title X: Registers of Immovable Property (Articles 1553-1646)
- Title XI: Literary and Artistic Ownership (Articles 1647-1674)

The English version of Book III, one of the two official versions, is titled ‘Goods’, a translation of biens the French Civil Code uses to describe all movable and immovable things ‘capable of being appropriated’ including land. Emulating the codificational idea of Romano-Germanic civil codes, it is axiomatically organised into chapters, paragraphs, principles, rules, exceptions and in some cases exceptions to the exception. Also, the structural appearance of the code suggests that Ethiopia was to embrace the old Roman conceptual categorisation of civil law into persons, actions, and things. David arranged the law on persons, things, and actions sequentially: Book III, therefore, follows the books on persons (and personal laws). However, and unlike for example the German Civil Code, the Code’s book on goods precedes the book on obligations (juridical acts).

The first three titles of Book III (see above) are easily recognizable for a continental civil lawyer. Content wise, they are generally comparable with sections of the corresponding books in Romano-Germanic civil codes, particularly French and German civil codes. In contrast, the last three titles may appear unfamiliar. For instance, Title XI (articles 1647-1674) creates property rights over literary and artistic works. Although the material sources of this title can be traced back to 20th century French statutes, its inclusion in Book III is a departure from classical Romano-Germanic codes. It is, thus, no surprise that a

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60For more on axiomatism in continental codifications, see Csaba Varga, *The Paradigms of Legal Thinking* (Szent István Társulat, 2012) 49-56.

61These are Book I on Persons, Book II on Family and Successions.

German legal scholar commented that the last three titles of Book III should have been included in other special legislations.63

If we count out the title on incorporeal property (Title XI, articles 1647-1674), which is not discussed here, classification of the subjects of property rights, the widest of which is individual ownership; elaboration of various rights in rem including possession; setting out rules on the registration of immovable and collective exploitation of landed property are the main concerns of Book III.64

Book III starts with classification. The first article of the first chapter of Book III sets the stage by broadly classifying goods (biens) – the subjects of rights in rem – into movable and immovable.65 The movable/immovable dichotomy is recognised as the ‘primary’ mode of classification of goods under Ethiopian property law.66 And, as in French law, the classification is considered to have some juridical effects.67

The bulk of Book III focuses on defining individual ownership and other rights in rem such as possession. Apart from the most complete right in rem (ownership) and the ‘actual control over things’ (possession), the Civil Code recognizes other traditional civilian rights in rem such as usufruct, servitudes, and pre-emption.68

Title VII and Title VIII, both of which focus on the traditional civil law rights in rem, include special rules for special cases (e.g. levels and suites of a building69 and ownership and use of water70). Further, ancient Roman legal categories of property such as occupatio,71 accessio,72 usucaptio73 and specificatio74 are generally recognized as the non-contractual modes of acquisition of title (ownership) over corporeal goods. Similarly, the civilian tradition of governing the contractual transfer of titles relating to immovables separately from that pertaining to chattels is embraced.75

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64As a leading commentator Ethiopian property law claims, 80 percent of Book III deals with what the code conceives as immovable goods (Abdo, above n 59, 56).


67Ibid.

68See generally ibid, Title VIII, Book III, Civil Code.

69Ibid arts 1281-1308.

70Ibid arts 1228-1256.

71Ibid arts 1151-1160.

72Ibid art 1170.

73Ibid art 1168.

74Ibid art 1182. On the Roman origins of these rules, see Thomas Watkin, An Historical Introduction to Modern Civil Law (Ashgate, 1999) 232-245.

75Arts 1184-1187, Civil Code.
In the fiction of Book III, land is a thing – an immovable thing over which an individual can enjoy a number of rights the widest of which is, as noted above, ownership. Article 1204 provides: ‘ownership is the widest right that may be had on a thing’. Article 1204 of the Ethiopian Civil Code is clearly inspired by Article 544 of the French Civil Code that reads:

> Property is the right of enjoying and disposing things in the most absolute manner, provided they are not used in a way prohibited by the laws and statutes.\(^76\)

Article 544 of the French Civil Code is considered one of the ‘innovative’ conceptual frameworks of the French Civil Code.\(^77\) Although it drew on natural law philosophy of individual sovereignty over property, it did not do that at the expense of the primacy of the power of the state over the rights of the individual owner. Commenting on the absoluteness of individual ownership under the French Civil Code, Damiano Canale wrote:

> Property is considered, as to its origin, an absolute right that admits no interference; but as to its function, this right can be claimed by the state for the purpose of ensuring the common welfare. From this point of view, therefore, property does not impose a limit on the action of government but does quite the opposite. This ambiguous characterisation of the right to property in the French code…reflects the two sides of the modern concept of liberty.\(^78\)

Article 1204, which re-enacted absolute ownership with its continental ambiguities, includes a phrase that declares the indivisibility of ownership. Specifically, the second limb of Article 1204 improves on its material source – Article 544 of the French Civil Code – by expressly stating that ‘ownership is neither divided nor restricted except in accordance with the law’. Some\(^79\) have also interpreted Article 1204 of the Ethiopian Civil Code as an adoption of the numerus clausus principle. Considered by many as a ‘civil law heritage’, the principle of numerus clausus (‘closed number of property rights’) theoretically restricts the number of property rights (other than ownership) that the law recognizes.\(^80\) The principle is believed to prevent not only the worsening of interference (by the state) with the unity of individual ownership at the cost of the flexibility of a civilian regime of ‘property rights other than ownership’.\(^81\)

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\(^76\)Code civil [Civil Code] (France) article 544.
\(^78\)Ibid 163.
\(^80\)Ibid.
\(^81\)In this regard, the civilian property law is contrasted with the other widely exported (Anglo-American) system of property law; see generally Ugo Mattei, *Basis Principles of Property Law: A Comparative Legal and Economic Introduction* (Greenwood Press, 2000) 91-93.
Nevertheless, it is worth noting that the Ethiopian Civil Code commits the ultimate offense on the civilian fixation with the unity of ownership by recognising (in Book I)\textsuperscript{82} the common law notion of trust which civilian jurists would cite as evidence of common law indifference to the civilian notion of undivided ownership (by implication the \textit{numerus clausus} principle).\textsuperscript{83} By making trust (an allegedly pro-divided ownership concept) part of the Civil Code, David was perhaps intending to make the Ethiopian individual ownership regime more flexible than it was in traditional Romano-Germanic legal systems. David would have explained his eclecticism vis-à-vis the principle of a ‘closed number of property rights’ (Romano-Germanic style) in terms of the developmental needs of code-importing Ethiopia:

\begin{quote}
[T]he need to attract foreign capital is often prevailed over considerations of what was humane and even just, which might have discouraged the establishment of foreign enterprises in Ethiopia. It has been rightly said that ‘Before having anti-trust laws, one must have trusts’.\textsuperscript{84}
\end{quote}

A detailed title of Book III, Title X (Articles 1553-1646), envisages the establishment of a register of immovable property where various rights encumbering the good are kept.\textsuperscript{85} The registers the Civil Code contemplates are four in type: (1) register of property,\textsuperscript{86} (2) register of mortgages,\textsuperscript{87} (3) register of immovables,\textsuperscript{88} and (4) register of owners.\textsuperscript{89} The aim of Title X is to establish these registers ‘in each \textit{Awraja Guezat} [provincial administration] of the Empire of Ethiopia’\textsuperscript{90} which by then were a little over hundred.\textsuperscript{91} Out of the four registers, the third, i.e. register of immovables, where cadastral details of an immovable property is entered, are to be kept only in districts where the land is ‘divided’.\textsuperscript{92}

\begin{footnotes}
\item [82]Arts 516-544, Civil Code.
\item [84]David, above n 49, 346.
\item [85]Title X, Book III, Civil Code.
\item [86]Register of property is the register where ‘all acts, public or private, made \textit{inter vivos} or \textit{motris causa} purporting to recognise, transfer, modify or extinguish the right of ownership’ are entered (ibid art 1567).
\item [87]This is the register where the following documents are entered: (1) acts purporting to create, modify, or extinguish a right of mortgage or antichresis; (2) acts purporting to transfer a debt secured by a mortgage or a right of antichresis or purporting to assign the benefit of priority attributed to such right by law (ibid art 1573).
\item [88]This is the register where ‘every immovable in the registering district is kept along with its number in the cadastre and other references to its individualisation’ (ibid art 1575).
\item [89]This is where the list of owners of an immovable property situated in the registering district is kept (ibid art 1583).
\item [90]Ibid art 1553.
\item [91]Donald Donham, ‘Old Abyssinia and the new Ethiopian empire: themes in social history’ in Donald Donham and Wendy James (eds), \textit{The Southern Marches of Imperial Ethiopia: Essays in History and Social Anthropology} (Cambridge University Press, 1986) 3, 27.
\item [92]Art 1555, Civil Code.
\end{footnotes}
The rules for procedure of registration, the forms used for registration, and the correction and cancellation of entries, and the legal effects of reiteration of immovable goods (particularly land) are laid down in Articles 1587-1636. The transitory provisions title of the Civil Code (Title XXII) suspended the entry into force of Title X until the registers are established by future legislation.93

David treated four topics under the heading ‘collective exploitation of property’ (title IX). These are: expropriation, agricultural communities, town-planning, and association of landowners. This title is unique as regards its material sources. It exemplifies David’s attempt to look beyond Romano-Germanic codes in preparing the Ethiopian Civil Code in more ways than one. First, David used a French treatise on administrative law (M. Waline’s Droit administratif) in drafting the rules on expropriation.94 Second, David dared to model part of Title IX on Soviet legal texts on Kolkhoz (collective farms), if only to make Ethiopia less socialist than it later became in the 1970s. Chapter Two of Title IX of the Civil Code includes some twelve articles dealing with ‘land owned by an agricultural community’.

Agricultural communities are, in my view, the most interesting property notion forming the package of ‘collective exploitation of property’. As I shall elaborate, they are the most contested concept of Book III. These concepts are also where David’s modernism – moulding (thereby discursively expunging) the gradations of diverse and complex indigenous land laws and practices into a uniform European legal form – was clearly visible. The timing of the moulding was also significant. As noted in Chapter Four, this was the time when late imperial Ethiopia was redrawing its geographies of property rights on the back of Italian colonialism (1936-1941) which had impacted the neftagna gebbar system and the status and roles of former functionaries of the imperial state (see Chapter Four).

Article 1489 summarizes the idea of agricultural communities in the following manner:

Land owned by an agricultural community such as a village or tribe shall be exploited collectively whenever such mode of exploitation conforms to the tradition and custom of the community concerned.

The Ministry of Interior is called upon to ‘ensure’ the codification of custom based on how such agricultural lands were utilized.95 Further, the Civil Code suggested the contents of such a code or custom-based charter. According to Article 1491, a charter detailing the custom of an agricultural community shall contain:

(a) The persons and families composing the community;

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93Ibid arts 3363 et seq.
94David, above n 49, 348.
95Art 1490, Civil Code.
(b) The land to which the rights of the community extend;  
(c) The manner in which the community is administered and its authorized representatives;  
(d) The manner in which the land and other resources of the community are allotted and exploited; and  
(e) The conditions on which the charter may be amended.

Under article 1497, three particular modalities of exploitation to be specified in the charter are listed. These are (1) whether the land may be divided into plots allotted for the exclusive use of members and if so, (2) the time and conditions for allotting parcels of land, and (3) the respective rights of the community and the members. The Code prefers charter over custom. In particular, as far as the mode of exploitation of the land owned by the community is concerned, it is provided that the charter ‘shall prescribe the mode of exploitation’.96 It is only when it is not prescribed by charter that custom will be relied upon in deciding disputes relating to the mode of exploitation of the land.97 The contents of the charter which may be revised to ‘ensure the economic progress of concerned communities and the implementation of constitutional principles’ must not, however, sustain custom safeguarding discriminations based on race, religion or social condition.98 The Code also declares land owned by agricultural communities is ‘inalienable’.99

David wrote that the chapter on agricultural communities was based on the former USSR’s kolkhoz (collective farm) laws.100 Legitimated by Marxist legal thought, kolkhoz was revolutionary Russia’s answer to ‘bourgeois’ property law that was believed to have ‘constrained many in effectively unfree peasantry’.101 It was a legal concept in the service of the Marxist elites, who were experimenting with modernist projects that later (particularly in the second half of the 20th century) provided Asian and African nations with alternative formulae for rural land reform.102 It was among the legal concepts that demonstrate Soviet Russia’s arrival as a new and alternative to ‘made-in-the-West’ technologies of legal modernity.103 The kolkhoz was also Soviet Russia’s legal warfare against the kulaks – a landlord class that in some respects can be compared to the one that existed

96 Ibid art 1496.  
97 Ibid.  
98 Ibid art 1492.  
99 Ibid art 1493.  
100 David, above no 49, 348.  
103 David and Brierley, above no 31, 185 et seq.
in late imperial Ethiopia. Targeted by a Marxist revolution, the kulaks (like the Amhara landed elites of imperial Ethiopia) were opposed to Marxist elites leading revolutions and their modernist land reform.104 Used in reconstituting village Russia into thousands of collective farms made up of individual homesteads, the kolkhoz represented one of the most ambitious (as well as violent) modernist experiments in agricultural production based on Eurocentric ideologies.105 Autonomous in various matters internal to the commune (e.g. adjudication of land-related disputes), collective farms were subject to a system of remuneration and required to meet certain public obligations (e.g. delivering agricultural produce to the state at prices set to enforce ‘command economy’).106

So what was David doing when he simultaneously prescribed French notions of individual landownership and a Soviet antidote to it? Was he, as Annelise Riles107 would have alleged, ‘fighting the cold war’ on behalf of the West and its liberal laws? Was he trying to rescue his proud nation from the allegation its most cherished juristic export-product was failing the poor peasants in the global South? Or, did he foresee that Haile Sellassie I would soon be challenged by an abortive coup (1960) and later by a successful revolution (1974) that, inter alia, promised major land reform?108

David might have been fighting the cold war; but, it is not clear if he was trying to suggest a pre-emptive legislative response to the political challenges the government of Haile Sellassie was facing. Even if we agree David was far-sighted enough to have anticipated the 1960 coup (or even more insightfully the 1974 Revolution), David was clear that Haile Sellassie’s Ethiopia would not be interested in Soviet-style land reform. As he noted in one of his writings, statutes from socialist countries would not be suitable for imperial Ethiopia because of the latter’s ideological difference from socialist countries.109 Hence, he could not have been preparing Ethiopia for collective farms, Soviet-style.

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104Rabinowitch, above n 102, 255. For more on the contest between the Amhara landed elites and the Ethiopian Marxists, see Chapters Six and Seven.
106Sawicki, above n 101, 61 et seq.
In including a *kolkhoz*-inspired concept into the format of Book III, David was reaffirming his belief in the undesirability of subjecting traditional realms of African life to the extensive assault of what he called ‘European individualism’. David was explicit that land tenure in Africa must be spared from immediate and rigorous intervention from European individualism. Still, he was also concerned with how to manage pluralism, which he argued inhibited legal unification in Ethiopia:

The Ethiopian nation is composed of communities which often do not follow the same customs. This fact is true not only when one considers the diverse ethnic groups …but it is also true even when one considers the same ethnic group. It is aggravated by the fact that the customs remarkably lack stability; the reading of two books published with the same name, *Diritto consuetudinario dell’ Eritrea* by two Italian authors, C. Conti-Rossini and F. Ostini, 40 years apart, in 1916 and 1956 [sic], is revealing in this regard. The idea of a custom with a sacred character, quasi-immutable, does not conform to the facts when one envisages the populations of the Ethiopian plateau, whether it be a matter of Amharas or [non-Amharas]. The circumstances of the present epoch are of a nature to precipitate this evolution. In anticipation of this evolution, in choosing the custom which now and henceforth appears to be the most modern among the many customs in being, it has been possible to cast an eye to progress without breaking the tie that legislation must necessarily have with the state of mores and customary practices in the country to which it is called to be applied, if it is to have a national character and to be realistic.

The ‘traditional’ agricultural communities of northern Ethiopia that the Italian anthropologists documented must have led David to believe that those customary land laws were ‘the most modern among the many customs’ in Ethiopia. And, Soviet legal texts were not his sole material source for agricultural communities. As Bilillign Mandefro rightly noted, ‘the customary laws of the communities [discussed by Ostini and Rossini] provided the necessary background material’. What David was, therefore, seeking to do was reduce ‘the most modern’ of Ethiopian customs into proper, ‘modern [rather European] legal form’. That legal form was the Soviet *kolkhoz* which the modernist David probably viewed as an intermediate development (and world) between the ‘most modern’ Ethiopian customary land tenure and the West where ‘European individualism’ reigned.

The concept of agricultural communities was, therefore, meant to reimagine Ethiopian agrarian and pastoral communities (and imperial Ethiopia’s geographies of property in general) via a legal form borrowed from the Soviet Union. The concept is David’s way of ‘casting an eye to progress without

110David, above n 39, 47-49.
111David, above n 4, 195 (emphasis added).
113Ibid 176.
breaking the tie’ between code and custom in Ethiopia. The adaptation of a Soviet property model so as to ‘unify’ diverse land tenure systems in Ethiopia was David’s modernism in the service of Abyssinian imperialism that reinforced the narrative of ‘the most modern among the many [Ethiopian] customs’.

Because of his attempt to write aspects of Ethiopian customary land laws (as described in materials published in Western languages) into his draft, David was spared from criticism from an ardent opponent of the Ethiopian Civil Code project. A. Arthur Schiller, as noted in Chapter Two, was engaged in his own project of codifying Ethiopian ‘customary land laws’. Schiller wrote that ‘David may not have been as critical of customary law’ as we made him out to be. According to Schiller, ‘land law [Book III] is one of the spheres which has not been completely recast’ by imported legal principles. David himself was confident that he succeeded in assembling a ‘law of things’ that was in conformity with the ‘Ethiopian sense of justice’. Reading the titles of the Ethiopian Civil Code discussed in this section is, David argued, ‘to be convinced that it is an Ethiopian civil code’:

The most important accomplishment of the civil code in the areas of persons, family law, property, and delictual liability was clearly, rather than to change the customary rules, to clarify these rules, to distil their essence and to unify them on the basis of those which appeared most reasonable [by that he meant customary laws of the rist region]. Our goal was to end an intolerable confusion and uncertainty by choosing the rule most in conformity with the Ethiopian sense of justice and Ethiopia’s interests, economic and otherwise.

It was unclear what David meant by the ‘Ethiopian sense of justice’ or how he made sure these titles conform to ‘the Ethiopian sense of justice’ and interests by simply translating select Ethiopian customary laws into European legal form. David was no Sanhuri or Hozumi, both of whom were writing civil codes for their respective semicolonial states. And who validly claim a deeper grasp of local legal traditions and probably what David called a local ‘sense of justice’.

114Schiller, above n 45, 1.
115Ibid 1-3.
116David, above n 49, 345.
117Ibid (emphasis added).
118The Japanese Nobushige Hozumi and the Egyptian Abdel-Razzak Al-Sanhuri, together with René David are dubbed the ‘masters of comparative law’ (20th century). Like David, the two non-European masters of comparative law participated in the drafting of civil codes in the semic colony (Hozumi, the 1898 Japanese Civil Code; and Sanuri, the 1949 Egyptian Civil Code). But, unlike David, the two non-Europeans had the advantage of being nationals of the countries they drafted the civil codes for. Obviously, one such advantage relates to access to local material sources and deeper grasp of local legal traditions. For more on the two non-European masters of 20th century comparative law, see Hitoshi Aoki, ‘Nobushige Hozumi: A skillful transplanter of Western legal thought into Japanese soil’ in Annelise Riles (ed), Re-Thinking the Masters of Comparative Law (Hart Publishing, 2001) 129; Amr Shalakany, ‘Sanhuri, and the historical origins of comparative law in the Arab World (or how sometimes losing
As David himself conceded, it was not possible for him to consult local materials. He was even quoted by Jorge L. Esquirol to have said:

I knew nothing about Ethiopia. The first thing I undertook was to instruct myself on the country, its history, its mores. I read everything that was published in Western languages on the subject, and I took two years of Amharic language in the School of Oriental Languages. Studying this language was not useless, even if I never was able to understand or speak well enough.

Moreover, David was convinced, probably not unreasonably, that his employers never intended their new code to be based on local custom (hence local materials). David’s readings of works published in western languages on Ethiopia might have improved his understanding of Ethiopia and were also reflected in his work. David was, however, as noted, against the idea of codifying modern law based on Ethiopian customs (arguably local ‘sense of justice’). Hence, one wonders what David meant when he stated that reading Book III is ‘to be convinced that it is an Ethiopian civil code’. This is particularly so, when he also (1) drafted his code in Paris in isolation from actors in Addis Ababa, (2) did not conceal his belief in the inappropriateness of custom in African codification, (3) had limited access, if any, to local materials including the Fetha Negast which relates to Book III, he claimed, were ‘easy to see’. It is apposite to analyse David’s argument regarding the conformity of Book III to the ‘Ethiopian sense of justice’ or Schiller’s claim that agricultural communities was not an overhaul of indigenous land laws. The following remark by the Finnish legal historian Kaius Tuori on the colonial modernism of Schiller’s codification of Ethiopian customary law project equally applies to David whose Book III, was, unlike Schiller’s fethas, based on secondary European legal materials:

The uniting factor between the colonial systems, the Restatement of African Law Project [RALP] and Schiller’s project was the belief in the neutrality of recording. While the RALP and Schiller [and I argue David too] strove to free themselves from the tradition of the imposition of law, they could not translate and transfer the law neutrally to writing because of the very impossibility of reducing a living system to a set of rules [e.g. Book III rules on agricultural communities].

Similarly, an Ethiopian property law scholar who carried out empirical research on the indigenous agricultural communities targeted by the Civil Code demonstrated that David was wrong in conceiving the communities in the northern parts of Ethiopia (Eritrea to be exact) as practicing collective exploitation.

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your Asalah can be good for you), in Annelise Riles (ed), Re-Thinking the Masters of Comparative Law (Hart Publishing, 2001) 152.

119David, above n 4, 188.
120Esquirol, above n 30, 230 (emphasis added).
121David, above n 4, 195; Abdo, above n 59, 3.
122David, above n 49, 345.
123Tuori, above n 47, 62.
of land in the Civil Code’s sense of the term. As he demonstrated, land may actually be exploited individually among most of the communities concerned. As such, he reasoned the phrase ‘collectively’ in Article 1489 of the Civil Code may rather be read ‘exploited in accordance with custom and tradition’.

Notwithstanding David’s error in conception or his unsustainable assertion of the link between ‘Ethiopian sense of justice’ and Book III of the Civil Code, the inclusion of agricultural communities is a progressive gesture. This is because it arguably gave primacy to communal notions of property which many considered antithetical to Romano-Germanic codes’ standard structure of property and, in our case, imperial Ethiopia’s supreme law, the 1955 Revised Constitution. Presumably, a French jurist hired to draft a civil code for a ‘modernising’ African state would have found it easier to simply copy the corresponding sections of Code Napoleon. Yet, the French drafter of the Ethiopian Civil Code was less nationalist (more comparatist) when it came to suggesting Code Napoleon as the ultimate cure for Ethiopia’s modernisation problems. As noted, David, whose desire for or access to Ethiopian material sources was limited, acknowledged the society-specific nature of law and the undesirability of unqualified reception of western law. For David, who declared a civil code for Ethiopia should be assembled ‘by utilizing comparative law’, Ethiopia was an opportunity to experiment with new imaginary communities. As shall be seen below, imperial Ethiopia’s landed elites had little interest in David’s new imaginary communities; his eclecticism and modernism at large. The landed elites were more interested in the maintenance of their hegemony. Hence, some of David’s ideas were contested by the Amhara landed elites who vetted the draft.

5.5. VETTING THE DRAFT: BOOK III, THE CODIFICATION COMMISSION AND IMPERIAL ETHIOPIA’S PARLIAMENT

As noted, Book III was the most interfered with part of the Civil Code. The inspection and alteration was carried out by the Imperial Codification Commission and imperial Ethiopia’s parliament. As will be seen, the Ethiopian actors participating in the codification process were less critical of the concept of

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124 Mandefro, above n 112.
125 Ibid 147-168.
126 Ibid 193.
128 David, above n 49, 344-346.
129 Ibid 344.
individual landownership save its one mode of acquisition – *usucaption*. As will be seen in section 5.5.1, the excision – rather rewriting of *usucaption* – during the parliamentary stage was meant to bring the imported notion of individual landownership within the bounds of the Abyssinian landed property notion of *rist*. Book III’s construction of agricultural communities was approved with extensive amputation than the concept of individual ownership. David’s attempt to translate some indigenous land laws in Ethiopia (as represented by Italians) into the language of ‘modern’ law was not appreciated, hence contested, by members of the Imperial Codification Commission and Haile Selassie’s parliament (that was infamous for frustrating various proposals for land law reform in late imperial Ethiopia\(^{131}\)). Out of the close to one hundred draft articles on agricultural communities, only twelve articles were retained in the official version of the Civil Code.\(^{132}\)

The drafter, whose communication with the Imperial Codification Commission and the Ethiopian Parliament was indirect (through the Ministry of Justice), was aware that Book III was subject to the most interventions.\(^{133}\) Still, the retention of the best part of the initial draft in the official version must have satisfied David. He wrote:

> On the whole in comparing the *projet* to the text of the [official] Code...it is permissible to say that the *projet* underwent victoriously the test of parliamentary discussion.\(^{134}\)

Despite being satisfied by the retention of the large part after his draft after the parliamentary stage, David deplored imperial Ethiopia’s lack of concern for his initial draft that was more comprehensive than the one that officially came out in 1960 as the Civil Code of the Empire of Ethiopia.\(^{135}\) The comprehensive draft included transition provisions and *exposé des motifs* (commentary on the draft).\(^{136}\) Cognizant of the presence in Ethiopia of a large Muslim community, David even drafted a section dealing with Muslim personal law which was rejected.\(^{137}\)

The fact that Book III suffered the most redrafting/excision of the *projet* is mainly a function of the participation of Ethiopia’s landed elites in the codification process. The parliament was dominated by the landlord class that was understandably protective of its (legal) position in what was described to be one


\(^{132}\)Arts 1489-1500, Civil Code; Dunning, above n 108, 278.

\(^{133}\)David, above n 4, 200.

\(^{134}\)Ibid.

\(^{135}\)Ibid 196-204.

\(^{136}\)Ibid.

of the few ‘true class antagonisms’ in postcolonial Africa. Carrying out what David called ‘important modifications’, the politically dominant group was making sure that their interests were not betrayed by David’s Eurocentric fantasies for land reform and legal modernisation in Ethiopia. Drawn almost exclusively from the landed Christian Amhara aristocracy, members of the Codification Commission and the parliament focused their intervention on David’s legislative proposals for (1) rural land reform, (2) Muslim personal law and (3) transition provisions (with emphasis on property matters). In contrast, the concept of individual ownership and allied concepts constituting the first three titles of Book III were easily endorsed.

The easy endorsement of the concept of individual ownership is perhaps because of its significance in perfecting Abyssinian imperialism (particularly in the highland peripheries). Land was vital for imperial Ethiopia. It was the sole means of support for the bulk of its essentially agrarian cum pastoralist society. With little urbanisation and hence ‘modern’ sectors of economy, land presented itself as the most dependable resource for the ‘modernising’ state. As noted in Chapter Four, land was the base of its various tax (or tribute) regimes. As the state also claimed a sizeable part of the Empire as state property (particularly in the highland and lowland peripheries), land was also a resource imperial Ethiopia widely relied on to co-opt its expanding functionaries. Also, the class basis of state power in imperial Ethiopia adds to the critical nature of land. The ruling elites, including the Haile Selassie I himself, are reported to have retained a very large portion of their gult lands as private property following the (partial) rationalisation of imperial Ethiopia’s tributary relationship with its agrarian society. Reassured by the increased commoditisation of land in post-Second World War Ethiopia, the ruling landlord class (which some social historians prefer to call ‘aristocratic bourgeois’ were as vested in the protection of landownership as their counterparts elsewhere. As a result, the elaborate legislation of individual ownership (Romano-Germanic style) was easy to swallow for Haile Selassie’s Ethiopia that was busy facilitating the conversion of ‘tribal lands’ to private property and obstructing internationally funded pro-peasant land reform projects.

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139 David, above n 4, 196-204. Jembere, above n 3, 195-196; Markakis, above n 15, 296-297; Clapham, above n 6, 142 et seq.
141 Markakis, above n 15, 129-140.
143Markakis, above n 15, 129-140; Dunning, above n 108, 271.
According to Jembere, some parts of the code (e.g. choice of law rules that included ‘special provisions for persons of the Muslim religion’\(^\text{144}\)) were excised prior to parliamentary debate ‘in the belief that the likelihood of a strong opposition from the parliament’ might have led to the rejection of the entire code.\(^\text{145}\) Also, Jembere attributed the following fears as the main reasons why property in general and Book III in particular was the most debated book of the Civil Code:

1. the fear that private ownership under the Civil Code may undermine the scope of ownership as recognized under rist land tenure,\(^\text{146}\)
2. the fear that foreigners may unfairly benefit from the code’s relaxed approach to land ownership by foreigners,\(^\text{147}\) and
3. the fear that concessions made by the Code to peasants (e.g. a maximum threshold set by the draft code on ‘the amount of rent that peasants had to give their landowners’) may undermine the position of the landlord class.\(^\text{148}\)

While the first fear contributed to the oddity of the Civil Code’s notion of usucaption (see below), it is my contention that the fear of legislative concessions to peasants (particularly in the highland peripheries and lowland peripheries) – the desire to write out peripheral peoples from Ethiopia’s modern law – explains the massive excision of the rules on agricultural communities. This is best demonstrated by the manner in which the Codification Commission and imperial Ethiopia’s parliament vetted by using the Civil Code’s notion of usucaption and agricultural communities. The discussion is meant to accentuate the agency of the Amhara landed elites in the codification process and its implications for David’s modernism.

5.5.1. The Oddity of the Civil Code’s notion of usucaption

Ownership may be acquired through appropriation (occupation). The Roman property law notion of usucaption (‘adverse possession’\(^\text{149}\)) is reproduced under Article 1151 of Ethiopian Civil Code which reads: ‘whosoever takes possession of a corporeal chattel which has no master with the intention of becoming the owner thereof shall acquire the ownership’. Civilian jurists distinguish the acquisition

\(^{144}\)For more on these special provisions of the draft Civil Code, see Norman Singer, ‘Islamic Law and the Development of the Ethiopian Legal System’ (1971-1973) 17 Howard Law Journal 130.

\(^{145}\)Jembere, above n 3, 202.

\(^{146}\)Ibid.

\(^{147}\)Ibid.

\(^{148}\)Ibid.

\(^{149}\)‘Adverse possession’ is a common law legal concept that is compared with the civilian notion of prescription (James Gordley, Foundations of Private Law: Property, Tort, Contract, Unjust Enrichment (Oxford University Press, 2006) 130 et seq.).
of ownership by occupation from ‘derivative acquisition of ownership’ that requires the cooperation of the previous owner. Specifically, the cumulative fulfilments of (1) possession, (2) intention, and (3) no master (res nullius) rule are required for the operation of the *occupatio* rule.\(^{151}\)

At first glance, actual control (possession) of land which the Civil Code recognises as a separate (if less wide right *in rem*) appears to entitle a possessor to acquire title over the land she continuously controls for a long period of time in the same way as was under comparable Romano-Germanic models. Article 1168(1) reads:

> The possessor who has paid tax for fifteen consecutive years the taxes relating to the ownership of [land] shall become the owner of such immovable:
>
> Provided that no land which is jointly owned by members of one family in accordance with custom [agricultural communities] maybe acquired by usucaption and any member of such family may at any time claim such land.\(^{152}\)

But, the conversion of such a possession to ownership of land under the Ethiopian Civil Code appears impossible. First, the Civil Code limits the operation of usucaption to lands that are not communally owned in accordance with custom (i.e. agricultural communities). Second, actual use (productive or otherwise) alone may not clear off prior titles in favour of the current possessor. Usage of land (which may be taken as a fulfilment of the first requirement for appropriation through *occupatio*) must be accompanied with a particular kind of intention to be a prospective owner. That is, paying of land tax for fifteen consecutive years. This closes any possibility of establishing intent to acquire title by ‘adverse possession’ by means other than payment of land tax – a requirement not known to various civilian codes.\(^{153}\)

The Ethiopian Civil Code rules on proof of ownerships which cast doubt on the practicality of *usucaption*, further add to the oddity of the Ethiopian variant of ‘adverse possession’. Possession does not of itself constitute proof of ownership. Under Article 1194, any vacant land situated in Ethiopia (res nullius) is deemed ‘the property of the State’. This presumption in favour of the State does not seem rebuttable for it was also reinforced constitutionally.\(^{154}\) As to the landowner, it is title deeds issued by the relevant administrative authorities that serve her best. The Civil Code rules on proofs of landownership seems to suggest that evidence other than title deeds (e.g. tax invoices) are not admitted.\(^{155}\) Hence, although the


\(^{151}\)Ibid 100-101.

\(^{152}\)Art 1168(1), Civil Code.

\(^{153}\)In various civilian codes, payment of tax is not required for *usucaption* (see, eg, art 927, German Civil Code).

\(^{154}\)Art 130, the Revised Constitution of 1955.

\(^{155}\)Art 1196, Civil Code.
rules on *usucaption* seem to suggest acquisitive prescription (a type of ownership) may be proved by documents such as tax invoices, it is not clear from the rules on proof of ownership if tax invoices count as evidence of prescriptive ownership.

From the reading of Book III, *usucaption* is the only way – an impossible one at that – ownership in land may be transferred (to another individual) against the will of the landowner. Planting trees or sowing seeds on a parcel of land owned by another may not necessarily entitle the user to even reap the fruits of her labour, let alone eventually adversely own the land.\footnote{Ibid arts 1172 *cum* 1175.} Also, the scope of the property right of the landowner under the Civil Code is wide enough to allow her to evict (against payment of compensation) anyone who erected a building without her clearly objecting to it.\footnote{Ibid arts 1178-1181.} As was the case with the concept of *usucaption*, these provisions on the non-protection of a non-owner (including ‘bad faith’ non-owner) user of land were significant departures from the preliminary draft that, according to David, ‘contained several provisions on the protection of a person who, even in bad faith, knowing that he is not the owner, sews, plants trees, or builds something on the property of another’.\footnote{David, above n 49, 344.} David attributes, and rightly so, the rejection of these rules and the Romano-Germanic variant of usucaption that he included in the initial draft of the code to the Ethiopian elites that were predisposed to the adverse possession unfriendly notion of *rist*. Seen from the point of view of the Ethiopian elites that were reviewing David’s draft based on their *rist*-based understanding of landownership, the rules discussed above appear curious. Also, it is my contention the tax requirement in article 1168 of the Civil Code (see above) was probably added upon the insistence of the Codification Commission or the Ethiopian parliament whose members were accustomed to the Abyssinian tradition of payment of tax (or tribute) as a precondition to royal recognition of *rist* – the Abyssinian variant of individual ownership. The following lines from a court judgment reported in the ‘case digest’ compiled by the Ministry of Justice as part of civil codification (which, as noted, David did not consult) add to my suspicion that the oddity of the Civil Code’s notion of *usucaption* was a function of Amhara landed elites trying to read a Romano Germanic concept through the notion of *rist*:

> If a person from the Amhara comes after a long absence and claims his share of a *rist*, but his relatives deny his claim, he may receive his share and the produce from it beginning from the time he brought his action against his relatives, provided he succeeds in establishing his claim.\footnote{Quoted in Markakis, above n 15, 76.} (Italics added)

This explains why Ethiopians (more specifically Amhara landed elites) might be disinclined to favor the Romano-Germanic idea of *usucaption* and protection of
non-owners vis-à-vis the owner. Hence, the fear that individual ownership under the Civil Code may undermine the scope of ownership as recognised under rist contributed to the oddity of the Ethiopian Civil Code’s notion of ‘adverse possession’. As shall be seen below, the same fear also contributed to the massive amputation of the chapter on agricultural communities.

5.5.2. The incomplete but massive amputation of the chapter on agricultural communities

The initial draft of Book III’s chapter on agricultural communities was more detailed and included more than ninety articles. Nevertheless, the Imperial Codification Commission ruthlessly amputated David’s extensive draft on the constitution and working of agricultural communities and, thus, the official chapter on les communautés agraires is light, albeit very ambitious.

Members of the Imperial Codification Commission and imperial Ethiopia’s parliament that passed the final decision on the conceptual content of the Civil Code were not receptive to David’s attempt to Africanise the Civil Code with a curious concept borrowed from Soviet legal materials. Considered as an attempt by David to introduce Ethiopia to ‘mild’ land reform and/or tribal autonomy, agricultural communities were the primary targets of pre-promulgation vetting by Ethiopian actors in the field of codification. Although many related the concept only to the rist region – where the indigenous land laws that inspired David in drafting the rules on agricultural communities applied – Mandefro (who interviewed some members of the Imperial Codification Commission) indicated that the Ethiopian actors read agricultural communities as a legal concept having nationwide relevance.

A member of the Codification Commission told Mandefro that the massive excision of the initial draft was because the Commission felt ‘the draft was too sophisticated for the tastes of the communities to whom it was directed’. If true, this disbelief in agricultural communities by the Commission (almost all of whom were originally from the rist region) resonated with the attitude in the rist region where peasant hostility to land reform measures were said to be informed

160Dunning, above n 108, 278.
161Ibid.
162Schiller, above n 45, 1-3.
164Mandefro, above n 112, 145-146.
165Ibid 175.
by ‘deep-seated suspicion’ to imperial Ethiopia’s modernisation projects. 166 Such
suspicion and resistance to land reform forced (on several occasions) Addis
Ababa to back off. 167 The imperial government was so worried about the
reactions of peasants in the rist region that it was, for example, willing to forego
higher tax rates and even tax arrears. 168 When, hesitatingly, it tried to subject
agricultural lands for measurement (for tax purposes), it received the clearest
indications that any more profound move in land reform would have been
actively resisted in the rist region. 169 And, modernising ‘traditional agricultural
communities’ is more profound than measurement of small parcels of rist lands
for tax purposes. The Imperial Codification Commission that avoided (however
imperfectly) David’s detailed idea of agricultural communities for fear of its
‘sophistication’ (I would add modernist progressive tones) was probably also
resisting the innovation for fear of the political risk implied by the Civil Code’s
attempt to modernise the rist system that peasants in the region fought to keep
autonomous. 170

If, however, we read agricultural communities as a concept relevant for
reimagining imperial Ethiopia’s geographies of property beyond the rist region
(as members of the Codification Commission reportedly did), the ‘sophistication’
justification could actually signify imperial Ethiopia’s unpreparedness to
concede anything to its non-Abyssinian subjects. As noted, the Codification
Commission cut out parts of the initial draft civil code in anticipation of the
reaction of the parliament dominated by Amhara-landed elite. In particular, the
excision of draft Civil Code sections on Muslim personal law and a rent cap in
agricultural tenancy suggest that members of the parliament were not interested
in legitimising the claims of the indigenous (partly Muslim) pastoral and agrarian
communities of the highland and lowland peripheries.

Further, in late imperial Ethiopia, where perfunctory land reform was
impossible, an idea like agricultural communities, which implied a more
profound change in imperial Ethiopia’s geography of property rights, was
intrinsicly undesirable. The following observation by Harrison Dunning on the
difficulty of land reform (with or without the Civil Code’s agricultural
communities) in late imperial Ethiopia explains why a universally applicable

166 Allan Hoben, Land Tenure among the Amhara of Ethiopia: the Dynamics of Cognatic Descent (The
167 See, eg, Markakis, above n 15, 376-387.
168 For more on a peasant uprising in the rist region triggered, inter alia, by the government’s
attempt to implement land tax reform measures, see Gebru Tareke, Ethiopia: Power and Protest
169 Ibid.
170 Ibid. An American anthropologist who studied the rist system in a northern province in late
imperial Ethiopia was left with the impression that any radical change in the rist system ‘will
be met with armed resistance’ (Hoben, above n 166, 232).
agricultural community, if at all intended, was unpalatable for the Ethiopian actors in the field of codification:

In Ethiopia the land reforms made thus far have been only of a token nature. At the same time, it must be recognised the political obstacles to serious reform in contemporary Ethiopia are formidable, for rights over land play an important part in maintaining Ethiopia’s current political system. Most importantly, they contribute to maintaining the Shoa [Shoa Amhara] ascendancy which has been well established since the time of Menelik II.171

On a related note, it is not clear if René David intended agricultural communities to apply to imperial Ethiopia’s peripheral peoples. As noted, the French drafter opined the Civil Code ‘was drafted for the more developed populations, those which inhabit the plateau of Ethiopia and Erythia [sic]’.172 Although David did not exclude the application of the Civil Code vis-à-vis what he conceived as the less developed peoples of imperial Ethiopia, he expected such applications to be limited to ‘exceptional cases, regarding that which concerns, for example, the rules of concessions granted by the [government]’.173 David’s expectation was also consistent with the practice of imperial Ethiopia which was all but ready to honour the property claims of its colonial subjects in the lowland and highland peripheries. For instance, imperial Ethiopia’s last constitution was explicit on state ownership of pasturcelands over which individual ownership was not established.174 Apart from the 1955 Constitution, other policy and legislative developments further evidence imperial Ethiopia’s unpreparedness for a universally applicable notion of agricultural communities.175 Backed by foreign capitalist interests, late imperial Ethiopia was more interested to perform its sovereignty over its peripheral peoples, some of whom have, for want of effective technology, escaped the bites of the neftagyna-gebbar system.176 For that reason, the skeletal retention of the rules on agricultural communities in Book III is a repository of imperial Ethiopia’s quandary in semicolonial legal modernity if not,
as Markakis and Ayele would posit, its intent to afford ‘special protection’ to indigenous land laws of the rist region.\textsuperscript{177}

5.6. CONCLUSION

Book III of the Ethiopian Civil Code of the 1960 is a legislative text that reflected the times, agency and contests of codification in a mid-20\textsuperscript{th} century African imperial state coming out of the shadow of semicolonialism. It is a repository of late imperial Ethiopia’s ambivalence toward semicolonial legal modernity.

The drafter, despite being dismissive of African legal heritage and proud of western legal traditions, remained loyal to his belief that a civil code for an African nation must reflect the aspiration for progress (to wit, ‘European individualism’) without necessarily breaking the ties with customary practices (‘communalism’). An exercise in eclecticism (‘legislative comparativism’), a trend in mid-20\textsuperscript{th} century African legal modernity,\textsuperscript{178} Book III presents as an attempt at both copying and at undermining the universal cogency of the code-based Romano-Germanic system of property. As such, Book III can, at least in part, be read as a critique of the classical Romano-Germanic codes. Despite that fact that Romano-Germanic codes formed the major material source for David’s project, they did not determine the legal categories of the Ethiopian Civil Code of 1960. Hence, Book III is its own ‘thing’. As such, it should be treated in more ways than as a mere copy of, for example, the corresponding book of the Code Napoleon. Its effects and reinterpretations should be studied for what they are – a creative copy of its precursors.

Book III is also a repository of the continued contest over Ethiopia’s semicolonial legal modernity. In the field of codification, David assumed a position similar to the ‘Ethiopian Japanisers’ who, during the first third of the 20\textsuperscript{th} century dominated the field of Ethiopia’s legal modernization. He was an ‘Ethiopian Japaniser’ while also a continental jurist. But, the temporality of the codification process (that is the field of codification) was different from that of the ‘Ethiopian Japanisers’ who were drafting laws for a ‘progressive’ Ras Tafari (the future Haile Selassie I). David, unlike for example Tekle Hawariat Tekle Mariyam (who drafted Haile Selassie’s 1931 constitution), needed to work with a ‘reactionary’ Haile Selassie I and his parliament dominated by political elites, who were less interested in his comparativism and progressive approach to codification than the protection of landownership and subversion of land reform measures. The incomplete retention of the chapter on agricultural communities is a case in point. David’s attempt to reimagine state and society relations (and, for our purpose,

\textsuperscript{177}Markakis and Ayele, above n 163, 23. In fact, the Amharic version of the Code uses ‘diessa’ (a landholding system particular to a locality in what I here call the rist region in describing ‘agricultural communities’).

the geographies of property rights discussed in Chapter Four) in non-industrial Ethiopia was based on material sources about the *rist* of northern Ethiopia and this is significant. Nevertheless, it was an imagination of Ethiopia’s future that was less welcome in Haile Selassie’s Ethiopia – an Ethiopia content with the theatrics of self-civilization for an external audience and ‘a future of non-reform’.¹⁷⁹ The fact that the rules on agricultural communities were amputated to render them invisible (or at least less visible) bears witness to imperial Ethiopia’s political elites’ rejection of a legal concept with implications for the maintenance of Amhara hegemony and the ‘writing in’ of the interests of peripheral subjects into the ‘modern’ laws of ‘self-civilising’ Ethiopia.

In the next chapter, I focus on the contests pertaining to the Ethiopian Civil Code project in another social space: the field of legal education in post-codification Ethiopia.

¹⁷⁹Cohen, above n 140, 382.
CHAPTER SIX


The jurist we train must be keenly aware and deeply involved in the work of revolutionising his society. He must understand not only the goals of economic, societal and political change which will emerge from within his polity, but also the dynamics which make these changes immensely difficult in many instances.1

6.1. INTRODUCTION

As seen in Chapter Two, the study of the Ethiopian Civil Code project as a ‘landmark’ legal transfer project started in the 1960s. Research remained lively during the last decade of Haile Selassie I’s reign, which also saw the consolidation of the legal transfer project in various social fields including legal education. While the presence of modern law in imperial Ethiopia was not questioned after the ‘[legal] revolution’2 of the mid-20th century, doubts remained as to whether this constituted a modern legal system pending the mass-production of local jurists trained in imperial Ethiopia’s imported legal codes. For instance, Jacques Vanderlinden, a Belgian professor of law at the Haile Selassie I University, wrote in 1966 that ‘the main characteristic of the contemporary Ethiopian legal system is that it does not yet exist as such’.3 Nevertheless, he as well as others4 saw the mid-20th century codification projects and the system of legal education that was emerging in the 1960s Ethiopia as ‘the setting… out of [which] will arise the [modern] Ethiopian legal system’.5 In particular, the US-funded Law Faculty of Haile Selassie I University (1964-1974), a typical Cold War era ‘law and development’ project that provided imperial Ethiopia with its first generation of locally trained custodians of the imported codes, was seen as instrumental to the gradual success of the legal transfer project.

While not denying the instrumentality of the national law school – which remained the only law faculty in Ethiopia until the 1990s – in the local production of code-trained legal elites, this Chapter draws attention to another dimension of legal education in late imperial Ethiopia. It reads the emerging

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3Ibid.
5Vanderlinden, above n 2, 250 et seq.
field of legal education in late imperial Ethiopia (1960-1974) as a field of Ethiopian legal modernisation. It examines the contests within that field and their implications for the Ethiopian Civil Code project. The analysis of the field of legal education in late imperial Ethiopia and its double effect (discussed below), is meant to bring to light important but little-known contests over the Ethiopian Civil Code project in understudied social spaces and their inter-temporal implications (see Chapters Seven and Eight). This Chapter attempts to reveal the continued contest over imperial Ethiopia’s semicolonial legal modernity (particularly, the Ethiopian Civil Code project) that the modernist stories, which stressed the instrumentality of code-based legal education in the eventual ‘success’ of the legal transfer project, fail to capture.

The chapter argues that the field of legal education in post-codification imperial Ethiopia was a site of contest between western jurists – that is, adherents of different legal traditions within what René David called ‘Western Law’.6 The continental European jurists saw the production of code-trained legal professionals as the primary goal of Ethiopian legal education. In contrast, the dominant actors in the field, American law professors funded by the Ford Foundation, reasoned that legal education in Ethiopia should aim at more than a production of code-trained jurists. More specifically, they aspired to train scholars who could critique and imagine land regulation rather than jurists able to determine the meaning of the code. The government of Haile Selassie I was less concerned with this ideological battle. Yet its desire to diversify its partners in ‘modern imperialism’7 and prioritise financial considerations over others allowed the Americans to dominate the emerging field of Ethiopian legal education. Important effects of the ascendancy of the Americans in the field of legal education include the pluralisation of actors in the field of Ethiopian legal modernisation, and the stimulation of alternative legal modernisms that were critical of the Ethiopian Civil Code project including Book III. Hence, the ascendance of the Americans, and their ideas for legal education in post-codification Ethiopia, was consequential not only in the production of code-trained civil lawyers (as pointed out by the optimist students of the Ethiopian Civil Code), but also in the engendering of newer interpretations of the Ethiopian Civil Code project and land regulation generally. They afforded newer imaginations of Ethiopia’s futures that ironically and perhaps unintentionally proved instrumental in post-imperial Ethiopia’s performance of ‘Marxist modernism’.8 Hence, the double effect of the escalation of the legal

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transfer projects of imperial Ethiopia and the attendant contests in post-codification and post-semicolonial contexts.

In section 6.2, I elaborate on the issue of producing code-trained local jurists as code-importing imperial Ethiopia’s legal modernisation ‘problem’ and the contests over how to ‘solve’ that problem. In sections 6.3, I examine the implications of the contests and the effects of the American era on Ethiopian legal education. Crucially, I draw attention to the pluralisation of actors in what I call the field of Ethiopian legal modernisation and the resultant transformation of the field with the arrival of actors who (1) contested imperial Ethiopia’s semicolonial modernity – and hence, the Ethiopian Civil Code project – and (2) proposed alternative modernisms that gained legitimacy in the post-imperial period.


The Amhara landed elites who were active in the field of codification (see Chapter Five) were marginal in the field of legal education. In the field of legal education, the contest over the Ethiopian Civil Code project was a contest between two groups of jurists predisposed to two different traditions of what René David called ‘Western Law’. As such, it was ultimately a contest between two external imperialisms (French and American), one of which was inheriting the other’s mantle in postcolonial Africa where the westerners’ concern with African modernity was increasing due to concern with the ‘general impact of Marxist legal thought’ (or its enabler Soviet imperialism). Imperial Ethiopia, and postcolonial Africa in general, was the battleground for this warfare between up-and-coming and weakening imperialisms.

6.2.1. Prelude to the Law Faculty of Haile Selassie I University (1900s-1950s)

During the first third of the 20th century, imperial Ethiopia was under the cultural (including legal) influence of France, which had exhibited the first interest in imposing an extraterritorial regime on semicolonial Ethiopia.10 This influence was expressed in, for example, the predominance of French-inspired law-making, the popularity of French legal materials among Ethiopian rulers and judges of the Special Court, and the publications of early 20th century Ethiopia’s laws in French.11 Also, most of the very few Ethiopians trained in

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11 See, generally, Bahru Zewde, Pioneers of Change in Ethiopia: The Reformist Intellectuals of the Early Twentieth Century (James Currey, 2002) ch 2; J Vanderlinden, ‘An Introduction to the
European laws attended French law schools. And, as noted in Chapter Five, the presence of this group of French-educated Ethiopian lawyers partly explains why it was the French ‘solution’ to imperial Ethiopia’s problem of legal civilisation – that is, codification – that appeared most appealing for late imperial Ethiopia.

Nevertheless, the number of foreign educated Ethiopians (most of whom were not lawyers by training) was very low when codification was contemplated in the early 1950s. Imperial Ethiopia, whose early 20th century practice of sending young Ethiopians to Europe for university education was interrupted by the Italian interlude, did not displace British-sponsored jurists from imperial Ethiopia’s two upper courts until after the establishment of the Law Faculty of Haile Selassie I University in the mid-1960s. This shortage of local jurists trained in modern law – that is, European law – was worrying for actors in the field of codification. For example, René David advised the Ethiopian government in 1955 to aim to produce at least 40 university-trained civil lawyers per year to help localise his code in Ethiopia.

This advice was translated into action by a French-educated Polish jurist, George Krzeczunowicz. Working with the Imperial Ministry of Justice, Krzeczunowicz organized the first large-scale training of code-trained lawyers by establishing a sub-degree program (1952) at the University College of Addis Ababa, which had been established with the assistance of French Canadian Jesuits in 1950. The aim was to educate a cohort capable of dealing with Ethiopia’s impending codified laws.

George Krzeczunowicz, the Polish professor who was at the forefront of Ethiopian legal education in the 1950s, was engaged by Haile Selassie’s government which, following the relaxation of British hegemony after the Second World War, was allowed to retain non-British expatriates in various sectors of the emerging bureaucratic state. Although little is known about how and why the Polish jurist was retained by the Imperial Ministry of Justice, his


12For more on early 20th century Ethiopia’s practice of sending its young students to Europe, see Zewde, above 11, 79 et seq.
14Ibid; Feyissa, above n 10, 130.
16Ibid; Markakis, above n 13, 151.
17Krzeczunowicz, above n 15, 91.
19His appointment was probably related to post-Italian occupation Imperial Ethiopia that was engaged in the politics of diversifying its partners in modernism and imperialism in the field of education and law. See, eg, Viveca Norberg, Swedes in Haile Selassie’s Ethiopia, 1924-1952: A
arrival (probably from France where he studied law and political science\textsuperscript{20}) in post-Second World War Ethiopia allowed him to be at the head of code-based legal teaching in imperial Ethiopia in the 1950s. Active in the field of Ethiopian legal education until the early 1980s, he was, according to some accounts, the most vocal voice for a strictly ‘civil law’ approach in Ethiopian legal education that, as will be seen, would come under significant American influence (1963-1974).\textsuperscript{21}

Before the suspension of the program in 1959, the University College managed to train a cadre of some 90 civil lawyers.\textsuperscript{22} Drawn largely from legal practice, the civil service, the army and the police, as mature age students, the lawyers graduated with diplomas and certificates (1956-1959).\textsuperscript{23} Young graduates of the Arts Faculty of the University College also went abroad for law degree programs.\textsuperscript{24} McGill University, in Canada, was the primary destination for these graduates.\textsuperscript{25} These Ethiopian law graduates, known as the ‘McGill group’, were the most prestigious Ethiopian lawyers during the early post-codification period, and were expected to play a dominant role in the training of the future custodians of imperial Ethiopia’s imported legal codes.\textsuperscript{26} The emergence of McGill University as a primary destination for Ethiopian law students in the 1950s was not just a reflection of the dominance of Canadians as the transnational actors establishing and running the recently established University College of Addis Ababa. It also reflected the confidence of the continental jurists in the emerging field of Ethiopian legal education, particularly Krzeczunowicz, that Québécois Canada (a former part of French colonial empire) could offer relevant training for future custodians of the Ethiopian Civil Code.\textsuperscript{27}

The sub-degree program at the University College of Addis Ababa and the ‘McGill group’ was an attempt to implant a kind of ‘continental’ legal education in non-French speaking Ethiopia where neither code-legislation nor ‘recorded

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\textsuperscript{20}See his credentials from the list of the transnational faculty of the national law school of the American era published regularly in the earliest issues of Journal of Ethiopian Law (1964-1973).

\textsuperscript{21}Stanley Z. Fisher, 50 Years of Legal Education in Ethiopia: A Memoir (13 January 2014) 5 <http://www.bu.edu/lawlibrary/facultypublications/PDFs/Fisher/50%20Years%20of%20LegalEducation%20FinalR3%20docx%20.pdf>.

\textsuperscript{22}Aklilou Hapte, ‘A Brief Review of the History of the University College of Addis Ababa’ (1961) 1 University College Review 25, 32.

\textsuperscript{23}‘A Short History of the Faculty of Law’, (2000) 20 Journal of Ethiopian Law 161, 162 [Hereinafter ‘Short History’].

\textsuperscript{24}Krzeczunowicz, above n 15, 90.

\textsuperscript{25}Ibid.


\textsuperscript{27}Krzeczunowicz, above n 15, 90.
Customary Law’ were apparently present.28 Because of British imperialism in Ethiopia in the 1940s, imperial Ethiopia of the 1950s had already replaced French with English as its European vernacular of law practice and higher education.29 This added to the challenges encountered by continental jurists who were trying to consolidate French – or more broadly continental European – cultural influence in late imperial Ethiopia. Commenting on the challenge, Krzeczunowicz, wrote that:

For lack of either code-legislation or recorded Customary Law, [we were] meant only to give a sound basis of legal theory to twelfth grade level practitioners in law, government and business. But legal theories differ. We were instructed to teach the Continental ones, chosen as bases for the projected codes. As there are, of course, variations within the Continental system, the lecturers’ choice of the concepts to teach was, of necessity, arbitrary. A minimal common ground for teaching was provided by the Roman Law. For the main courses, French, and Swiss-German legal writings were largely drawn upon and acrobatically adapted in uncongenial legal English, the language of instruction. That same language difficulty rendered the original reference books inaccessible to students, who could not read law.30

The study of French and Swiss-German legal writings in ‘uncongenial legal English’ in pre-codification Ethiopia is a consequence of its late performance of legal modernity from a precarious semicolonial position. Arguably, such a muti-lingual and multi-jural performance of legal modernity would have been unlikely with an early performance of legal modernity or a performance from a colonial position (rather than a semicolonial one). If Ethiopia’s legal education field had been transformed by a colonial power, an imposed language might have been used consistently. Instead, different legal traditions and languages competed for primacy. Hence, the multi-lingual and ‘muti-jural’ performance of legal modernity in the field of legal education reflects the peculiar temporality of a mid-20th century codification by an African state with little historical connection to a single European colonial power, but intense pressure to imitate the modern nation-state form and its cultural artefacts. Imperial Ethiopia’s legal modernity (more specifically, the unfolding experiments with legal education) can be contrasted with those seen in continental Europe and other semicolonial nations. For instance, despite the imported code being among the few African imported codes enacted in a non-European language,31 imperial Ethiopia could not afford to insist on the establishment of a local vernacular as the lingua

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28Ibid; Vanderlinden, above n 2, 260.
29For more on this, see Perham, above n 18, 250-61.
30Krzeczunowicz, above n 15, 94.
franca of code-based legal education.\textsuperscript{32} This was particularly the case in the 1950s when it was still subject to British imperialism, was culturally less confident and was, thus, willing to reduce the pressure by engaging in multiple ‘imitative’ modernisation projects.\textsuperscript{33}

Despite this, Krzeczunowicz was hopeful this difficult start to the education of code-trained lawyers ‘might have led Ethiopia gradually to higher levels’.\textsuperscript{34} The ‘higher level’ to which the Polish professor refers is presumably located in continental Europe. Still, he criticised the imperial government for ‘putting the cart before the horse’ – that is, failing to seriously think about law instruction before (or in tandem with) the codification. Further, the Polish jurist declined the university college’s request to start an LLB program for he strongly believed that Ethiopia was ill-prepared for a full-time law degree, and Ethiopia had a ‘dire need for legal professionals’.\textsuperscript{35} Consequently, the launch of an LLB program was postponed until the establishment of the Law Faculty of Haile Selassie I University in 1963 with American assistance (see below for more).

6.2.2. SAILERS, the Americans, and the Law Faculty of Haile Selassie I University (1963-1974).

As noted, legal education in late imperial Ethiopia was primarily a field of contest for external imperialisms: French and American. This becomes clearer with the arrival of American jurists in the early 1960s to establish imperial Ethiopia’s first national law school. The outcomes of the contest have, however, more to do with the stimulation of alternative legal modernisms (section 6.3) than the undoing of French ties to imperial Ethiopia’s imported legal codes, as often claimed by some (see below).

The University College of Addis Ababa was reconstituted as Haile Selassie I University in 1961, when all but one of the six codes were officially promulgated.\textsuperscript{36} Legal education was among the major priority areas of the University that was taken over by the Americans from its Canadian founders in the 1960s, supplying funds and personnel.\textsuperscript{37} The Law Faculty of Haile Selassie I University was established in 1963 with the support of the Ford Foundation, particularly the SAILER (the Staffing of African Institutions of Legal Education


\textsuperscript{33}Note that law instruction in Amharic was possible in the American-run Faculty of Law of Haile Selassie I University, albeit it was confined to sub-degree level programs (see James Paul, ‘First Annual Report from the Dean’ (1964) 1 Journal of Ethiopian Law 335, 340.

\textsuperscript{34}Krzeczunowicz, above n 26, 68 and 73.

\textsuperscript{35}Krzeczunowicz, above n 15, 95-96.

\textsuperscript{36}Krzeczunowicz, above n 15, 99.

\textsuperscript{37}Ibid.
and Research) project. Under the successive deanship of American professors (James Paul (1963-1967), Quintin Johnstone (1967-1969), Cliff F. Thompson (1969-1973), this Law Faculty led the education of Ethiopian LLB graduates for decades. Apart from producing LLB graduates, the American-led law school launched Ethiopia’s first legal periodical – *Journal of Ethiopian Law* – in 1964. The Law Faculty also facilitated the emergence of an elite group that critiqued the Ethiopian Civil Code project in particular and imperial Ethiopia’s ambivalent legal modernity in general (see section 6.3). Finally, the American connection led to US universities becoming a major overseas destination of graduates of the Law Faculty (including non-law faculties such as the Land Tenure Center of the University of Wisconsin-Madison).

When Haile Selassie I University was established, a committee composed of Ethiopians (particularly the ‘McGill Group’) and foreign experts worked on a curriculum. The curriculum aspired to maintain continuity with the continental-type legal education that was set in motion in the 1950s. In the meantime, in 1961 René David proposed teaching his code ‘in French by Frenchmen’. Otherwise, the French drafter was content with bilingual tuition in legal education in post-codification Ethiopia where, as he noted, the American influence was becoming hegemonic.

David’s call for a particular mode of code-based legal education in Ethiopia may be interpreted as disregarding that aspect of the Civil Code which, as seen in Chapter Five, has nothing to do with conceptual developments in France (e.g. agricultural communities). His fear that the cultural purity of his code would be compromised if it was taught in English by non-French scholars also apparently contradicts his claim that his code is more than a replication of the 1804 French Civil Code – unless, of course, one assumes French jurists are more qualified than jurists from other countries to teach legal codes of any kind. It is not clear how a French legal scholar would be more qualified than any other jurist to teach an eclectic code that improved and subverted the traditional Romano-Germanic civil code on several points. However, one suspects David’s

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39The Faculty of Law of Haile Selassie I University (now Addis Ababa University) remained Ethiopia’s sole law school until the turn of the 21st century that witnessed the creation of additional law schools (both private and public) in various locations throughout the country.
40Generally, the United States was the primary overseas destination of Ethiopian graduate students of the late imperial period, see Markakis, above n 13, 155; Paulos Milkias, *Political Linkage: The Relationship Between Education, Western Educated Elites, and the Fall of Haile Selassie’s Feudal Regime* (PhD Thesis, McGill University, 1982) 163-164.
41Krzeczunowicz, above n 15, 99-100.
42See generally Krzeczunowicz, above n 26.
43Quoted in Krzeczunowicz, above n 26, 70. See also René David, ‘L’enseignement du droit en Ethiopie’ (1962) 6 *Journal of African Law* 96.
44Ibid 100.
suggestion for tying Ethiopian tuition of civil law to its French roots was motivated by the excessive respect he and other French-speaking legal scholars showed to the French material sources of imperial Ethiopia’s imported legal codes.

For the university’s top management the question of ‘where to find funds and expatriates to establish a national law faculty’ was more crucial than anything else. And, as far as the funds were concerned, the Americans were the easy answer. First, seeking to contain the spread of communism and Soviet hegemony in postcolonial Africa, the USA treated anti-Marxist African regimes such as Haile Selassie’s as ‘allies deserving... aid’. In fact, the USA was the most pervasive foreign presence in late imperial Ethiopia. The Americans had invested heavily in imperial Ethiopia’s military, communications, and education since the 1950s. Their presence in various sectors of Ethiopian life was so noticeable that an Ethiopian historian described Ethiopia’s 1950s and 1960s as the ‘American era’ that succeeded the ‘British decade’ of the 1940s. Second, when imperial Ethiopia was considering establishing its national law school, the development of African-based legal education was emerging as an area of interest among American law professors gathered around SAILER. Funded by the Ford Foundation, one of the biggest financers of American law and development projects in the ‘Third World’, the SAILER project included American jurists such as James Paul, who could find Haile Selassie I the funds to establish the national law school. The possibility of funding from Ford’s SAILERS project was one of the reasons Paul accepted the invitation from Haile Selassie I to establish a national law faculty. Though the funds did not arrive as early as Paul would have liked, Ethiopia eventually became the African country with the most Ford Foundation investment. Arguably, David and other transnational jurists eager to establish a basically continental-style legal education in post-codification Ethiopia, could not access such funds. SAILER afforded the American jurists like Paul a leading position in postcolonial African legal education, a field of ‘cultural imperialism’ where European colonial powers (notably France and Britain) were less interested in investing.

45Krzeczunowicz, above n 15, 99-100.
48Ibid 179 et seq.
49Krishnan, above n 38.
50Ibid.
51Paul, above n 26, 145.
52Krishnan, above n 38, 291-300.
SAILER, which gave birth to the Law Faculty of Haile Selassie I University, was a project of its time, that is, the 1960s ‘law and development’ era that targeted non-western nations prone to traditionalism and, since World War II, susceptible to communism. And Paul, the founding dean of the Law Faculty of Haile Selassie I University who also served as the Academic Vice President from 1967-1969, was a ‘seminal figure’ in the SAILER project, a typical American ‘law and development’ project. When appointed, Paul was a law professor at the University of Pennsylvania. As a fellow commissioned by SAILER, he travelled to Africa (1960-1962) to study the development of legal education in Africa. A memorandum he wrote based on his visits to various African countries (including Ethiopia) served the Ford Foundation as a blueprint for SAILER projects like the Law Faculty of Haile Selassie I University. Paul’s memorandum pointed out the relevance of American ‘best practices’ in legal education for future African law faculties.

Paul, like David, was less critical of the importation of western laws to late imperial Ethiopia, whose ‘traditional’ laws, he reasoned, ‘did not deal with much modern phenomena’. In a paper presented at a conference on ‘Ethiopian Studies’ in 1973, Paul showed his support for what I have called the optimist views of the Ethiopian Civil Code project. He maintained:

Some observers have looked askance, or cynically, on [borrowing]. But, in fact, the imposition or ‘borrowing’ of foreign law has been widespread historically and is a contemporary phenomenon in many developing countries. Traditional law of Ethiopia did not deal with much modern phenomena… Political modernisation has meant that more and more of the law became written, formal, transactional, impersonal, and geographically homogenous.

As will be seen, what distinguished Paul from the likes of David, another optimist of the Ethiopian Civil Code project, was the specificity of western ‘borrowing’ in the field of legal education.

56Ibid 23.
57Ibid 21-23.
58Memorandum: Developments in Legal Education in English Speaking Countries of West and East Africa (SAILER, 1961) cited in Krishnan, above n 38, 276.
59Ibid.
60Krishnan, above n 38, 276-277.
62Ibid.
Upon arrival, Paul was given the curriculum developed by George Krzeczunowicz, and the ‘McGill Group’. Paul was not, however, intent on proceeding with the curriculum un-amended. A believer in American ‘best practices’ in legal education, Paul was in fact critical of tying code-based legal education in Ethiopia to its French model in the way Krzeczunowicz and David wanted. He had a different vision for the future custodians of Ethiopia’s newly enacted codes. True to his American sociological jurisprudence, he wanted graduates of the Ethiopian national law school to be social engineers. In a conference on legal education in Africa held at Haile Selassie I University in 1968, Paul made explicit that his law school was set to depart from a continental style of legal education that, according to Hans Baade, was geared towards exegesis (the exposition of the codes pursuant to an orthodox doctrinal curriculum). For Paul, exegesis was too limited a style to adopt in Ethiopia:

While much can be said for developing a career judiciary, a career civil service of lawyers – along European lines, it seem to me this may be an unwise way to use professional manpower – at least in countries where there is a dearth of lawyers and where, per force, we may have to think of efficient allocation of a small cadre of highly trained ‘elites’ with broad perspective and experience, operating within the total legal system… The jurists we train must be keenly aware and deeply involved in the work of revolutionising his society. He must understand not only the goals of economic, societal and political change which will emerge from within his polity, but also the dynamics which make these changes immensely difficult in many instances.

The revised curriculum, according to Paul, benefited from feedback from prominent Anglo-American jurists including L.B.C. Gower (London School of Economics), Roger Fisher (Harvard University), and William Twining (Queen’s University of Belfast). It included foundation courses in civil, commercial, penal and constitutional law. Further, it incorporated skills courses (e.g. drafting and litigation skills). As noted, Paul sought roles for prospective Ethiopian law graduates to assume other than working as advocates, judges, counsellors, and academics. Crucially, he wanted lawyers to be ‘social agents’. As a result, non-legal courses that were meant to help broaden their perspective were included. These included courses in social science, history, political theory, economic theories of growth and rural change and land development.

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63Krzeczunowicz, above n 15, 100.
64Paul, above n 33, 336.
65Baade, above n 32, 26.
66Paul, above n 1, 19-21.
68Ibid 24.
69Ibid.
70Paul, above n 1, 16.
The curriculum also made legal education in the Americanised law school at Addis Ababa ‘elitist’ (or academically selective). It required students joining the national law school to have ‘superior academic ability’ and at least two years of university education with high grades.\(^{72}\) Despite a limited number of students that fulfilled the rigorous admission requirements of the school, Paul insisted the Law School must, ‘for some time, be elite in quality’:

Numbers cannot be the goal: in some countries numbers are not even needed, there are already too many technician lawyers; in others, even those where the shortage is acute, it is probably unrealistic to assume that the courts and bar can or should be fully staffed by men with broad university training. We have to think of a small cadre of top flight personnel working with others who have received a more basic technical training through special, ad hoc programs which university law schools, themselves, may have to mount.\(^{73}\)

Reflecting on his decision to adopt an elitist model of legal education in imperial Ethiopia, where ‘large scale’ training of civilian lawyers was apparently urgent, writing in 2008, Paul stood by his old belief that elitism was the right answer for the resource-striped African nation’s quest for ‘rule of law’:

\[\text{[Given]}\] we lacked faculty resources to teach a large student body... it seemed appropriate to adopt the “elitist” model... Certainly, there are “large scale” university programs of legal education in other countries, notably in many civil law jurisdictions; but... a country lacking a well-trained judiciary and an independent, self-regulated legal profession can ill afford to sacrifice quality for quantity. The effective development of rule of law, as the foundation of any creditable legal system, requires competent, dedicated and independent judges and lawyers. Legal education committed to training them should never be provided “on cheap,” nor overwhelmed by numbers’.\(^{74}\)

These and other positions of the American jurists were translated into practice, leading ultimately to a hybrid faculty with different national backgrounds and approaches. However, the playing down of the views of civilian jurists on various curricular and related matters by the dominant American jurists who were, like their civilian counterparts, jealous of their (legal) traditions created a feeling among continental jurists that the Americans hindered the better understanding of the imported codes by Ethiopian graduates of law. For instance, George Krzeczunowicz complained that Ethiopian codified laws, which he reasoned were ‘in advance’ of foreign legislation, remained a ‘dead letter’ partly because graduates of law are confused by irrelevant Anglo-American concepts (imported via legal education).\(^{75}\) Similarly, an Italian

\(^{72}\)Students admitted to full-time LLB program mainly ‘came from two years of University training’ (ibid, 518; Paul, above n 26, 146.

\(^{73}\)Paul, above n 1, 22.

\(^{74}\)Paul, above n 26, 147.

\(^{75}\)George Krzeczunowicz, *The Ethiopian Law of Extra-Contractual Liability* (Haile Selassie I University, 1970) 4-5.
comparatist, Salvatore Mancuso, recently (2009) alleged the American influence in Ethiopian legal education left the interpretation of imperial Ethiopia’s French-inspired codes in the hands of generations of local jurists educated in Anglo-American materials.76

Nevertheless, the introduction into Ethiopia of American teaching methods and philosophies did not result in a complete disregard of the European roots of imperial Ethiopia’s imported legal codes as some accounts seem to suggest. For instance, Paul took the trouble to travel to Europe and North America with a view to recruit English speaking professors ‘trained in continental and civilian methods’.77 As a result, the faculty was able to include legal scholars who came from Canada, Germany, Belgium, Finland, Scotland and France.78 The majority of continental European faculty members of the Law Faculty were assigned to teach code-based courses. Also, as one of the stated objectives of the Faculty’s LLB curriculum was the provision of a French language course (the goal being to enable students to ‘read, translate and use French legal materials’79), Legal French was a subject.80 Further, in recognition of the translation problems identified by French-speaking jurists, a project (‘the Lexicon Project’) was launched to record the legal terms of the Civil Code in triplicate (French, Amharic and English).81 Funded by the Ford Foundation, the project aimed to ‘harmonise’ the official Amharic and English versions of the Civil Code with their French master-text that, for many continental lawyers, was no less authoritative than the official ones in Amharic and English languages.82 As some works authored by law graduates of Haile Selassie I University indicate, these French connections have encouraged students of Ethiopian law to maintain the cultural link between Ethiopian codes and their continental material sources that were often available in French but not English.83

Regarding the teaching of Book III on property law, however, Paul assigned Harrison Dunning, a recent American graduate of Harvard Law School, in preference to a continental jurist with exposure to Romano-Germanic codes. As

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77 Fisher, above n 21, 8.
79 Paul, above n 67, 24.
82 Ibid.
Paul believed lawyers were needed for various vital roles in the process of rational development in Ethiopia, the teaching of land law (and hence Book III of the Ethiopian Civil Code) ought to be sensitive to various disciplinary perspectives, not just the recitation of Book III’s orthodox and Eurocentric views on landed property. His firm belief in the role of law and lawyers in social change (including land reform) must have contributed to his decision to retain the services of an American, rather than European, to teach property and land law in Ethiopia’s first law school. In one of his letters with the Harvard Law School, which had been requested by Paul to fund Dunning to join Haile Selassie I University, he writes: ‘Dunning’s previous work in Kenya on land law, and the fact that Ethiopia had adopted a Civil Code that was to “displace a considerable body of traditional [land] law” of its own,’ mean that it was ‘key to “have[e] a man of Mr. Dunning’s caliber associated with” his faculty’. In assigning Dunning, Paul was, thus, contesting David and his continental counterparts at Haile Selassie I University. For the continental jurists, the engagement of continental jurists or at least Ethiopian law graduates from Quebec-Canadian faculties to teach Ethiopia’s code-based property law was what they hoped for.

Although Dunning’s assignment was probably one of the many instances where the Americans offended the Europeans involved in Ethiopia’s legal modernisation projects, it did not result in any significant departure from French approaches to teaching Book III. Dunning, who, like Paul, was a critic of the ‘orthodox’ doctrinal approach, tried to keep his method closer to the French approach that David was proposing Ethiopia should adopt. First, the Harvard-graduate spent the academic year 1964-65 as a student of the Faculty of Law of the University of Paris in order to prepare himself to teach property law at the newly founded university in Addis Ababa. While in Paris, he studied French property law (the droit des biens) to feel familiar with Romano-Germanic code’s approach to property, and met with René David to discuss the latter’s work in drafting the Ethiopian Civil Code. Second, upon starting teaching Book III at Addis Ababa, he excluded the ‘unconventional’ parts of Book III (e.g. the title on collective exploitation of property) from the ambit of the curriculum for ‘Property Law of Ethiopia’. Dunning and former students

85Krzeczunowicz, above n 26, 70.
86Harrison C. Dunning, ‘Some Thoughts on Existing Curricula of African Law Schools’ Jacques Vanderlinden (ed), Proceedings of the Conference on Legal Education in Africa (Addis Ababa, 1968) 69 (Dunning posited the goal of legal education in Africa should be ‘to impart legal skills rather than doctrine’).
87Email Interview with Professor Harrison Dunning (Jan. 7-10, 2016)
88Ibid.
89Ibid; see also Harrison Dunning, Property Law of Ethiopia (Haile Selassie I University, Unpublished Teaching Material, 1967).
of law at Haile Selassie I University do not, thus, agree that legal education in the Americanised Law Faculty was solely American-oriented or indifferent to continental approaches to code-based legal education. They maintain that the faculty was, despite the deans and many of its faculty being from the USA, ‘a mixed’ one with ‘lots of different approaches’.90

In sum, the competition over the staffing and curriculum of the Faculty of Law of Haile Selassie I University shows the continuing contest over the Ethiopian Civil Code project in social fields where transnational actors with divergent views on the future of legal education in Ethiopia dominated. As the next section further demonstrates, the American era in the field of Ethiopian legal education ensured the continuity of the contest. That is, it fostered the subjection of the Ethiopian Civil Code project to newer interpretations and, hence, modernisms (including Marxist modernism) as much as it helped imperial Ethiopia produce its first generation of locally-produced elite custodians of its imported legal codes.

6.3. THE STIMULATION OF ALTERNATIVE LEGAL MODERNISMS

6.3.1. The Return of Social Critique: The Civil Code and Jurists of Haile Selassie I University

As noted in Chapter Two, some optimist views on the Ethiopian Civil Code project blamed a lack of code-trained Ethiopian jurists for imperial Ethiopia’s struggle to ‘grow into’ the code. The huge American investment in Ethiopian legal education, and higher education in general,91 was expected to counterbalance imperial Ethiopia’s considerable pre-codification disadvantage in ‘implementational facilities’.92 The most highly funded SAILER project – the Law Faculty of Haile Selassie I University – was, however, slow in the mass training of code-trained lawyers. Between 1964 and 1974, the Law Faculty managed to train a total of 1,528 graduates out of which 227 were LLB holders.93 This slowness can be attributed to the budget and its ‘elitist’ curriculum that discouraged a rapid production of code-trained technicians of law.

With these law graduates, imperial Ethiopia was able to replace the transnational jurists at Haile Selassie I University.94 Similarly, it was able to

90Email Interview with Professor Harrison Dunning (Jan. 7-10, 2016); Interview with Dr. Elias Nour (September 07, 2015, Addis Ababa, Ethiopia); Interview with Professor Tilahun Teshome, Addis Ababa University (9 October 2015, Addis Ababa, Ethiopia).
91Zewde, above n 47, 186 et seq.; Markakis, above n 13, 152.
92Beckstrom, above n 4, 572 et seq.
93See Short History, above n 21, 175.
94The tenth dean’s report declared the ‘Ethiopianisation’ of the national law school as ‘substantially complete’ (see Cliff F. Thompson, ‘Tenth Annual Report from the Dean’ (1973) 9 Journal of Ethiopian Law 419, 419.
fully ‘Ethiopianise’ its two highest courts where foreigners presided until the 1960s. Nevertheless, the possible spaces for these new forces of legal modernity in the wider ‘legal field’ were still dominated by local actors with little or no access to the cultural details of imported laws and institutions. The graduate pool was not big enough to allow them dominate the ‘legal field’ that was emerging in the bureaucratising empire.

What is, in my view, the most enduring effect of the American interlude in Ethiopia’s legal modernity was not related to the production of code-trained lawyers for post-codification imperial Ethiopia, or limiting Abyssinian imperialism in post-codification Ethiopia. Instead, it was the stimulation of alternative modernisms (a kind of post-semicolonial jurisprudence, if you will) that was critical of imperial Ethiopia and its semicolonial legal modernity. As I have demonstrated in Chapter Four, the discursive space for the articulation of Ethiopian (legal) modernisation in the first half of the 20th century was dominated by ‘Ethiopian Japanisers’ who, inter alia, called for the Europeanisation of the Fetha Negast. When imperial Ethiopia’s Europeanised Fetha Negast finally arrived and another related project of producing code-trained lawyers commenced, a new but more radical force replaced the long lost ‘Ethiopian Japanisers’ as the dominant articulators of Ethiopian modernity. Based largely at the then young Haile Selassie I University, this new force began to engage in a critique of imperial Ethiopia more radical than that of the ‘Ethiopian Japanisers’ – an Ethiopia that disappointed many commentators who had hoped for more than reluctant and tardy legal modernisation. The post-semicolonial jurisprudence that the transnational actors in the field of Ethiopian legal education promoted (see below) and the parallel (if more radical) ‘land reform’ discourses of the leftist Ethiopian Student Movement (see section 6.3.2) show the arrival of new actors with new/alternative visions. In the remainder of this section, I elaborate on what I have called post-semicolonial jurisprudence of the transnational actors in the field of legal education and its implication for the Ethiopian Civil Code project.

6.3.2. Post-semicolonial jurisprudence

The American era is celebrated as the heyday of legal scholarship in Ethiopia. Brun-Otto Bryde, a German jurist who visited the American-led law school in the early 1970s, admired the ‘outstanding’ professional commitment and scholarly atmosphere he witnessed at the Law Faculty of Haile Selassie I University.

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95Feyissa, above n 10, 130.
96The reception of European-style law and institutions presented opportunities for a host of actors to join the legal profession (See, e.g., Thomas Geraghty, ‘People, Practices, Attitudes and Problems in the Lower Courts of Ethiopia’ 6 Journal of Ethiopian Law 427, 453-456).

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Similarly, Ethiopian legal scholars of the 21st century remember the formative years of the Law Faculty of Addis Ababa University for its dynamic legal scholarship. Aspects of that legal scholarship culminated in the production of various commentaries and textbooks, most of which still serve as authoritative texts decades later. Almost all published in English, the commentaries and textbooks were exclusively authored by the American and European expatriates. On areas of laws covered by the codes, the contribution of Europeans dominate, while Anglo-Americans dominate in constitutional and public laws (including property). Finally, although doctrinal works trying to expose the meanings of the rules in the code dominate the contents of the *Journal of Ethiopian Law*, works informed by the then current American legal thinking (e.g. law and social change) were not uncommon. In so far as matters covered in Book III are concerned, the works of the American professor Harrison Dunning and his Ethiopian student Bilillign Mandefro can be singled out (see below). While the locally read *Journal of Ethiopian Law* appeared to be the most important outlet for scholarly discussions regarding imperial Ethiopia’s laws and its metropolitan legal system, the transnational jurists published their works on Ethiopia’s legal modernisation projects in law periodicals in the United States and Europe as well. As such, works that appeared in foreign law journals are also discussed as forming part of the post-semicolonial jurisprudence. I start the review with the works of the American jurist, Harrison Dunning, who taught property and land law at Law Faculty of Haile Sellassie I University (1965-1968).

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100 Short History, above n 21, 172.
101 A 1973 Dean’s report noted that there were 42 teaching materials for LL. B program, all of which were prepared by the expats. For a partial list of the published and unpublished works as well as the role of the expats in the ‘Ethiopianisation’ of teaching materials, see Thompson, above n 94, 419.
Dunning’s scholarship drew attention to three landed property matters in post-codification imperial Ethiopia. These are (1) expropriation, and (2) land reform, and (3) property law and economic development. Dunning, who described Ethiopia’s imported codes as ‘fascinations of students of the reception of western law in non-Western countries’ was also a keen observer of the reception of the imported codes. He also initiated and taught a course in land reform law. In the land reform law course, taught twice while an assistant professor of law at Haile Selassie I University (1965-1969), he is said to have tried to deal with ‘the realities of land law in various areas [geographies of landed property] of Ethiopia’. He was also likely one of the professors behind a series of seminars on law and economic development held at the Faculty of Law in the 1960s.

A cautious optimist of the Ethiopian Civil Code project and a critic of Ethiopian attitudes that ‘the best is whatever is done in the West’, Dunning was concerned with the judicial application of the expropriation rules of the Civil Code in late imperial Ethiopia. As noted in Chapter Four, the Civil Code contains rules on expropriation. Dunning considered these rules important additions to the law of imperial Ethiopia, where various government agencies exercised statutory or other powers of expropriation dissimilarly. In particular, he was puzzled as to why the Imperial Highway Authority (IHA) got away with its practice of expropriating land without paying compensation to individual landowners as it should have done under the rules of the Civil Code. The IHA continued to base its expropriation and compensation practice on a 1951 proclamation and appeared indifferent to the changes

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109Email Interview with Professor Harrison Dunning (Jan. 7-10, 2016)

110Ibid.

111Paul, above n 71, 524 (noted that the Faculty of Law held series of seminars on law and on law and economic development with sessions providing, inter alia, discussions on land law problems under the Civil Code).

112Dunning, above n 86, 64.

113Dunning on Expropriation, above n 105, 220 et seq.

114Ibid. Note that IHA paid compensation in kind in some cases where it believed was justified under a 1951 law (Imperial Highway Authority Proclamation, Proc. No., 115, 1951, Neg. Gaz., Year 10, No. 5). But Dunning reasoned this would violate the rules of the Civil Code.

115Ibid art 5.
brought by the Civil Code as well as the 1955 Revised Constitution. In fact, in some instances, the IHA succeeded in moving courts to uphold the argument that its power should not be superseded by the new requirements of the Civil Code. Dunning was critical of not only the resistance of the IHA to surrender to the ‘desirable’ expropriation rules of the Civil Code, but also its attempt to move the government ‘for new legislation which would exempt it from the requirements’ of the Civil Code, based on which courts ordered IHA to pay compensation.

Dunning was also unsure if it was appropriate for resource limited imperial Ethiopia to burden itself with an unsustainable commitment for individual landownership or its corollary expropriation law. Crucially, he was critical of S.A.C.A.F.E.T., Societa Amnonima v. The Ministry of State Domains and Mines, a 1962 civil judgment by the High Court of Addis Ababa, that prohibited a government agency from evicting a leaseholder in Addis Ababa from premises that was required for government use. Sympathetic to the argument that governments of the ‘developing’ African nations should not be constrained by principles of expropriation in the same way as their ‘developed’ counterparts, Dunning argued such a move by African courts to uphold individual ownership may ‘inhibit rapid economic development that is today so badly needed and so strenuously sought all over Africa’:

The public purpose limitation is unsuited to a modern, development-oriented African state. Such a state is or should be engaged on all fronts of development – planning, initiating, and often producing. In these circumstances every development project, even managed by private persons for their own profit, directly serves the public interest. The power of [expropriation] is an important tool in getting these development projects underway. Sites can be obtained through compulsory acquisition in places where no land market exists or where a purchaser on the open market cannot be assured of obtaining clear title. The power of [expropriation] must be viewed positively and even the most broadly worded public purpose limitation encourages a negative, restricting approach. Moreover, if the definition is expanded to include any conceivable project, the

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116The Revised Constitution of Ethiopia, 1955, Neg. Gaz., Year 15, No. 2, art 44 stating that ‘Everyone has the right, within the limits of the law, to own and dispose property. No one may be deprived of his property except upon a finding by ministerial order issued pursuant to the requirements of a special expropriation law enacted in accordance with the provisions of…the present Constitution, and except upon payment of just compensation determined, in the absence of agreement, by judicial procedures established by law’.

117Dunning on Sub-surface Stone, above n 104, 450.

118Dunning on Expropriation, above n 104, 221-224.


120Dunning Dunning on Eminent Domain, above n 107, 1315.
limitation is being retained simply for ornamental or sentimental reasons, and is misleading.\footnote{121}

This is a criticism of a strict application of the Civil Code’s rules on expropriation and by extension individual landownershio. Dunning’s thesis against a full-blown adoption in Africa of a western style expropriation regime that gives primacy to individual ownership may have been influenced by the then current ideology of ‘the new international economic order’,\footnote{122} as much as it was shaped by his encounter with cases involving Ethiopian government agencies such as IHA.\footnote{123} His indirect call for a more limited individual ownership in Ethiopia (and Africa in general) may be compared to David’s proposal for a geographically qualified application of individual ownership in imperial Ethiopia. Both are inspired by an understanding of the peculiar temporality of the concepts of individual ownership (and other related western notions of private property) in ‘developing’ Africa. In arguing for a broader state prerogative over individual landownership in Ethiopia, Dunning was, however, suggesting the need to limit the scope of individual landownership further than that which David had imagined in drafting Book III. The argument that individual landownership should be constrained so that the post-semiccolonial state could perform its modernisation projects unhindered by legal concepts borrowed via an ambivalent performance of semicolonial legal modernity, also lends (unintended) support for the imperialism – now called ‘development’ – of late imperial Ethiopia.

Imperial Ethiopia, which was being disciplined by the concept of individual ownership in ways noted above, was, however, less troubled in expropriating (without compensation) tribal lands which, under David’s Code, were conceived as ‘agricultural communities’. Dunning, who considered the Civil Code’s agricultural communities as ‘mild’ attempts at restructuring the rist system, was also concerned with a lack of meaningful rural land reform in Haile Selassie’s Ethiopia.\footnote{124} Particularly, he was disappointed by the impossibility of land reform on behalf of imperial Ethiopia’s peripheral subjects.\footnote{125} As noted in Chapter Four, tenancy was widespread in the highland peripheries to which, he rightly held, the private property principles of Book III were applied.\footnote{126} This led Dunning and others to look for solutions to the miseries of the peasants of peripheral Ethiopia within the agricultural tenancy

\footnote{121}{Ibid 1313.}
\footnote{122}{Harry Johnson, ‘The New International Economic Order’ (Woodward Court Lecture, University of Chicago, Selected Papers No. 40, 1976) 1.}
\footnote{123}{Dunning Dunning on Eminent Domain, above n 107, 1310.}
\footnote{124}{Dunning on Land Reform in Ethiopia, above n 106, 278.}
\footnote{125}{Ibid 277 et seq.}
\footnote{126}{Ibid.}

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provisions of the Civil Code and/or an improved version of the same. He was discouraged from this, as any move to improve the legislative status of the tenant by, for example, entitling him or her to a minimum four year tenancy. Such reform was interpreted by the powerful landowning class as ‘an attack on their prerogatives,’ and hence, defeated. Writing some four years before the 1974 Ethiopian Revolution, he seemed pessimistic about agrarian land reform in favour of imperial Ethiopia’s colonial subjects, for there was no ‘serious political pressure’ for land reform by locally organised political forces.

In late imperial Ethiopia where, per Dunning, there was no ‘serious political pressure for land reform by locally organized political forces’, students of Haile Selassie I University had become the ‘the only organised group to openly opposing [sic] autocratic monarchical rule’. Students rallied in support of the failed coup (1960) and tenancy reform bill (1965), published anti-government opinions, and eventually formed political parties on Marxist platforms which called for the overthrow of Haile Selassie’s regime. Some of these students also joined Dunning in the scholarly critique of the lack of land reform in late imperial Ethiopia.

In an article published in the Journal of Ethiopian Law in 1968, a former professor of property law at Haile Selassie I University who had been a student of Harrison Dunning, Bilillign Mandefro, presented the Civil Code’s agricultural communities as ‘a measure of a land reform, a purely transitional measure to facilitate the evolution of some kind of individual ownership’. Unlike Dunning, Mandefro argued that the concept of agricultural communities concerned literally all villages and tribal communities that maintained their own land tenure system. Further, he criticised the Codification Commission for rejecting a substantial part of David’s initial draft on agricultural

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128Dunning on Land Reform in Ethiopia, above n 106, 281.


132Mandefro, above n 83, 192.

133Ibid 145-146.
communities. For him, the rejection was unwise as the enforcement of the remaining skeletal rules on agricultural communities necessitated the incorporation of the rejected parts of the draft. Also, Mandefro expected an easy endorsement of the law on agricultural communities by at least the sedentary communities of imperial Ethiopia:

As [agricultural community] was, to a large extent, an embodiment of certain customary rules, it would have been readily accepted in most of the sedentary communities concerned. It would have been accepted in the pastoralist communities, which would have been affected by it only in a very limited number of cases. As the [law and its draft] had a sedentary inspiration, most of its provisions would not have been applicable for resolving disputes particularly connected with a pastoralist mode of living.

Although Mandefro thought that the concept of agricultural communities was meant to remove ‘vast stretches of land in the Empire from the ordinary application of the Civil Code [that is, individual ownership]’, that removal was thought to be only temporary. This was because the alleged policy priority of Haile Selassie’s government was, Mandefro claimed, ‘to make land tenure uniform in the Empire’. Mandefro hoped agricultural communities would play a crucial role in the harmonisation of the diverse indigenous land tenure systems in imperial Ethiopia and the gradual consolidation of a uniform tenure system predicated on individual ownership. He called upon the government of Haile Selassie to transfer the task of translating agricultural communities into practice to the Ministry of Land Reform and Administration (MLRA). According to Mandefro, who himself was a legal expert at MLRA, the Ministry of Interior (the body chosen under the Civil Code for implementing agricultural communities) was not ‘best fit to carry out’ the task.

MLRA was a bureaucratic agent, Mandefro argued, more fit to facilitate the actualisation of agricultural communities in rural Ethiopia. The government agency established to deflect international and local criticism on the slowness (or absence) of agrarian land reform in imperial Ethiopia. Funded by various international donors, MLRA was widely considered a welcome addition to imperial Ethiopia’s property politics. It undertook survey studies, compiled data on land tenure, prepared draft bills on land-related matters (particularly agricultural tenancy), and prescribed policy options for the government of

134Ibid 176 et seq.
135Ibid 176.
136Ibid 191-192
137Ibid.
138Ibid 192.
139Ibid.
140Dunning on Land Reform in Ethiopia, above n 106, 287.
141Ibid; Mandefro, above n 83, 195.
Haile Selassie. However, officials of MLRA preferred private land tenure over indigenous property systems, notwithstanding calls for caution in abolishing the latter in favour of the former. MLRA was largely pessimistic about the rist system which some observers noticed was somewhat inimical to ‘development’. Mandefro’s characterisation of agricultural communities as a transitional measure to facilitate the consolidation in Ethiopia of a uniform private system of land tenure reflected the dominant land reform views of MLRA and its legal experts. These experts were drawn mainly from Haile Selassie I University and the Land Tenure Center of the University of Wisconsin-Madison (USA).

Not all local legal scholars calling for land reform in late imperial Ethiopia were positive about harmonisation of land tenure based on the notion of individual ownership. For instance, Alemseged Tesfai, a graduate of the Faculty of Law at Haile Selassie I University who studied for his PhD at the Land Tenure Center of the University of Wisconsin-Madison, aired his scepticism about the viability of land reform aiming at ‘uniformization’ and individualisation of land. For Tesfai, the attempts to destroy the ‘egalitarian’ ideals of ‘communal’ systems of ownership in place in various regions of the empire was futile, albeit ‘more desirable’ for the ruling Amhara landlord class. For Tesfai and some of his contemporaries, the way forward in imperial Ethiopia’s land reform was to abandon ‘the philosophy [of late imperial Ethiopia] of encouraging individualisation of ownership’ in what he considered ‘communal areas,’ and to carry out a major overhaul based on ‘communal’ or ‘group’ rights that recognises the colonial difference between ‘northern farmers’ of the rist region and the ‘southern farmers’ of the highland peripheries. Such a critique of the positions held by MLRA and legal experts more generally in late imperial Ethiopia were further given a radical accent in the ‘land reform’ discourses of the Ethiopian Student Movement. This was the most consequential social movement in late imperial Ethiopia, in which some graduates of the law school participated (see below).

Finally, René David’s code was also critiqued for its eclecticism and liberalism. Peter H. Sand, a member of the transnational faculty of the Faculty of Law of

142Cohen and Koehn, above n 97, 235-237.
145Donham, above n 8, 28.
147Ibid 27-29.
148Ibid.
Haile Selassie I University, found David’s ‘comparative legislation’ a rather ‘less than ideal solution for the problems of law reform in developing countries’. Based on his research on court practice in post-codification Ethiopia, he suggested law-importing countries like Ethiopia apparently needed a simpler law related to a ‘particular family of legal systems’, lest we produce a kind of ‘orphan law’. For his part, Paul Brietzke, an avowed critic of the Ethiopian Civil Code, threw his support behind the Ethiopian academic left that, as will be seen, promoted socialist projects, by calling for the abandonment of the eclectic code. Writing just before the arrival of socialist Ethiopia (and probably with a learned grasp of where Ethiopia was heading with its ascendant Marxist-oriented intelligentsia), the American jurist, who taught law and development at the national law school, asked ‘Whose interests do the Civil and Commercial Codes [of Ethiopia] serve?’ He answered: ‘The Codes have... served the interests of those who would preserve the status quo – the westernized, landed and urbanized elite’. For the American comparative lawyer, who was in Addis Ababa during the height of the revolution (1973-1975), the ‘practical effect’ of the imported legal codes had been ‘the appearance rather than the reality of reform’. Accordingly, he called for their replacement with codes drawn from socialist Europe, which, he reasoned, attempted ‘to combine the stabilizing idea of a Civil Code with the extensive discretionary powers of economic-administrative agencies’. Britetzke’s and, to some extent, Sand’s critique resonated with that proposed by the organised, politically engaged, and most radical social critique of state and society relationships nurtured by the American-funded Haile Selassie I University: the Ethiopian Student Movement (see below).

6.3.3. The Ethiopian Student Movement and ‘Land to the Tiller’: Prelude to the 1974 Ethiopian Revolution

The Ethiopian Student Movement was basically a protest by Ethiopian university students against Haile Selassie’s regime. Very active in the late 1960s and early 1970s, the movement was spearheaded by students of Haile Selassie I University and Ethiopian students in the diaspora, predominantly in the USA.

In the Ethiopian students’ circle, Marxism was the most admired political ideology. Enraged by the unresponsiveness of Haile Selassie’s regime (an ally of

150Ibid.
152Ibid.
153Ibid.
154Ibid.
155Zewde, above n 131, 220-226; see also Balsvik, above n 131, ch 2.
the USA in the Cold War) to demands for political reforms, and inspired by peasant protests in various parts of the country, the students found Marxism very attractive. The popularity of Marxism among Ethiopian students of the 1960s and 1970s can, in part be explained, by the emergence of new (imitable) models of political and social systems in what Norman F. Cantor called the ‘age of protest’. Living in the ‘age of protest’ and shouldering the burden of articulating the future of Ethiopia, the students (in contrast to the ‘Ethiopian Japanisers’ before them) could not help but look for models beyond the West or Japan. A former participant in the Ethiopian Student Movement wrote:

The period… was an era of anti-colonialist struggle in Africa, social revolutions in the far east and Latin America, and the civil rights movement in America. It was an era when the Soviet Union and China were recognised as important global social forces. It was to these quarters that the Ethiopian radical generation kept on looking for solutions to the ills of the country. (Italics added).

Part of the worldwide trend of articulating ‘Third World’ discontent in Marxist terms, the Marxism of the Ethiopian Student Movement was deep. Students of Haile Selassie I University were not only encouraged (by some radicals among them) to embrace Marxism, but also labelled passive students as ‘reactionaries’ and harassed those who did not at least pretend to have adopted Marxism. An alumnus of the Law Faculty of Haile Selassie I University remembers the Marxist disposition at the nation’s first university as follows:

Marxism was presumed to be an unchangeable truth, even if it was not understood. It generated a mass hysterical loyalty. The student leadership recast Marxism into its mold, and every element of youth discontent was defined in Marxist terms. Many did not read about it, but that was beside the point. They were obsessed with it. Most accepted it as true even before they read about it, and when they did read they found the “self-evident” truth. They were not seeking to establish truth. It was there already.


161Ibid.
This ‘unchangeable truth’ was so contagious it affected students, who were not officially participating in the Ethiopian Student Movement. For instance, the former law student of Haile Selassie I University, whose testimony was quoted above, conceded his LLB thesis ‘reflected the radicalism [he] had absorbed from the university climate’ by arguing for the nationalisation of land.\textsuperscript{162} A radical and anti-regime, if not necessarily Marxist, atmosphere was also observed in the American-funded and apparently anti-leftist Law Faculty of Haile Selassie I University.\textsuperscript{163} John M. Cohen, a former professor at Haile Selassie I University, noted:

By the mid-1960s a more liberal, if not radical, faculty was emerging. This was particularly the case in the Law School and the Faculty of Arts, where U.S., Canadian, and European faculty members taught courses and encouraged students to write theses on development and land tenure. Clearly, a number of law students were ‘radicalised’ when they dug into archival material on land and local administration. This was also the case with judges, advocates, police prosecutors, ad government bureaucrats charged with law-oriented tasks who took law school extension courses and had access to the school’s growing bilingual [Amharic and English] law publications.\textsuperscript{164}

Two questions were particularly important to the Marxist Ethiopian students: (1) the land question, and (2) the nationalities question. Various issues of student publications (some of which were printed abroad and smuggled into Ethiopia by the movements’ overseas wings in Europe and North America) were replete with Marxist analysis of Ethiopian landlordism and official nationalism.\textsuperscript{165} The Marxist critique of landlordism and Ethiopian nationalism was persuasive because of, \textit{inter alia}, the existence in Ethiopia of a regime ‘with exploitative landlords and centralised royal authority’ comparable with the

\begin{itemize}
\item \textsuperscript{162}Ibid 9. My attempt to access unpublished LLB thesis written by Haile Selassie I University graduates during the era of land to the tiller and beyond was unsuccessful for two reasons: (1) the Law Library of Addis Ababa University was closed for most of the time during my field trip to Ethiopia (August-September, 2015) and (2) the misplaced thesis archive of the law school did not allow me to locate select works on subjects like land reform. Consequently, my construction of the link between Ethiopian Marxism and postrevolutionary Ethiopian land reform measures is based primarily on published works and interview with select actors in the legal academia and practice.

\item \textsuperscript{163}Harrison Dunning, whom I asked about the claimed Marxism of his former law students at Haile Selassie I University, prefers to call them ‘antiregime’ than Marxists. Email Interview with Professor Harrison Dunning (Jan. 7-10, 2016).


\end{itemize}
ancien régime in pre-revolutionary France (or even better, Russia). Accordingly, unlike the ‘Ethiopian Japanisers’ before them, for the left-oriented post-World War II Ethiopian intelligentsia, Haile Selassie’s Ethiopia appeared less Japanese and more pre-socialist Russian. Addis Hiwet, one of the very few published leftist critics of imperial Ethiopia, thus wrote:

Unlike its European (and Japanese) and so much like its Tsarist counterparts, the modern state arose in Ethiopia not as an agency of social-economic change but as a method, as an apparatus of administration and government with tremendous resources and capacity for repression... Any superficial consideration of the structure of government and administration... would amply illustrate how much the feudal heritage is pervasively present in every nook and cranny of the state structure. And this despite and even because of very widespread capitalist relations.

The university students’ concern with imperial Ethiopia’s land law can be traced to as early as 1965, when they staged ‘large scale demonstrations’ in support of a tenancy reform bill that was pending in Parliament. “Away with Serfdom” and “Land to the Tiller” were among the slogans chanted by the demonstrators. Crucially, the latter was also ‘the heading of an editorial’ of a 1965 issue of News and Views, a student publication. The editorial argued for land reform so that Ethiopia could ‘keep in pace with the emerging countries of the world’. Haile Selassie’s regime, which imported legal codes in order to ‘keep pace with the changing circumstances of the world’, bothered little with the students’ call. Ironically, the regime’s technocrats, including Aklilu Habtewold (who, as seen in Chapter Four, was instrumental in initiating the Civil Code project) were ‘not certain to what extent land reform measures were a pressing requirement’ for Ethiopia – an Ethiopia which for the Marxist students was a military-feudal-colonial empire.

Although imperial Ethiopia established the Ministry of Land Reform and Administration in 1966, Haile Selassie’s regime continued to frustrate both its international allies and the radicalising students by, inter alia, failing to turn legislative drafts into official laws. In the eyes of the leftist intelligentsia as well as the foreign commentators, these reforms would have only endorsed the

167Hiwet, above n 131, 79.
168Balsvik, above n 131, 22.
169Ibid 22-23.
170Balsvik, above n 163, 500.
171Hiwet, above n 131, 3.
existing agricultural tenancy practices. The more change resistant and repressive the regime became, the more leftist the students’ demands. The student movement, which grew stronger in terms of organisation and sophistication towards the eve of the 1974 Revolution, began setting out programs for revolutionary change that included land reform. In 1972, the World-Wide Union of Ethiopian Students adopted what it called The National Democratic Revolution Program (hereinafter NDRP).

The NDRP called for the revolutionary overthrow of Haile Selassie’s regime. As it saw ‘an excellent revolutionary situation’ in late imperial Ethiopia, it found it appropriate to list the targets of the anticipated ‘Ethiopian Revolution’. Among the targets identified were ‘the feudal landlord class’ whose economic power rested on land. It conceived the feudal landlord class as composed of ‘big’ and ‘lower’ feudal landlords. Big feudal landlords included the Emperor, the royal family, the nobility, the Ethiopian Orthodox Church and other high dignitaries who together were reported to constitute 0.01% of the total population and yet owned 70% of the Ethiopia’s arable land. NDRP explains why the big feudal landlord class were the enemy and target of Ethiopia’s future revolution as follows:

These social parasites engage in no productive work but live luxuriously in the capital city or other cities far away from their estates. The big feudal landlord class is strongly tied with (in fact it has now become an appendage of) imperialism [American imperialism] and is the centre of counter-revolutionary forces in Ethiopia. Being the ultra-reactionary wing of the feudal landlord class it is absolutely hostile even to the minimum reformist demands, let alone a revolutionary change.

The ‘lower feudal landlords’, whose numerical size, ethnic composition and geographical spread is thought to be different from the ‘big’ feudal landlord class, included absentee landlords with rural landholdings and provincial functionaries of imperial Ethiopia, including judges and police officers who, in their view, ‘participate in the repression of the peasants’ at the grassroots.

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175 See, generally, Zewde, above n 131; Hiwet, above n 131, 94-98; Balsvik, above n 131, 19-46.
177 Ibid 522.
178 Ibid 517 and 523 et seq.
179 Ibid 526.
182 Ibid 527.
183 Ibid 527 et seq.
The revolution, the NDRP forecasted, ‘will undoubtedly erode’ the political and economic power of the feudal landlord class.\textsuperscript{184}

The leftist Ethiopian students, who Randi Balsvik\textsuperscript{185} compares to students in pre-revolutionary Russia and China, continued agitating for radical land reform when the revolution they were anticipating edged closer with the assumption of power in September 1974 of the \textit{Dargue}, the military junta that overthrew Haile Selassie I.\textsuperscript{186} It was not clear from the beginning if the \textit{Dargue} would take the Marxist path to revolution as preached by the students since the 1960s or remain content with a simple takeover of the power from the Amhara landed elites.\textsuperscript{187} A November 1974 issue of \textit{Democracia}, the publication of one of the leftist political parties established abroad by former participants in the Ethiopian Student Movement, urged the \textit{Dargue} to realise ‘Land to the Tiller’ by abolishing landlordism.\textsuperscript{188} It argued that ‘there is no change without fundamentally altering the relationship between the broader Ethiopian people and land’.\textsuperscript{189} Further, it listed the land reform measures that the authors the \textit{Dargue} must carry out to return land to the tiller. These included:

1. The total abolition of agricultural tenancy;
2. The immediate implementation of the abolition reform;
3. No measures that would indirectly turn former tenants into rural labourers;
4. Encouraging collective and state farms;
5. Confiscating land (without compensation) from the landlord class and redistributing it to the landless for free;
6. Fixing the maximum size of agricultural land based on the particularities of the locality where land redistribution is to be carried out.\textsuperscript{190}

Seen from the perspective of the Civil Code project, these prescriptions for legal change squarely depart from the earlier concerns that made the Civil Code possible. For instance, the leftist Ethiopian students’ articulation of the future of Ethiopia’s legal system did not embrace Europeanised \textit{Fetha Negast} as a goal or symbol in the same way as the ‘Ethiopian Japanisers’ of the early 20th century did. In fact, the leftist Ethiopian intellectuals of the post-codification period wanted the rewriting of the Civil Code and other land laws of imperial Ethiopia and state practices which, as seen in Chapter Four, helped consolidate dispossession, tenancy, and landlordism (Abyssinian landlordism to be exact) in Ethiopia. Their call for expropriation of land without compensation

\textsuperscript{184}\textit{Ibid} 528.
\textsuperscript{185}Balsvik, above n 165, 497.
\textsuperscript{186}Andargachew Tiruneh, \textit{The Ethiopian Revolution 1974-1987: A Transformation from an Aristocratic to a Totalitarian Autocracy} (Cambridge University Press, 1993) 85 et seq.
\textsuperscript{187}\textit{Ibid}; Zewde, above n 47, 236 et seq.
\textsuperscript{189}\textit{Ibid}.
\textsuperscript{190}\textit{Ibid} 4-5.
resonated with the call by Harrison Dunning, among others, for qualified reception of the concept of individual ownership. Further, the ascendance of these subversive discourses about property law during the 1960s, which in Ethiopia’s legal modernisation literature is celebrated as a decade of legal revolution, reveal that the Civil Code had arrived at the wrong time. It arrived at a point when Japan (liberalism) was replaced by the likes of China (socialism) as a major symbol of social progress among Ethiopian intellectuals of the day.

As will be explained in Chapter Seven, these ideas influenced the Dargue, which embarked on (1) a project of a socialist civil code, and (2) radical land reform measures. Despite the fact that incomplete the socialist civil code project was never completed, it affected the Ethiopian Civil Code project profoundly.

6.4. CONCLUSION

The chapter reveals the diversity of legal knowledge in imperial Ethiopia relates to the diversity of those exporting legal knowledge The British were instrumental in the organisation of imperial Ethiopia’s judiciary. The French were dominant in the field of codification. Ethiopia’s defencelessness to the export and ‘globalisation’ of the modern state and its legal systems also meant additional opportunity for various transnational actors to influence juristic development, particularly after the Second World War. The Ford Foundation’s SAILER (the Staffing of African Institutions of Legal Education and Research) project that led to the establishment of imperial Ethiopia’s only national law school (1963-1973) and the affiliation of scores of American and European legal academics with it is a typical example.

The ascendency of transnational actors, particularly American jurists, in the field of legal education was hardly surprising. As a latecomer to the culture of the modern nation (particularly its ‘universalised’ legal systems), Ethiopia has been culturally more dependent on transnational actors in both codifying its laws and localising them than its historical counterparts such as Japan. The agency of late imperial Ethiopia appeared limited to choosing between the diverse exporters of legal knowledge – that is, partners in modernism and imperialism. As noted, late imperial Ethiopia’s selection of ‘western’ partners in legal imperialism was motivated by its desire to limit the cultural influence of select European powers (notably, Britain) and capitalise on the resources made available by its major ally in the fight against communism, the USA.

192Feyissa, above n 10.
193Jembere, above n 191, 195 et seq.
194See, eg, Noda, above n 32, 43-62 and 139 et seq.
Anti-communist African regimes like imperial Ethiopia were ‘the land of the possible in terms of legal education reform’ for SAILER, who aspired to create ‘a new law school that [they] claimed would produce the next generation of not just legal, but political, societal and nation building leaders as well’. As such, René David and other continental jurists contested American efforts to take legal education in code-importing Ethiopia in a different direction. But the views of the Americans remained dominant. Although the Americans, led by James Paul, did not entirely reject the ideas of European actors in the field of Ethiopian legal modernisation, they found it appropriate to redesign the law curriculum of Haile Selassie I University with a view to introducing Ethiopia to American teaching methods, and hence, soften French influence in Ethiopian legal education.

The American interlude in Ethiopian legal education culminated with the graduation of imperial Ethiopia’s first post-codification code-trained lawyers. It was also a period known for its stimulation of scholarly discussions regarding late imperial Ethiopia’s legal modernity. The academic and political discourse pertaining to the Ethiopian Civil Code project and land reform in late imperial Ethiopia demonstrates the arrival of new forces, and hence, new modernisms. An important effect of what Bahiru Zewde calls the ‘American Era’ in Ethiopian history was the pluralisation of the actors, and thus the transformation of what I call the field of Ethiopian legal modernisation. The appearance of a new generation of elites versed in the languages of imperial Ethiopia’s newly imported laws and Marxism (another discourse of modernism gaining momentum in Ethiopia and postcolonial Africa in general) are a case in point. Apart from the relatively slow production of code-trained lawyers versed in imperial Ethiopia’s products of semicolonial legal modernity (e.g. the 1960 Civil Code), the launch of a US-funded law school contributed to the emergence of new social forces that added to the inter-temporal contestability of the Ethiopian Civil Code project. Hence, the double effect of post-codification imperial Ethiopia’s performance of legal modernity in the field of legal education, where American cultural influence was more profound than that of continental Europe, and the irony of a Cold War funded scheme which led to the spread of Marxism instead of liberalism.

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195 Krishnan, above n 38, 292-293.
196 Zewde, above n 47, 184.
197 Hazard, above n 9, 575.
CHAPTER SEVEN

Law assumes multiple meanings and forms over time.¹

7.1. INTRODUCTION

It is common among students of the Ethiopian Civil Code project to compare the Ethiopian Civil Code with that of Turkey and Japan. As noted in Chapter Three, however, the Ethiopian Civil Code project can be contrasted with its Japanese and Turkish predecessors in terms of its peculiar Ethiopian temporalities. There are major breaks from the past when the initial legal transfer occurred. In contrast to the civil code projects of Turkey and Japan that, as noted, share a history of semicoloniality and imperialism with Ethiopia, the Ethiopian Civil Code project encountered revolutionary moments that altered the composition and position of Civil Code actors, particularly in Ethiopia. In contrast to the later legal transfer projects that were embedded from the outset in what students of social revolutions call ‘revolution from above’, the Ethiopian Civil Code project encountered the Ethiopian ‘revolution form above’ roughly two decades after the initiation of the legal transfer project.² This, as I have noted in Chapter Three, makes the Ethiopian Civil Code project more than a cross-cultural phenomenon.

This Chapter analyses the understudied implications of the new temporality (marked by the 1974 Ethiopian Revolution and the attendant Marxist legal modernity) on the Ethiopian Civil Code project. This chapter argues, the 1974 Ethiopian Revolution launched a new temporality for the Ethiopian Civil Code project. It produced a new political force, with new modernisation ideals; the leftist Ethiopian students that, as we have seen in Chapter Six, were gathering momentum in post-codification imperial Ethiopia. The military junta that overthrew Emperor Haile Selassie I in 1974 delivered ‘the only African’ social revolution³ of the 20th century by, inter alia, rewriting Book III of the Ethiopian Civil Code through its introduction of major postrevolutionary laws. A large factor in this (partial) subversion of the Ethiopian Civil Code project related to the replacement of the landed elites and modernist partners, the ‘Ethiopian

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Japanisers’, who dominated the field of Ethiopian legal modernisation during the imperial era. They were replaced with a left-oriented local intelligentsia that was unsympathetic to Haile Selassie’s imported legal codes or their West-centric legal modernity. The ideas of ‘Ethiopian Japanisers’, who wanted the recreation of Ethiopia as a more respectable and ‘westernised’ imperial power as Japan has been, was thus overridden by the leftist Ethiopian intelligentsia of the post-codification period.

As seen in Chapter Six, the socialist reformers, unlike the ‘Ethiopian Japanisers’, wanted to counter what they saw as the imperialist projects of Haile Selassie’s Ethiopia with, among other things, radical land reform. Following socialist Ethiopia’s rearticulation of state and society relationships through radical land laws, Book III of the Ethiopian Civil Code was eclipsed by a new set of modern laws that responded to Ethiopian students’ call for a revolutionary reconstruction of imperial Ethiopia. A major effect of the post-1974 reconfiguration of the field of Ethiopian legal modernisation (and, hence, the Ethiopian Civil Code project) was, therefore, the introspection of the major legal concepts of Book III (e.g. individual ownership) which, in Marxian parlance, legitimised landlordism in imperial Ethiopia. The overriding of the ‘Ethiopian Japanisers’ with the leftist Ethiopian intelligentsia and the resultant rewriting of Book III through passage of laws evince the contested nature of late imperial Ethiopia’s legal transfer projects.

The next section briefly outlines the 1974 Ethiopian Revolution and its implication for the composition and position of actors in what I call the field of Ethiopian legal modernisation. The aim is to elaborate on the genesis of socialist Ethiopia’s radical land laws that pronounced the (legal) conceptual break from late imperial Ethiopia, and its imported legal code. Section 7.3 reviews postrevolutionary Ethiopia’s ‘basic’ laws. The implications of socialist Ethiopia’s Marxist modernism on the Ethiopian Civil Code project, which was not completely abandoned (contrary to some claims⁴), is discussed in section 7.4. Finally, section 7.5 summarises the major claims of the chapter.

7.2. THE 1974 ETHIOPIAN REVOLUTION: PRÉCIS

On the 12th of September 1974, representatives of a committee of junior military officers went to Emperor Haile Selassie’s palace and ‘read a statement proclaiming his deposition’.⁵ The committee of junior military officers was formed in June 1974, following months of army mutiny and widespread protest

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against Haile Selassie’s regime. The protests were mainly civilian and urban based. A 50% rise in the petrol price led to a mass strike by taxi-drivers on the 18th February, 1974. On the same date, teachers and students came out on a strike protesting an educational reform program. The popular upsurge intensified when the Confederation of Ethiopian Labour Unions (CELU) called for a four-day general strike (March, 1974) which was followed (April, 1974) by a huge demonstration by Ethiopian Muslims demanding religious equality. Although the government tried to diffuse the protests by reshuffling cabinet, promising constitutional reform and resorting to intimidation, it did not work and the protests escalated.

Unlike in previous times, Haile Selassie was unable to stifle the popular upsurge mainly because he was isolated from the ‘men-in-uniform’. The police and military (principally non-commissioned officers) joined the protest by capitalizing on army mutinies in peripheral Ethiopia that, inter alia, demanded an improvement of the living conditions of the ‘men-in-uniform’. In an effort to coordinate the demands of the ‘men-in-uniform’, a committee (the Coordinating Committee of the Armed Forces, the Police and the Territorial Army) was established (formally in June 1974). The committee, best known by its Ge’ez name Dargue, evolved into what an Ethiopian historian has called ‘a military parliament’. The ‘military parliament’, which included the future dictatorial leader of socialist Ethiopia, Major Mengistu Haile Mariam (1977-1991), began to test the resolve of Haile Selassie’s regime by demanding more than salary increments or the improvement of living conditions of junior army and police officers. The Dargue’s demands, including the arrest of hundreds of senior officials, were allowed by Haile Selassie’s regime – a regime the power of which had already been strained by peasant rebellions, secessionist movements, and (finally) urban-based civilian protests. Despite repeatedly stating their
allegiance to the Crown, the Dargue confirmed its rising power on the 12th of September 1974, by declaring the ousting of the unsuspecting ‘Sun King’, 17 Emperor Haile Selassie I. In the same month, it christened itself as the Provisional Military Administrative Council (PMAC) and assumed ‘full government power until a legally constituted people’s assembly approves a new constitution [which was promulgated in 1987] and a government is duly established’. 18

Radical land reform is one of the things for which the Dargue is remembered. The Dargue enacted and implemented a series of laws that nationalized various means of production, such as land, which under the 1960 Civil Code can be owned privately. These measures proved the September 1974 military overthrow of Haile Selassie’s regime was more than a simple takeover of power by the military, as had been the case in numerous postcolonial African countries of the last quarter of the 20th century. In fact, students of the revolution likened the 1974 overthrow of the ancien régime in Ethiopia to ‘classical’ social revolutions such as the Chinese Revolution. 19 Messay Kebede posits:

Both the nature of the changes and the seriousness of their implementation strongly state that Ethiopia must be seen as a classic revolutionary socialist state, that the Ethiopian government has committed itself to the Marxist-Leninist development strategy and political structure, both of which have been pursued with consistency and determination. 20

The Dargue’s radical land laws were largely direct appropriations of the land reform agendas of leftist political parties that grew out of the Ethiopian Student Movement (see Chapter Six). Also, the radical land laws (see section 7.3.1 and 7.3.2 below) vindicated some critics of the Ethiopian Civil Code project who, just before the 1974 Ethiopian Revolution, called for its replacement with a new legal code with some socialist inflections. 21 As such, post-imperial Ethiopia’s ‘Marxist modernism’ 22 (re)shaped the Ethiopian Civil Code project in ways unexpected by the early students of the legal transfer project, most notably those holding

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19 See, eg, Theda Skocpol, States and Social Revolutions: A Comparative Analysis of France, Russia and China (Cambridge University Press, 1979) 287; Christopher Clapham, Transformation and Continuity in Revolutionary Ethiopia (Cambridge University Press, 1988) 242; see also Halliday and Molyneux, above n 2, 268.


what I have called the optimists’ view (see section 7.4). Moreover, the reshaping of the Ethiopian Civil Code project was largely a function of the reconfiguration of the field of Ethiopian legal modernisation because of the ‘first’ Ethiopian revolution. For our purpose, the reconfiguration is best represented by the alliance – a short lived alliance at that – of the Dargue and the civilian left in rewriting Ethiopia’s ‘law of things’, that is reimagining what I have called the Ethiopian geographies of property anew (see Chapter Four).

7.3. THE ALLIANCE OF THE DARGUE AND THE CIVILIAN LEFT IN PROPERTY LAW-MAKING

As seen in Chapter Six, the early 1970s – when the first Ethiopian revolution arrived – was the time when the critique of late imperial Ethiopia and its ruling Amhara landlord class was at its peak. Considered as a sequel of the social critique started by ‘Ethiopian Japanisers’ of the early 20th century, the social critique of state and society relationships of the era of land to tiller had a Marxist flavour. Moreover, the obsession of the social critics of late imperial Ethiopia was not the Europeanisation of the Fetha Negast (which was in fact achieved). Instead, it was the reconstitution of imperial Ethiopia into a republic based, at least in part, on Marxist ideologies that implied the replacement (or amendment) of the 1960 Civil Code with a socialist civil code.

It was not clear if the ‘military parliament’ would embrace the radical land reform measures proposed by the leftist Ethiopian Student Movement. As noted in Chapter Six, the students and the Marxist parties that grew out of their Movement continued agitating for radical land reform and the performance of ‘Marxist modernism’ in general. The Dargue’s initial motto was ‘Ethiopia First’, which was devoid of any Marxist overtones. A nationalist mantra more than anything else, ‘Ethiopia First’ was later joined by hibretasahawinet (Ethiopian socialism) when on December 20, 1974 the Dargue gave the strongest signal that it was conceding to the unrelenting agitation of the civilian left by declaring ‘scientific socialism’ as an additional state ideology. The All-Ethiopia Socialist Movement (MEISON in Amharic), one of the two most dominant Marxist parties formed by Ethiopian diaspora students in the late 1960s, allied itself with the Dargue and helped the later deliver on the ‘land question’ of the Ethiopian

24Zewde, above n 5, 240
25Ibid.
Student Movement as well as sharpen the ideology of ‘Ethiopian socialism’. The Dargue, which summarily executed what Marxist Ethiopian students called ‘big feudal land lords’ who had assumed key governmental positions in Haile Selassie’s government, wiped out the landlord class as a dominant force in land law making in Ethiopia. Also, the ‘provisional’ military government’s temporary alliance with the radical civilian left meant the replacement of the landed aristocracy and pro-individual landownership modernists with Marxist intellectuals as the most important actors in the field of Ethiopian legal modernisation, and more specifically, the field of land-law making.

This post-revolutionary configuration of the field of law making is significant. The ascendance of the formerly marginal forces of modernisation in post-revolutionary Ethiopia meant the reinterpretation of imperial Ethiopia’s semicolonial legal modernity. Hence, the reimagining of state, land, and society relationships in more ways than René David, the ‘Ethiopian Japanisers’, and the Amhara landed elites could have imagined. Put in other words, the alliance of the Dargue and the civilian left in (property) law making was, in part, the undoing of imperial Ethiopia’s modernism and imperialism that made the Ethiopian Civil Code project and its agency possible.

The first proclamation issued by the ‘provisional military government’ of Ethiopia, the Provisional Military Government Establishment Proclamation of September, 1974, suspended Haile Selassie’s last constitution. The 1955 Revised Constitution, which, as seen in Chapter Five, made some of the 1960 Civil Code’s concepts redundant, was interpreted by the new power in Addis Ababa as ‘a democratic façade for the benefit of world public opinion’ that needed replacement by a new constitution. Further, it promised the formal if selective continuity of the Civil Code – which, as demonstrated in Chapter Four, was imperial Ethiopia’s additional ‘façade for the benefit of world public opinion’.

26For more on the emergence of two competitive leftist political parties – Ethiopian Peoples’ Revolutionary Party (EPRP) and All-Ethiopia Socialist Movement (Me’ison) – out of the Ethiopian Student Movement, see Zewde Socialist Utopia, above n 23, ch 7.
27Leading figures of Haile Selassie’s government, including Aklilu Habtewold, who, as noted in Chapter Four, talked Emperor Haile Selassie into codifying its laws, were summarily executed in November 1974. Haile Selassie died in prison a year after his dethronement (September 1975). Although the former emperor’s death was officially attributed to ageing and deteriorating health conditions, some claim Major Mengistu Haile Mariam had him killed in secret. See Dawit Wolde Giorgis, Red Tears: War, Famine and Revolution in Ethiopia (The Red Sea Press, 1989) 16-21.
28The alliance between the civilian left and the Dargue could be said temporary (1974-1977) for the military dictatorship transformed itself into a vanguard Marxist party (The Workers’ Party of Ethiopia (WPE), est. 1984) after purging the leftist political forces that grew out of the Ethiopian Student Movement and vied for political domination in postrevolutionary Ethiopia. See generally Tiruneh, above n 12, 205 et seq. Zewde, above n 5, 236-56.
29Art 5, PMG Proclamation, above n 18.
30Ibid Preamble.
The proclamation declared ‘all existing laws that do not conflict with the provisions of the [Provisional Military Government Establishment Proclamation] and with all future laws, orders, and regulations shall continue in force’.31

The Public Ownership of Rural Lands Proclamation No. 31/197532 and Government Ownership of Urban Lands and Extra Houses Proclamation No. 47/197533 are the two ‘basic’ laws of revolutionary Ethiopia that, for many, symbolised the Marxist credentials of post-imperial Ethiopia. These laws, that brought the concept of public ownership of land to the centre of Ethiopian property law were also the product of the alliance of the civilian left and the Dargue. Considered by an Ethiopian legal scholar as Socialist Ethiopia’s ‘constitutional acts’,34 the proclamations represented the 1974 Ethiopian Revolution in a similar way as the Code Napoleon represented the French Revolution. As I shall show below, the proclamations rewrote land-related provisions of the 1955 Revised Constitution and Book III of the Ethiopian Civil Code (which, unlike the 1955 Revised Constitution, was not officially abrogated). And, they rewrote them in light of the ‘land to the tiller’ agenda of the leftist Ethiopian Student Movement and, indirectly, the land reform prescription of various transnational actors that dominated the field of Ethiopian legal modernisation in late imperial Ethiopia.

Before setting out the relevant aspects of the two ‘basic’ laws that epitomised post-revolutionary Ethiopia’s Marxist modernism, it should be stressed that the radical land law-making was meant to generate legitimacy for an insecure regime. Further, the laws addressed the concerns of the most vocal political forces of the time who kept calling for radical reform. If Haile Selassie’s regime aspired to engender international legitimacy by engaging in massive legal transfer projects, the military junta, which opted for radical land reform, aspired to build domestic legitimacy by enacting laws that anticipated the demands of the leftist Ethiopian legal modernisers of the time.

As noted in Chapter Six, Haile Selassie’s government had in 1966 established a government agency, the Ministry of Land Reform and Administration (MLRA), in response to mounting international and local criticism of the government’s land reform policies. Assisted by graduates from Haile Selassie I University, MLRA and other government agencies (e.g. the Chilalo Agricultural Development Unit (CADU) of the Ministry of Interior) initiated various

31Ibid art 10.
unsuccessful land reform bills in the decade before the revolution.\textsuperscript{35} After the revolution, there were, therefore, numerous draft land law bills by which the\textit{ Dargue} could perform its alternative modernism. And, it was to these drafts and their local sponsors, not to European (Soviet) legal experts, that the\textit{ Dargue} resorted for guidance. In doing this, the\textit{ Dargue} was departing from Haile Selassie’s legislative practice which, as noted, preferred foreign legal expertise when drafting major pieces of laws. Such a departure from late imperial Ethiopia’s practice was possible largely because of the redefinition of the field of Ethiopian legal modernisation as a direct result of US-funded legal education. As noted in Chapter Six, American legal imperialism in late imperial Ethiopia created a new generation of legal modernists that competed with each other for the attention of Haile Selassie’s regime and its immediate successor.

\textit{MLRA}, the legal experts of which included former participants of the leftist Ethiopian Student Movement, initially advised the\textit{ Dargue} against radical land reform that implied the ‘nationalisation’ of land.\textsuperscript{36} Although it was hoped by some that the\textit{ Dargue} would adopt draft bills that upheld the continued centrality of individual ownership in postrevolutionary Ethiopia’s land law, it finally opted for alternative drafts that centered on the notion of public landownership (see sections 7.3.1 and 7.3.2 below).\textsuperscript{37} The radical land laws that were enacted in anticipation of the similarly radical demands of the intellectual left are among the major reasons the Ethiopian Revolution is characterized as socialist. These laws, which were, as John Cohen rightly noted, ‘the product of urban Ethiopian intellectuals’ were also a probable reflection of the peripheral (ethnic) nationalism of its drafters.\textsuperscript{38} John Cohen posited ‘Oromo nationalism may have been the most important influence on the process of formulating the reform’.\textsuperscript{39} The participation of members of the ‘Oromo-dominated’ \textit{MEISON}, a leftist political party espousing the ‘nationalities’ question in the drafting of socialist Ethiopia’s radical land laws appears to support Cohen’s claim that peripheral nationalism contributed to the radicalness of\textit{ Dargue}’s land reform.\textsuperscript{40}


\textsuperscript{36}John M. Cohen, ‘Foreign Involvement in the Formulation of Ethiopia’s Land Tenure Policies: Part II’ (1985) 7东北非洲研究 1, 3-4.


\textsuperscript{38}Cohen, above n 35, 42.

\textsuperscript{39}Cohen, above n 36, 16.

\textsuperscript{40}Ibid; Interview with Abera Yemane-Ab - Pt 1 SBS Amharic. <https://www.youtube.com/watch?v=lzAZ_ClwiU>.
The adoption of the radical land laws allowed the Dargue to outdo leftist political parties that grew out of the Ethiopian Student Movement. In fact, the ‘provisional’ military government’s adoption of ‘the most radical of the proposals put before it’, against the advice of Soviet and some local experts, is explained by the Dargue’s desire to undermine the civilian left – its formidable competitor for power during the early days of the revolution. An insider wrote:

These [nationalisations of all means of production] measures had been envisaged by only the most extreme among the intellectuals...Many of the Council [the Dargue] members did not want to be permanent rulers; but the more ambitious, especially Mengistu, were motivated by a strong hunger for power. Thus, the Council’s actions ...were always a reaction to the radical proddings from the intellectuals, the only real threat to its power. The Council’s leaders sought to anticipate the radical demands of the intellectuals, usurp their drive, and at the same time conceal their own ignorance.42

The land reform laws aroused immediate enthusiasm among the wider public.43 Addis Ababans went out to the streets in support of the Public Ownership of Rural Lands Proclamation.44 Placards shown at a huge mass rally on March 4, 1975, the day the proclamation became official, read ‘land has reverted to its ancient owners [which probably meant the gebbars and urban dwellers that were the primary beneficiaries of the land reform measure]’.45 Commenting on the difficulty of challenging the Dargue after the promulgation of the land reform laws, a former member of a leftist party wrote:

[The regime’s] political stock had risen considerably and not only among the direct beneficiaries of the reforms. Many radicals were won over as well, seeing no reason to struggle against a regime that had fulfilled the major material demands of the movement.46

Although it addressed the land question (which was the major ‘class’ question for the leftist Ethiopian intellectuals), and addressed it comprehensively, the Dargue was not able to deliver on some of the demands of the civilian left (most notably the ‘nationalities’ question which led some to raise arms against the Dargue).47 And that, as will be seen in Chapter Eight, ultimately undermined the

41Markakis and Ayele, above n 37, 130.
42Wolde Giorgis, above n 27, 24-25.
43Cohen, above n 35, 42.
45Zewde, above n 5, 242.
47The nationalities question, along with ‘land to the tiller’, was among the two core questions identified by the Ethiopian Student Movement and, as will be discussed in the next chapter, the
Dargue’s political stock which ‘had risen considerably’ following the promulgation of Public Ownership of Rural Lands Proclamation and Government Ownership of Urban Lands and Extra Houses Proclamation, the relevant aspects of which are set out below.

7.3.1. Village Ethiopia’ Reimagined: Public Ownership of Rural Lands Proclamation No. 31/1975 and the Notion of Peasant Associations

The Dargue, which as stated was initially more nationalist than leftist, affirmed its gradual appropriation of Marxist ideology (espoused by the leftist Ethiopian Student Movement since the 1960s) by, inter alia, enacting a radical rural land reform law on the 4th of March 1975 almost six months after toppling Haile Selassie I. The stated rationale for the Public Ownership of Rural Lands Proclamation included (1) liberating rural Ethiopians from ‘age-old feudal oppression’, (2) laying the basis upon which all Ethiopians live in ‘equality, freedom, and fraternity’, (3) making the tiller ‘the owners of the fruits of his labour’, (4) distributing land.48 These were, as noted in Chapter Six, among the goals of the Ethiopian civilian left set for a post-Haile Selassie Ethiopia.

Contained within a total of 24 articles, the Proclamation (1) declares ‘all rural lands shall be the collective property of the Ethiopian people’,49 (2) establishes peasant associations (gabare mahiber in Amharic),50 (3) defines the powers and functions of MLRA the legal experts of which participated in the drafting of the law,51 and (4) abolished tenancy and landlordism,52 and (5) reconstitutes Ethiopian pastural lands, the rist region as well as the highland peripheries (which the proclamation refers as ‘provinces with privately owned rural lands’53) as geographies of property rights where tillers or pastoralists (the proclamation uses the term ‘nomadic people’54) ‘shall have possessory rights’ over the land they customarily use.55

As the proclamation declared the public ownership of all rural lands which, as seen in Chapter Six were commonly held as individual property, it in effect

48Preamble, Rural Lands Proclamation.
49Ibid art 3.
50Ibid arts 8 et seq.
51Ibid arts 12 et seq.
52Ibid art 6.
53Ibid art 4.
54Ibid art 24.
55Ibid arts 19 et seq.
expropriated scores of individual landholdings. Although the Proclamation appeared to give legitimacy to the 1960 Civil Code by expressly referring to the latter’s definition of some legal terminology, it ignored the expropriation rules the code laid down. Instead, the leftist revolutionaries who drafted the proclamation opted for a regime of expropriation without compensation. Article 3(3) thus provides:

> No compensation shall be paid in respect of rural lands and any forests and tree-crops thereon; provided that fair compensation shall be paid for movable properties and permanent works on the land (Italics mine).

The expropriation without compensation rule applied even to large scale agricultural businesses most of which were foreign owned. The *Public Ownership of Rural Lands Proclamation* set to reorganise ‘large-scale farms’ (estimated to be about 5,000 covering a total area of 7000 sq. km) into ‘state farms’ or ‘cooperatives’. Further, it stipulated ‘compensation [for expropriated large scale farms] shall not be paid for the value of the land’.

As noted in Chapter Six, late imperial Ethiopia undermined various proposals on agricultural tenancy reform that could have only mildly (if at all) improved the position of peasants in the highland peripheries. The *Public Ownership of Rural Lands Proclamation* realised the dream of both liberal and leftist critics of Haile Selassie’s land law policy by abolishing agricultural tenancy. Part of article 6(3) of the proclamation reads:

> As of the effective date of this proclamation the relationship between landowner and tenant is abolished. Accordingly, the tenant shall be free from payment to the landowner of rent, debts or any other obligation.

The tenant thus freed is also entitled to ‘retain agricultural implements and a pair of oxen belonging to the landowner’ subject, however, to the payment (within a maximum period of three years) of ‘reasonable compensation’ to the landowner. The proclamation fulfilled the ‘land to the tiller’ motto of the Ethiopian Students Movement by recognising what it calls the possessory right of the ‘freed’ tenant or hired labourer who tills her land. The implementation of

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58*Ibid* art 7; see also Cohen and Koehn, above n 44, 9.
59*Ibid*.
60*Ibid*.
61*Ibid*.
the tenancy reform is taken up tangentially along with its implication for the Ethiopian Civil Code project in section 7.4 below.

With the introduction of the concept of public ownership of (rural) lands, individual landownership is removed from Ethiopian property law. Article 3(2) of Public Ownership of Rural Lands Proclamation that stated ‘no person or business organisation or any other organisation shall hold rural land in private ownership’ can be read as an unequivocal abrogation of Article of 1204 of the Ethiopian Civil Code which, as noted, followed Article 544 of the 1804 French Civil Code in conceiving individual ownership of land as the widest property right in rem. As land is conceived ‘the collective property of the Ethiopian people’, the proclamation prohibits the individual transfer of rural land through sale or otherwise. However, it recognises the right of any person willing to personally cultivate land to be allotted a maximum of 10 hectares of rural land over which an inheritable usufructuary right can be established.

Two interesting departures from the Haile Selassie era rural land law pertain to rist (the inalienable right of Abyssinian peasants to individually possess parcels of cultivable land and to pass that right on to heirs) and ‘nomadic lands’. While Haile Selassie’s Ethiopia had not had difficulty in lending legitimacy to the Abyssinian concept of rist the new republic tried to distance itself from the practice of imperial Ethiopia privileging property right institutions from rist regions vis-à-vis comparable institutions from the peripheries. Crucially, it (1) outlawed rist claims in land and (2) imposed peasant associations in rist regions where, as noted in Chapter Four, indigenous and relatively autonomous peasant association-like bodies had long administered rist claims. Meanwhile, imperial Ethiopia’s ‘el dorado’, that is the lowland peripheries where land was not generally held via individual ownership (see Chapter Four), was reconceptualised as a geography of possessory rights in the same way as the rist region. Accordingly, pastoralist people of Ethiopia’s lowland peripheries ‘shall have possessory rights over lands they customarily use for grazing or other purposes related to agriculture’.

The Public Ownership of Rural Lands Proclamation, the implementation of which was, as will be seen, rapid and sweeping, can be contrasted with the 1960 Civil Code for its conceptualisation of ‘possessory right’ as the widest land right an individual can have in postrevolutionary Ethiopia. The possessory right under

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62Ibid art 3.
63Ibid art 4.
65Art 24, Rural Lands Proclamation.
the proclamation is not, however, equivalent to possession as we know it under
the 1960 Civil Code. As seen in Chapter Five, possession under the Civil Code is
more than mere physical control of land. It is a property right that entitles the
possessor to (1) use force in the protection of his actual control or seek civil action
and (2) acquire landownership through ‘adverse possession’. Such a conception
of possession is untenable in postrevolutionary Ethiopia where land cannot be
owned individually and, as will be seen, court actions cannot be had on land
disputes. As such, what socialist Ethiopia’s land laws consider possessory rights
are closer to, but broader than, what the Civil Code conceives as usufruct. The
overshadowed survival of the Civil Code’s property law concepts of possession
and usufruct (see section 7.4 for more) made Dargue-era concepts of possessory
rights and use rights confusing to students and legal practitioners.66 The
confusion appears to linger in post-socialist Ethiopia where the government has
chosen not to re-establish individual landownership as the centre of Ethiopian
property law.67

Concerned exclusively with ‘land outside the boundaries’ towns and
municipalities constituted under Ethiopian law, the Public Ownership of Rural
Lands Proclamation created peasant associations for the implementation of
Ethiopia’s postrevolutionary rural land reform.68 The function of the peasant
association included (1) distributing land among eligible members of the peasant
association and (2) hearing (through its judicial tribunal) land disputes arising
within its area.69 Taking the smallest rural administrative unit of Haile Selassie’s
era as a basis, the law contemplated the establishment of peasant associations
‘within a minimum area of 800 hectares’ all over Ethiopia.70 The attention given
to peasant associations by socialist Ethiopia can be demonstrated by the
enactment of separate legislation, in December 1975, exclusively dealing with
their powers and functions.71 Furthermore, the revolutionary euphoria and the
student mobilization that attended the revolution saw the rapid establishment of
peasant associations in rural Ethiopia.72

66Interview with Ato Mekasha Abera (September 4, 2015, Addis Ababa).
67See, eg, የከተማ ከሆታ ከውሆኔ ያመብት ከሆታ ከተረጓጋ ስም [Filipos Aynalem, ‘The Interpretation of
the Urban Holding Right’ (2009) 23 Journal of Ethiopian Law 18].
68Arts 1 cum 8, Rural Lands Proclamation.
69Ibid art 10.
70Ibid art 8.
Year 35, No. 15 [Hereinafter PA Consolidation Proclamation].
79, 84 et seq.
7.3.2. Government Ownership of Urban Lands and Extra Houses
Proclamation No. 47/75

PMAC’s attack on landlordism (hence individual landownership and, hence, aspects of Abyssinian imperialism) extended to urban Ethiopia when, in July 1975, the Government Ownership of Urban Lands and Extra Houses Proclamation was enacted. The Preamble of the proclamation identified, inter alia, the concentration of urban land in the hands of what it called ‘feudal lords, aristocrats, high Government officials and capitalists’ and the high incidence of court cases involving urban lands and houses as major social problems the socialist republic must address. The Preamble of the proclamation identified, inter alia, the concentration of urban land in the hands of what it called ‘feudal lords, aristocrats, high Government officials and capitalists’ and the high incidence of court cases involving urban lands and houses as major social problems the socialist republic must address. And, government ownership of urban lands was the solution prescribed. Article 3 of the proclamation reads:

1) As of the effective date of this Proclamation, all urban lands shall be the property of the Government.
2) No person, family or organisation shall hold urban land in private ownership
3) No compensation shall be paid in respect of urban lands.

The proclamation, which entered force a few weeks before the celebration of the first-year anniversary of the downfall of Haile Selassie I, prohibited the transfer of urban land by sale or otherwise, limited the size of urban landholding to 500 square meters, abolished urban land tenancy, and granted the right of possession to tenants who, following their freedom from payment to the landowner of rent, held land on which their dwellings were built.

The abolition of urban land tenancy materialised some five months after the abolition of tenancy in rural Ethiopia. The time gap allowed expropriated absentee landlords to take ‘temporary refuge’ in their real estate in urban Ethiopia, particularly Addis Ababa. But, following the radical urban land reform measures of the revolutionary state, the expropriation of landlords (framed as the class enemy of socialist Ethiopia) was complete. The only consolation for the landlord, who is now severed from her urban and rural land estates, might be his ability to keep a single dwelling of his choice for his family and additional business houses anywhere in urban Ethiopia. The Proclamation recognised the use right of urban landholders. Otherwise, like urban

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73 Preamble, Urban Lands Proclamation.
74 Ibid art 4.
75 Ibid art 5.
76 Ibid art 6.
77 Ibid art 7.
78 Cohen and Koehn, above n 44, 6.
79 Arts 11-12, Urban Lands Proclamation.
80 Ibid art 7.
landholdings exceeding 500 square meters, ‘extra houses within the boundaries of a municipality or town’ are made ‘government property’.81

Government ownership of urban lands and extra houses meant the payment of rent to the new owner, the Ethiopian state.82 The cooperative society of urban dwellers (the urban equivalent of peasant associations of the Public Ownership of Rural Lands Proclamation) and the Ministry of Public Works and Housing were tasked with the collection of rent due to the government.83 The proclamation also imposed temporary rent reduction and promised future rent control regulations to respond to ‘widespread complaints over high, increasing, and inequitable urban rents’.84 According to John M. Cohen and Peter M. Koehn, the rent reduction scheme served the Dargue to garner ‘popular urban support for the [urban land reform] measure as a whole’.85

As noted, expropriation without compensation is a pillar of Public Ownership of Rural Lands Proclamation that came before Government Ownership of Urban Lands and Extra Houses Proclamation. And, it was retained in the latter which, as noted, decreed ‘no compensation shall be paid in respect of [expropriated] urban lands.86 But, the Government Ownership of Urban Lands and Extra Houses Proclamation made some concessions to ‘fair compensation’ regarding expropriated urban houses.87 The scope of expropriation without compensation rule is limited to confiscated urban houses which, being previously government property or built with funds raised by the public or obtained from the state, were [during Haile Selassie’s reign] transferred to private individuals at ‘depressed prices’.88 On a different note, expropriation (rather ‘taking back’) of urban land for public purposes which under the Civil Code was subject to a detailed procedure, entailed only the payment of ‘compensation in kind’, that, in effect, meant the allocation of alternative urban land to the possessor of urban land whose land was taken by the government – the sole owner of all urban lands in postrevolutionary Ethiopia.89

After the arrival of socialist Ethiopia and its ‘constitutional acts’ that reimagined land, state, and society relationship in ways summarised above, enthusiasm over the Ethiopian Civil Code project declined. In fact, discussions on Ethiopian legal

81Ibid art 13.
82Ibid art 9.
83Ibid art 20.
84Ibid; Cohen and Koehn, above n 44, 29
85Cohen and Koehn, above n 44, 30.
86Art 3, Urban Lands Proclamation.
87Ibid arts 18-19.
88Ibid arts 18 cum 14.
89Ibid art 7.
modernisation in the late 1970s and 1980s focused on products of socialist Ethiopia’s Marxist modernism. This shift of focus was reflected in the works of former students of the Ethiopian Civil Code project that remained sceptical of the legal transfer project or saw the emergence in Ethiopia of a socialist regime as an additional challenge for the ‘successful’ reception of what they considered a ‘neo-capitalist’ code. Moreover, some recent accounts of the Ethiopian Civil Code project presented the 1974 Ethiopian Revolution as driving the final nail in the code’s coffin. Despite partial subversion of Book III’s project and, hence, the modernism and imperialism that made it possible, the not-completely-abandoned Civil Code remained vital in certain social spaces (e.g. legal education) where the influence of Marxism became minimal or declined after the early 1970s. I elaborate these points below.

7.4. THE CIVIL CODE IN THE ERA OF ‘LAND TO THE TILLER’

Land, a thing which under the Civil Code, can be owned privately is, as noted, reconceptualised as an exclusive subject of public or government ownership. Although the idea of public ownership was not alien to either Book III of the 1960 Civil Code or the abrogated 1955 Revised Constitution, its exaltation in socialist Ethiopia’s foundational laws reduced the significance of a chunk of Book III’s rules on landed property. For instance, the rules on expropriation which were inspired by mid-20th century French administrative law were rendered obsolete by socialist Ethiopia’s revolutionary land laws that nationalised urban and rural lands with very little regard for Haile Selassie’s expropriation laws. Similarly, the various rules that assume individual landownership (e.g. acquisition and proof of landownership) also became of little relevance to postrevolutionary Ethiopia’s property regime.

As noted, the radical land laws of socialist Ethiopia, that brought the concept of public ownership of land to the centre of Ethiopian property law, grew out of local discourse on land reform in Ethiopia. Although such discourses were not always hostile to a system of individual landownership, it was the most leftist approach to land reform that was finally translated into law by the Dargue. The concerns of those who argued for a measured land reform short of nationalisation

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91 Menski, above n 4, 484. 2

92 Although ‘public ownership of land’ (under Public Ownership of Rural Lands Proclamation) is slightly different from ‘government ownership of land’ (under Government Ownership of Urban Lands and Extra Houses Proclamation), I am using the term public ownership of land to refer to both.
(expropriation without compensation) were ignored, if not met with violence.93 Moderate leftists and anti-communist modernists who believed in the continued centrality of individual landownership in post-Haile Selassie Ethiopian property law were silenced by the passion of the radicals among whom most were children of peasants from peripheral Ethiopia.94 For the ‘enlightened’ and radicalised children of the Ethiopian subaltern, decentering individual landownership from the national land law was probably the best response to the Ethiopian landlord class, the target of their modernist discourse (see Chapter Six). This has contributed to the relative radicalness of post-codification Ethiopia’s approach to land reform in comparison to other legal code importing African and Latin American countries that carried out land reform in the 20th century.95

As Book III’s place in postrevolutionary Ethiopia’s jigsaw puzzle of land laws diminished, some students of the Ethiopian Civil Code project saw socialist Ethiopia continuing the Civil Code’s agricultural communities. For Harrison Dunning, who continued to follow postrevolutionary property law developments in Ethiopia,96 peasant associations appeared ‘a solution strikingly similar to the ‘agricultural communities of the Civil Code.97 Similarly, a leading Ethiopian social scientist likened peasant associations of the collectivisation phase of socialist Ethiopia’s rural land reform to the Soviet kolkhoz that, as noted, inspired the Civil Code’s agricultural communities.98 However, Paul Brietzke,

93See, eg, Cohen, above n 36, 3.
94Among the participants of the Ethiopian Student Movement (including ‘most prominent leaders’ of the many Marxist political parties that grew out of the student movement) were of ‘peasant or countryside origin’. The fact that they ‘grew up witnessing first-hand the misery of the peasant world…and including their own families’ must have contributed to their radicalization, embrace of Marxism and radical prescription of land law reform projects that socialist Ethiopia allowed. See generally Tibebu, above n 23, 347; Zewde Socialist Utopia, above n 23, 118; Cohen, above n 36, 16.
98As the state’s ideological commitment to ‘scientific socialism’ reached its high in the late 1970s and the early 1980s, peasant associations were used by the Dargue as instruments of collectivization projects. The peasant produce cooperatives (PPCs) that were created out of peasant associations, in the view of Rahmato, resembled (‘at least on paper’) the Soviet kolkhoz of the 1930s. See Dessalegn Rahmato, ‘Land, Peasants, and the Drive for Collectivization in Ethiopia’ in Thomas J. Bassett and Donald E. Crummey (eds), Land in African Agrarian Systems (The University of Wisconsin Press, 1993) 274, 288.
wrote (in 1982) ‘any underlying reason for the agricultural communities vanishes’ because of the comparable legal concept, peasant associations.99

There is some truth in claims about the similarity of the concepts of agricultural communities and peasant associations. As noted in Chapter Five, the concept of agricultural communities appears to be predicated on René David’s assumption that ‘collective exploitation’ of land was the norm in rural Ethiopia. The same assumption predicates peasant associations of socialist Ethiopia. Further, agricultural communities induced hopes, albeit qualified, for grassroots peasant autonomy as well as change in the rules pertaining to access to cultivable land in late imperial Ethiopia in the same way as peasant associations did in the era of land to the tiller.100 Peasant associations, the Ethiopian kolkohzs, were also generally ‘socially and ethnically homogenous’ in ways David had probably imagined the agricultural communities of the 1960 Civil Code.101 In view of that, allusions to the continuity of agricultural communities in postrevolutionary Ethiopia’s notion of peasant associations are not unreasonable.

The new agricultural communities are, however, different from their Civil Code predecessor and symbolise the inter-temporal contest over Book III of the Ethiopian Civil Code project and, specifically, imperial Ethiopia’s politics of exclusion through codification (see Chapter Four). First, the Civil Code’s agricultural communities are more of a reflection of Rene David’s perception of ‘traditional’ African land tenure and ideas about how it could be modernised through European legal concepts. Second, agricultural communities of the Civil Code appear to favour the maintenance of the status quo in rural Ethiopia with little disturbance of an already existing grassroots structure of power in land allocation and dispute settlement. In contrast, peasant associations, which were introduced in response to tenants’ misery in the highland peripheries, were not about maintaining the status quo. Instead, peasant associations were about upsetting the status quo, particularly in areas with history of the colonial nefagna gebbar system.

John Cohen, a former legal advisor to the government of Haile Selassie, links ‘the appearance of peasant associations as a critical element’ in revolutionary Ethiopia’s land laws.102 He argues the peasant associations reflect efforts by transnational actors that unsuccessfully pushed late imperial Ethiopia to create

99Brietzke, above n 90, 241.
101Rahmato, above n 98, 284.
102Cohen, above n 35, 36.
strong tenant associations to counter the power of landlords that were seen as hijacking the benefits of foreign-funded agrarian reform projects. One such project was the Chilalo Agricultural Development Unit (CADU). Launched seven years after the codification of agricultural communities, CADU was a ‘green revolution’ project funded by the Swedish International Development Agency. Among others, its objectives included testing a new approach to agrarian development that would promote the economic and social conditions of small-scale landowners and tenant farmers in select pilot-project locations in the highland peripheral region where late imperial Ethiopia’s modernisation projects were more pervasive than elsewhere in the empire. Participants of the project, some of whom were active members of leftist political parties that grew out of the Ethiopian Student Movement, were clear that their project, despite aiming at small-scale farmers, was rather hitting ‘traditional landowners and provincial elites’. Transnational green revolutionaries and their funders, the Swedish government, who appeared concerned with the unintended consequences of their project, approached Haile Selassie’s government with draft tenancy reform bills that included the idea of the ‘peasant association’. According to Abera Yemane-ab, a former CADU expert who was also involved in drafting the Public Ownership of Rural Lands Proclamation, the idea of the peasant association was an adoption of the initial CADU proposal. And, it was meant by the radical leftists sponsoring it to promote ‘democracy and social justice’ on behalf of Ethiopian tenants of imperial Ethiopia’s peripheries (particularly highland peripheries) – the undesirable and, hence, written out, subjects of the Civil Code’s agricultural communities.

A consequence of late imperial Ethiopia’s engagement with foreign-funded agrarian reform projects and the left legalism of the local intelligentsia, the idea of the peasant association was also interpreted by some as ‘threatening’ [instead of protecting] the rist system. As seen in the preceding chapters, rist is treated relatively favourably by late imperial Ethiopia and the Civil Code’s agricultural

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103Ibid.
104See, eg, John Cohen, ‘Effects of Green Revolution Strategies on Tenants and Small-scale Landowners in the Chilalo Region of Ethiopia’ (1975) 9 Journal of Developing Areas 335
105Ibid 337 et seq.
109Ibid.
110Cohen and Koehn, above n 44, 7.
communities have been widely regarded as a codename for *rist*. Although modernist land reformers in late imperial Ethiopia, like their leftist counterparts in the period under discussion, had not necessarily been sympathetic to the *rist*, René David had, as noted, shown unusual sympathy to indigenous land tenure systems from historic Abyssinia. But, socialist Ethiopia conceived the *rist* region as well as the highland and lowland peripheries as geographies of peasant associations. Seen from the point of view of the peripheral subjects of Ethiopia, the concept of peasant association, thus, symbolised the levelling up of their indigenous land rights claim vis-à-vis *rist*. In other words, the new ‘agricultural communities’ symbolised the new temporality that separated the present from an era when their traditional land was conceived by Addis Ababa as a preserve of the Crown or the landed gentry. To that extent at least, peasant associations were more of an attempt at subverting (instead of consolidating) the modernisms of late imperial Ethiopia and its transnational client, René David.

The rewriting of land-dependent agrarian and pastoral communities of peripheral Ethiopia into the modern laws of Ethiopia was also accompanied by the deployment of about 60,000 students and teachers (most of whom were drawn from secondary schools) in rural Ethiopia to assist the new regime’s ambitious and wide-ranging modernist campaigns.\(^{111}\) The massive placement of students in rural Ethiopia ‘gave the most important boost to the [rapid] establishment of peasant associations’.\(^{112}\) Some suggest over 24,000 peasant associations were formed within only three years of the revolution.\(^{113}\) In taking peasant associations to rural Ethiopia, where David hoped Ethiopia would institute his agricultural communities, the students gave substance to socialist Ethiopia’s Marxist legalism. Dessalegn Rahmato, who compares the student campaigners (*zemachoch*) with party cadres that helped implement the Vietnamese and Chinese land reform projects which the Ethiopian leftist intelligentsia applauded and embraced as models,\(^{114}\) recounts the zeal and sacrifice of the students in bringing peasant association to the Ethiopian peasantry:

\(^{111}\)Dessalegn Rahmato, *The Peasant and the State: Studies in Agrarian Change in Ethiopia 1950s-2000s* (Addis Ababa University Press, 2009) 143; Paul Brietzke, ‘Land Reform in Revolutionary Ethiopia’ (1976) 14 *The Journal of Modern African Studies* 637, 649. Note that the deployment of students in rural Ethiopia, which was started before the enactment of the land reform laws, was not related to the institutionalisation of peasant associations. It was rather meant to carry out ‘literacy campaigns’ and ‘teach…hygiene, and basic agriculture’ (Donham, above n 22, 29).

\(^{112}\)Tiruneh, above n 12, 102.

\(^{113}\)See, eg, Ottaway, above n 72, 89.

Despite the absence of clear guidance from the fledgling revolutionary government in Addis Ababa, students proceeded to organise Peasant Associations, and to preach armed revolution against the landed classes. In their zeal, they saw themselves as the catalyst of the Revolution, and went on to confront all those they considered to be landlords and feudalists. The property of such persons was summarily expropriated, and this was followed by attempts to disarm them, and on occasions to put them under arrest. Such aggressive action drove some gentry into armed opposition, and others simply fled their homes and went into hiding or were forced to seek the safety of the larger towns. On occasions, however, confrontation led to violence and a good number of [student campaigners] were killed in the process.115

The instrumentality of the most important actors in Ethiopian politics of land law, Ethiopian students of the 1960s and early 1970s, was, thus, not limited to the legislative reimagining of ‘village Ethiopia’. As noted, these functionaries had long been identified by leftist Ethiopian modernisers as the targets of the revolution. And, as could be gathered from the quotation above, their role now included the actual weeding out of, at times violently, provincial functionaries of late imperial Ethiopia (particularly in the highland peripheries).116

Another major effect of socialist Ethiopia’s Marxist modernism was the marginalisation of ordinary courts in the interpretation of the Civil Code. For instance, the *Government Ownership of Urban Lands and Extra Houses Proclamation* (1) prohibited court action challenging the legality of any action taken pursuant to the proclamation,117 (2) annulled all cases involving urban land pending in ordinary courts,118 and (3) established a new judicial tribunal (appended to the cooperative society of urban dwellers) to ‘hear and decide disputes involving


116Studies show that a lower level of enthusiasm for Ethiopia’s postrevolutionary rural land reform among peasants of the rist region. The low level of northerners’ enthusiasm for the idea of peasant associations is often explained in terms of the different concerns in the rist region regarding property rights: e.g., the nonappearance of absentee landownership as a social problem and little desire to modify the close cultural tie between rural elites and rist right holders through legal technology- imposed from Addis Ababa. See, eg, Alula Abate, ‘Peasant Associations and Collective Agriculture in Ethiopia: Promise and Performance’ (1983) 37 *Erdkunde* 118, 123 et seq; Dunning, above n 97, 209.

117Art 40, Urban Lands Proclamation.

118Ibid.
urban land or house arising between urban dwellers’. Comparable judicial provisions were also appended to peasant associations of rural Ethiopia. Despite dominating the settlement of land-related civil disputes during the era of land to tiller, these ‘popular tribunals’, staffed by laymen, were not generally expected to apply Haile Selassie’s legal codes. As Wolde Selassie noted:

[Socialist Ethiopia’s new popular tribunals] are not strictly bound by [Haile Selassie’s era] codes. As laymen, the members are not in any case expected to be versed in any of the modern laws. Hence, they apply the method Ethiopian elders used for ages [that is their common-sense and norms indigenous to the locality of the peasant associations] and [their] skill.

Consequently, civil cases requiring the judicial interpretation of Book III of the Ethiopian Civil Code declined significantly in the era of land to the tiller – an era where ‘possessory right’ has become the widest property right an individual may have over a parcel of land (see table below). Apart from the ousting of ‘ordinary’ courts from jurisdiction over (urban and rural) land-related civil disputes, the transfer of landownership to the state is believed to have contributed to the decline in land-related judicial disputes. Proponents of socialist Ethiopia’s legal reform have taken some pride in the decline of civil cases (which, as noted in Chapter Six, were largely related to land) and the replacement of courts with ‘popular tribunals’ (of peasant associations and urban dwellers associations) that, as noted, were not required to apply the legal codes from Haile Selassie’s era. This appears another subversion of code-based legal modernisation that commenced just a couple of decades before.

119Ibid arts 39 cum 27.
120Art 10 Rural Lands Proclamation; see also PA Consolidation Proclamation.
122Ibid 572 et seq.
123Ibid 570.
My review of select court cases from the period under discussion shows the continued relevance of individual ownership vis-à-vis property disputes involving what under the Civil Code is movable property. This may not be surprising for the subject of individual ownership in socialist Ethiopia excluded land. What is surprising, however, is the practice of courts that in some cases applied Book III’s otherwise non-operational rules on individual landownership analogically to cases involving other things. It is also ironic to note that the civil cases declined when code-trained legal professionals were growing in numbers and, also, showing some sophistication in handling their imported legal texts.

The disempowered courts (because of their exclusion from assuming jurisdiction in land-related disputes) continued to interpret Haile Selassie’s Civil Code as an important piece of national law in various civil matters excluding land. The size of civil cases lodged with courts (sitting in Addis Ababa and various provincial towns) after the 1974 Revolution (see table above) attest to their continued, but reduced relevance in the adjudication of civil law matters (e.g. family and succession matters that do not require the interpretation of Book III).

The Civil Code, a considerable part of which Book III was layered by socialist Ethiopia’s basic land laws, was also identified by the regime as needing revision with a view to giving the revolutionary state a socialist civil code. The effort to

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124 Adapted from Wolde Selassie, above n 121, 572.
125 See the various civil cases reported in Select Judgments of Ethiopian Supreme Courts (Addis Ababa University Faculty of Law, 2000 [in Amharic]). Also, interviews with former judges from the socialist era confirm the decline in civil cases requiring the application of Book III of the 1960 Civil Code. Interview with Professor Tilahun Teshome, Addis Ababa University (9 October 2015, Addis Ababa, Ethiopia).
126 See, eg, Esayas Like v Habte’ab Kifle and Bezabih Kilile (1990) Cassation Bench, Supreme Court (People’s Democratic Republic of Ethiopia). In the judgment, the Cassation Bench annulled the decision of the High Court that applied Book III’s rules on immovable property (land) to a case involving a special movable property (automobile).
127 My judgment is based on a review of reported civil cases during the era of ‘land to the tiller’.
(re)assemble Ethiopia’s socialist civil code started in late 1975, but gained momentum in the 1980s when a Law Revision Commission with various subcommittees was set up.\textsuperscript{128} Chaired by Aberra Jembere, (a first-generation graduate of the Law Faculty of Haile Selassie I University who also served Haile Selassie’s government in various high-ranking official roles), the commission prepared various drafts of Ethiopia’s socialist legal codes and submitted them to the Shengo, the legislative assembly of People’s Democratic Republic of Ethiopia (since 1987).\textsuperscript{129} Committee 1 of the Law Revision Commission (1982-1988) was assigned to revise Books I to III of the Civil Code.\textsuperscript{130} The work of this committee appears to have attracted the utmost attention among legal academia who, through their publications in the \textit{Journal of Ethiopian Law}, tried to influence the draft through suggestions \textit{de lege ferenda} (law reform proposals).\textsuperscript{131}

The revision which was carried out by committees composed of law graduates of Haile Selassie I University (Addis Ababa University since 1974) also addressed matters unrelated to ‘streamlining’ Haile Selassie’s codes to the socialist ideologies of the post-revolutionary Ethiopia. According to Harrison Dunning, the revisers took the chance to eliminate and correct ‘inconsistencies and translation errors made when David’s French draft was translated into English and Amharic’.\textsuperscript{132} But, perhaps the most difficult part of the revision related to the ‘streamlining’ of the Code with socialist principle. Conversations with some members of the Law Revision Commission has revealed the challenges of making imperial Ethiopia’s imported legal codes conform with the socialist ideology of post-Haile Selassie Ethiopia.\textsuperscript{133} Some are doubtful they have meaningfully contributed to the law revision work. They remember their participation in the

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\item \textsuperscript{128}አበራ ጋምበሬ፣ ደርሳነ ለይወቴዴMOST (ሆን ከሆነ፣ 2000) \textit{[Aberra Jembere, My Autobiography]}. (Shama Books, 2012) 192.
\item \textsuperscript{129}Ibid 196. Note that Ethiopia’s official name is changed to People’s Democratic Republic of Ethiopia since 1987 Constitution (See The Constitution of the People’s Democratic Republic of Ethiopia (1988) 14 \textit{Review of Socialist Law} 2, 181 \textit{et seq}.).
\item \textsuperscript{131}Ibid; George Krzeczunowicz, ‘Products Liability in Ethiopia’ (1982) 12 \textit{Journal of Ethiopian Law} 167; Negatu Tesfaye, ‘Liability for the Acts of Minors under Ethiopian Law’ (1992) 15 \textit{Journal of Ethiopian Law} 65. Note that the very few scholarly articles published with a view to influencing the Law Revision Commission relate to matters (albeit not on land related issues) with which Committee 1 dealt. Incidentally, my select reading of the minutes of some of the committees of the Law Revision of Commission suggest that members of the Commission were careful not to affect the basic laws of socialist Ethiopia through their revision of Haile Selassie’s era legal codes.
\item \textsuperscript{133}Dunning, above n 97, 189.
\item \textsuperscript{133}Interview with Ato Akili Wolde Amanuel (October 6, 2015, Addis Ababa); Interview with Associate Professor Zekarias Kenea (September 8, 2015, Addis Ababa).
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law revision process with little enthusiasm. According to a former member of the law revision commission:

The task of streamlining the legal codes to the official state ideology was very difficult. The only policy guideline given by the Ministry of Justice and Law – the best stakeholder to have elaborated what to do – was ‘align the codes to the socialist ideology of the state’. And, as we were all lawyers with little knowledge on policies but the techniques of law, we were at a loss.\textsuperscript{134}

Some are, however, prouder than others of their contribution to the process and hence more disappointed by the socialist republic that did not translate the draft (completed in 1988) ‘socialist’ civil code into official law before its collapse in 1991.\textsuperscript{135}

Although it is not clear why socialist Ethiopia was unable to translate the draft socialist civil code into law, its performance of Marxist modernism through (incomplete) codification projects can be contrasted with the performance of juristic self-civilisation by late imperial Ethiopia. Both reforms embedded in official nationalisms that insisted on exalting Addis Ababa’s power vis-à-vis the peripheries. As noted in the preceding chapters, Haile Selassie’s symbolic appropriation of European legal codes was necessary to create the image of ‘progress’ in the field of law in the last semicolon of the West. Haile Selassie’s Ethiopia, which was more concerned with the appearance than the reality of legal modernity, was, however, ambivalent about its modernisation projects. Late imperial Ethiopia’s experience with the concepts of individual landownership and agricultural communities can, as noted, demonstrate the ambivalence of imperial Ethiopia towards appropriated legal concepts that, \textit{inter alia}, implied land reform, state-sanctioned legal pluralism and (partial) decolonization of Addis Ababa’s land-based relations with its peripheral subjects. In contrast, socialist Ethiopia did not need a socialist civil code to prove its Marxist credentials. The various statutes that nationalised the means of production (see section 7.3 above for a partial review) would have been enough to prove its Marxist credentials. In fact, it is generally agreed it was one of the exceptional Afro-Marxist regimes of the 20\textsuperscript{th} century because of its far-reaching land reform and nationalisation measures.\textsuperscript{136} The Ethiopian socialist civil code project

\textsuperscript{134}Interview with Associate Professor Zekarias Keneaa (September 8, 2015, Addis Ababa).
\textsuperscript{135}Particularly, the Chair of the Law Revision of Commission, Aberra Jembere was not happy about the incomplete project; see Jembere, above n 128, 197.
\textsuperscript{136}See generally Edmond J. Keller & Donald Rothchild (eds), \textit{Afro-Marxist Regimes: Ideology and Public Policy} (Lynne Rienner Publishers, 1987).
represents the ideological seriousness of the socialist republic, albeit not passed into law.

One of the effects of the non-materialisation of the ‘socialist’ civil code project was the continuity of Book III of the 1960 Civil Code under the shadow of land laws giving effect to public landownership and peasant associations. Despite remaining marginal in various fields (e.g. the field of land dispute adjudication), Book III remained central to property law teaching in postrevolutionary Ethiopia. The radical land laws that changed Ethiopia’s property law a great deal were not integrated into the curriculum of the law school. Despite changes in the curriculum of the national law school to reflect the ideological shift in the country (e.g. inclusion of a course on Marxist Thought and partnership with law schools in socialist Europe), property law instruction proceeded largely in the same way as it had before the revolution. Discussions regarding the postrevolutionary laws were apparently minimal among legal academia, whose allegiance to the codes from Haile Selassie’s era remained largely intact. As noted, leftist Ethiopian students of the Haile Selassie era (some of whom were graduates of the Law Faculty of Haile Selassie I University) promoted socialist projects. Yet, unlike in post-revolutionary Russia, legal academics had not adopted the enthusiasm of the Marxism that, as seen, greatly influenced the radical land laws of socialist Ethiopia. In contrast to the radical land laws of socialist Ethiopia that managed to grab the attention of (at least) sceptical students of the Ethiopian Civil Code project, code-based doctrinal research was the preoccupation of the faculty of the national law school in post-imperial Ethiopia.

Forrest D. Colburn, an American scholar who visited Addis Ababa University towards the end of the 1980s, wrote that the university community of the time (including the national law school), unlike the pre-revolutionary times, were ‘withdrawn’ and out of ‘passion for politics’ and scholarship. If anything, scholars at the university focused on the study of ‘technical or mundane issue’ [like code-based doctrinal analysis] with a view to avoid the reaches of the authoritarian government that was ‘exercising complete control over publications’ and discouraging open academic discussion. The avoidance of discussions regarding socialist Ethiopia’s laws may, therefore, in part have

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138 This can be noted from scholarly works published in various issues of Journal of Ethiopian Law (1980-1992).
140 Ibid 141.
something to do with the fear-filled atmosphere that followed the Ethiopian Red Terror (1977-79, the purge of thousands of intellectuals and students as part of Dargue’s quest for leftist hegemony). Colburn’s assessment was also reinforced by the Chair of the Law Revision Commission, Aberra Jembere, who, wrote about his experience ‘fearfully’ teaching law at the national law school during the socialist republic.

Lack of interest among (leading) Ethiopian legal intellectuals in socialist Ethiopia’s laws or Marxist legalism, may also be related to the importance they attach to Haile Selassie’s legal codes that, as noted, were embedded on the (exclusionary) official nationalism of imperial Ethiopia. Their celebration of Haile Selassie’s legal modernisation and/or its ‘ancient’ equivalent the Fetha Negast, can be contrasted with their disdain for post-revolutionary Ethiopia’s laws that reflect, at least in part, the peripheral nationalism of the leftist modernists of the ‘era of land to the tiller’. According to some accounts, interest in keeping the codes unmodified contributed to the defeat of socialist Ethiopia’s project of a socialist civil code. Regardless, the non-materialization of socialist Ethiopia’s project of a socialist civil code rendered the 1960 Civil Code continuously relevant, at least among legal academics and the judiciary, that as noted, continued to interpret the civil code as a major law, and more so after the collapse of socialist Ethiopia in 1991. Hence, the continued relevance and contestation over the legal modernisms of late imperial Ethiopia and the symbolism of the 1960 Civil Code in the federalist temporality that brought its own expectations and interpretations of the ‘landmark’ legal transfer project (see Chapter Eight).

7.5. CONCLUSION

The 1974 Ethiopian Revolution witnessed the ascendance of a Marxist critique of imperial Ethiopia, its property (particularly land) regime, and official nationalism. In contrast to the pre-codification era local articulations of legal modernization, the agitation of the local (student) intelligentsia of the post-codification period, whose power and influence grew with the demise of imperial

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144Interview with Professor Tilahun Teshome, Addis Ababa University (9 October 2015, Addis Ababa, Ethiopia).
Ethiopia, was not the importation of legal codes. Instead, it was the rewriting of imperial Ethiopia’s land laws along socialist lines, with or without a legal code. As such, the 1960 Civil Code, imperial Ethiopia’s tardy response to charges of legal primitivism, had fallen into the hands of a new force that embraced Marxism and, at least in part, peripheral nationalism(s). This force aspired to break with the temporal trajectory set by the foundation of imperial Ethiopia in the late 19th century and its subsequent legal modernization projects.

As this Chapter has demonstrated, the era of land to the tiller culminated in the juristic rearticulation of the land, society, and state relationships in Ethiopia. The Public Ownership of Rural Lands Proclamation and Government Ownership of Urban Lands and Extra Houses Proclamation added public ownership of land and peasant associations to the lexicon of Ethiopian property law. The two proclamations had far reaching implications for the 1960 Ethiopian Civil Code project. The Ethiopian Civil Code, which during Haile Selassie’s last decade in power symbolized Ethiopia’s legal modernity and aroused hopes for a property system based on the concept of individual landownership, was reinterpreted in the era of land to the tiller as a symbol of Ethiopia’s unholy marriage with feudalism and imperialism. As such, efforts were made to replace Haile Selassie’s ‘landmark’ legal transfer project with Public Ownership of Rural Lands Proclamation and Government Ownership of Urban Lands, Extra Houses Proclamation, and a socialist civil code. Overshadowed by socialist Ethiopia’s two radical land laws (but not a socialist civil code), Book III of the Ethiopian Civil Code remained marginal in post-Haile Selassie Ethiopia’s modernism and law-related practices. As the Dargue chose public ownership as the main legal concept for opening a new Ethiopian future, the impact of individual ownership declined. Perhaps, because of their resemblance with René David’s approach to rural land tenure in Ethiopia, peasant associations appeared similar to the concept of agricultural communities which, as noted in earlier chapters, exposed imperial Ethiopia’s ambivalence to its semicolonial legal modernity. Crucially, the concept of peasant associations, in tandem with the concept of public ownership of land, aimed at disempowering the landlord class and undermining its juristic signifier, the concept of individual landownership. The peasant association is a symbol of partial decolonization for pastoralists and peasants of peripheral Ethiopia that, according to David, were not the direct addressees of Ethiopia’s ‘modern’ legal code. Hence, they exemplify the inter-temporal contestation and subversion of the Ethiopian Civil Code project.

The Ethiopian Civil Code of 1960, however, survived the socialist republic which collapsed in 1991. Although the radical land laws impacted the Ethiopian Civil Code significantly, the effect of socialist Ethiopia’s Marxist modernism on the
field of education appears to be limited. So much so that Book III continued to shape the curriculum of property and land law in post-revolutionary Ethiopia. On the other hand, courts, and their truncated involvement in the adjudication of land-related civil disputes, carried the civil code through the era of land to the tiller.

The era of land to the tiller importantly retells the story of the ‘landmark’ legal transfer project. Crucially, it counters the ‘failure’ thesis that paid little attention to the continued contest over the Ethiopian Civil Code project (or more generally the modernisms and imperialisms of late imperial Ethiopia and its western partners). Attending to inter-temporal contests over the Civil Code project also contributes a better explanation of how and why law (appropriated legal concepts) assume multiple contested and layered meanings over time, not only space – the traditional focus of legal transfer studies.

As the era of land to the tiller gives way to the era of ethnic federal Ethiopia, the Ethiopian Civil Code project encounters newer powers with their own priorities and concerns vis-à-vis Haile Selassie’s (in)famous legal transfer project and socialist Ethiopia’s radical land laws. Chapter Eight elaborates on the continued contest over Haile Selassie’s Civil Code in what I have preferred to call the federalist temporality, an era inaugurated by yet another Ethiopian revolution led by peripheral participants of the Ethiopian Student Movement of the 1960s and 1970s.
CHAPTER EIGHT

8. HAILE SELASSIE’S CIVIL CODE IN “ETHNIC” FEDERAL ETHIOPIA (1991- c. 2010)\(^1\)

What is this fake [Ethiopian] nationalism? It is not simply Amhara and to a certain extent Amhara-Tigre supremacy?\(^2\)

8.1. INTRODUCTION

As I have noted in Chapter Four, the ‘modern’ Ethiopian state that emerged at the turn of the 20\(^{th}\) century was an imperial polity composed of multiple cultural and legal geographies. It was a multinational and multi-religious empire that, however, opted to base its national identity on cultural templates from historic Abyssinia (particularly southern Abyssinia). The nation-building project of imperial Ethiopia implied, inter alia, the exclusion of the culture and values of the non-Abyssinian and non-Orthodox Christian others of the black African empire. This was also reflected in late imperial Ethiopia’s civil codification which, as seen in Chapters Four and Five, was a pronouncement of ‘Amhara Christian paramountcy’.\(^3\) As such, Haile Selassie’s Ethiopia appeared, for many learned commentators, ‘Abyssinia writ larger’.\(^4\)

Discontent with and resistance to ‘Abyssinia writ larger’ and its official nationalism was evident from the very early decades of the empire.\(^5\) For instance, traditional rulers of peoples in peripheral parts of imperial Ethiopia offered themselves to the League of Nations as mandate territory in preference to Abyssinian rule.\(^6\) Pro-Abyssinian local literati, such as Gebrehiwot Baykedagn (who, as noted, called for the Europeanisation of imperial Ethiopia’s Fetha Negast), had also shown some concern over the growing exclusionary tendencies of imperial Ethiopia’s official nationalism.\(^7\) Baykedagn’s remark on the hegemony of

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\(^1\)Although the ‘ethnic’ federal Ethiopia is still inexistence, I limit my discussion of the Ethiopian Civil Code project in ‘ethnic’ federal Ethiopia to the period 1991- c 2010, when the legal transfer project’s half centenary was celebrated by proponents of imperial Ethiopia’s legal modernity (see Chapter Two).


\(^6\)See, eg, Ezekiel Gebissa, ‘The Italian Invasion, the Ethiopian Empire, and Oromo Nationalism: The Significance of the Western Oromo Confederation of 1936’ (2002) 9 Northeast African Studies 75.

\(^7\)Gebre Heywet Baykedagn, ኢን reside, ከእን ይክር ይና ከእን ይክር [Emperor Menelik and Ethiopia] (Addis Ababa, 1912) 15.
Shoa Amharas, to the exclusion of other Abyssinians (such as ethnic Tigrains to which he belonged), anticipated what was going to unfold in the last third of the 20th century: that is, the growing consciousness of and hence militant resistance to imperial Ethiopia’s exclusionary official nationalism by non-Amhara Abyssinians and, of course, non-Abyssinian others. Here, I use the term peripheral nationalism to generally refer to the consciousness and resistances to Ethiopia’s official nationalism.

The aggressiveness of imperial Ethiopia’s nationalism and imperialism grew in tandem with its late and largely ‘posturing’ legal modernisation projects. For instance, Eritrea, a former Italian colony from 1880s to 1941,8 settled predominantly by Tigrinya speaking people with past links to historic Abyssinia, was federated with Ethiopia in 1952.9 Although there was little change made to the autonomy and continuity of Eritrea’s colonially inherited legal system, it was reduced to a mere province of Amhara-ruled Ethiopia in 1962.10 Consequently, its power to determine the extension of the applicability of Addis Ababa’s imported legal codes, such as the 1960 Civil Code, was lost.11 Addis Ababa’s insistence on consolidating its power at the expense of Asmara and other nodes of peripheral nationalisms was not unnoticed by the leftist Ethiopian Student Movement (see section 8.2.1 below).

As seen in Chapters Six and Seven, reconstituting Ethiopia along socialist lines was the preoccupation of the leftist Ethiopian Student Movement. Their critique of imperial Ethiopia revolved mainly around two issues: the nationalities question and the land question. For many, the ‘land question’ had been addressed adequately by the socialist republic (1974-1991). Yet, the ‘nationalities question’ bedevilled the socialist republic that, like the ancien regime before it, insisted on the primacy of ‘Ethiopian nationalism’ – the official nationalism of the multinational empire – vis-à-vis the resistant peripheral nationalisms.12 Various national liberation fronts and neighbouring Somalia sought to ‘redraw the map’13 of the multinational empire in favour of Ethiopia’s peripheral nations and fight

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8See, eg, Tekeste Negash, Italian colonialism in Eritrea, 1882-1941: policies, praxis and impact (Uppsalla University, 1987).
9The federation of Eritrea with Ethiopia was modern Ethiopia’s first federal experience. For an insight, see Tekeste Negash, Eritrea and Ethiopia: The Federal Experience (Transaction Publisher, 1997).
10The Termination of the Federal Status of Eritrea and the Application to Eritrea of the System of Unitary Administration of the Empire of Ethiopia Order, Order No. 27, 1962, Neg. Gaz., Year 22, No. 3.
Ethiopia’s first republic that eventually collapsed in 1991 as a direct result of these pressures from national liberation movements (see below). Hence, Ethiopia’s second ‘revolution’.

This Chapter examines the implications of Ethiopia’s second revolution for Haile Selassie’s Civil Code. It shows how the second Ethiopian revolution (1) enabled new [or previously marginal] actors, particularly the Ethiopian People’s Revolutionary Democratic Front (EPRDF) to direct legal modernisation projects from earlier eras through yet another temporal trajectory, what I have called the federalist temporality (Chapters One to Three). The federalist temporality is marked by a hesitant but consequential response to what in the discourses of local modernists of the late 20th century was called the ‘nationalities question’ (see sections 8.3 and 8.4). This Chapter argues the second Ethiopian revolution represents another reconfiguration of the field of Ethiopian legal modernisation. It resulted in the replacement of the Dargue with a segment of the proponents of ‘the nationalities question’ that, like their predecessors, were critical of imperial Ethiopia’s official nationalism and legal modernism. As shall be seen latter, there were numerous national liberation fronts and political parties that supported the ‘nationalities question’ (see section 8.2). But the federalist temporality represents the ascendance only of groups forming part the Ethiopian People’s Revolutionary Front (EPRDF), particularly its core Tigrayan People’s Liberation Front (TPLF). Their criticism of the modernisms of previous regimes is embodied in the 1995 Ethiopian Constitution, the most important legal document of the Federal Democratic Republic of Ethiopia that rearticulated state and society relationship for post-Dargue Ethiopia (see section 8.3). The constitutional changes were directed against both imperial and socialist Ethiopia, outlining an ascendant modernism that simultaneously subverted and consolidated the Ethiopian Civil Code project vis-à-vis the era of ‘land to the tiller’. The Constitution legitimised the notion of national self-determination and reconstituted Ethiopia as a federation of national states. It also legitimised socialist Ethiopia’s response to the ‘land question’ of the Ethiopian Student Movement. Curiously, though, ‘ethnic’ federal Ethiopia retained Haile Selassie’s civil code as a de facto ‘uniform’ civil code of the multinational federation. It also brought ordinary courts to increased importance vis-à-vis the era of ‘land to tiller’. The regime, which even today resists calls for the reintroduction of individual landownership, was also engaged in multiple legal modernisation projects (e.g. harmonisation of the legal curriculum (see section 8.4)) the cumulative, if indirect, effect of which was the consolidation of the Ethiopian Civil Code project. While the continuity of the Civil Code as a uniform law for the multinational federation symbolises the contested consolidation of the Ethiopian Civil Code. ‘Ethnic’ federal Ethiopia’s resistance to the persistent call for the
reintroduction of individual landownership (a central notion of Book III of the 1960 Civil Code) represents the continued subversion of the Ethiopian Civil Code project. The consolidation of the Ethiopian Civil Code project reflects the continuity of imperial Ethiopia’s ‘cultural projects’\textsuperscript{14}, that is Abyssinian imperialism, in federalist Ethiopia.

The overarching argument made in this chapter is that the subverted and contested continuity of Haile Selassie’s Civil Code as a national law of what has officially been a multinational federal polity reflects the continued weight of Abyssinian imperialism. I make this argument in three stages. First, in the next section, I argue that the second Ethiopian revolution can be understood as a culmination of the late 20\textsuperscript{th} century struggles over the ‘nationalities question in Ethiopia’, with the ascendance of peripheral nationalists (Tigrian nationalists to be exact) over socialist Ethiopia. Second, in section 8.3, I review the translation of the military successes of (former leftist) peripheral nationalists into new juristic languages that can be read as the continued contest over imperial Ethiopia’s semicolonial legal modernism, including the Ethiopian Civil Code project. Finally, section 8.4 sets out what I consider to be the important implications of the federalist temporality on the Ethiopian Civil Code project, that is the truncated but contested continuity of the Ethiopian Civil Code (particularly Book III) as a uniform law shaping legal practice and legal education. As shall be demonstrated, the Ethiopian Civil Code project has been impacted by the ambivalent modernisms of the new republic and, hence, remains a contested, but not a failed or triumphant, legal transfer project.

Before proceeding any further, a few words on the peripheral nationalists – Tigrayan nationalists – that are dominant in this account. As noted, discontent with and resistance to Amhara hegemony in modern Ethiopia was not limited to Tigrayan nationalists who consider themselves as Ethiopians in more or less the same way as the Amharas do.\textsuperscript{15} The Amhara and Tigray people belong to what Teshale Tibebu calls Ge’ez civilisation which has defined the contours of Ethiopian identity.\textsuperscript{16} They belong to the rist region which, as noted, was treated favourably by imperial Ethiopia and its laws. In contrast, peripheral peoples outside the rist region (e.g. Oromo and Somali nationalists) are cultural outsiders to the Ge’ez civilisation and were not ‘included in political, social, or economic life on equal


\textsuperscript{15}See, eg, John Sorenson, Imagining Ethiopia: Struggles for History and Identity in the Horn of Africa (Rutgers University Press, 1993) 65.

terms’ with the people of the *rist* region that were part of the historic Abyssinian state before Menelik II’s expansion to the highland and lowland peripheries. Hence, despite their shared sentiment against the Amhara political elites who have dominated Ethiopian politics since Menelik II (r. 1889-1913), the peripheral nationalists that dominated the second republic were distrustful of remaining peripheral nationalists of the highland and lowland peripheries (see section 8.4 below). As will be seen, this has been reflected in the practices of ‘ethnic’ federal Ethiopia that has been dominated by the Tigrayan nationalists, who won their struggle against Amhara-dominated Ethiopia in 1991. Also, because the federalist temporality is marked mainly by the ascendance of the Tigrayan nationalists from the *rist* region (that is, historic Abyssinia) my account does not closely consider the nationalisms of the significant non-Abyssinian others whose contest against and/or resistance to the state has continued beyond the second Ethiopian revolution.

8.2. THE SECOND ETHIOPIAN REVOLUTION

8.2.1. The ‘Nationalities Question’

In his provocative and ground-breaking article, *On the Question of Nationalities in Ethiopia* (1969), Wallelign Mekonnen of Haile Selassie I University asked “what are the Ethiopian peoples composed of?” He then answered:

[S]ociologically speaking at this stage Ethiopia is not really one nation. It is made up of a dozen of nationalities with their own languages, ways of dressing, history, social organisation and territorial entity. What else is a nation [if it] is not made of a people with a particular tongue, particular ways of dressing, particular history, particular social and economic organisation [?]. Then I may conclude that in Ethiopia there is the Oromo Nation, the Tigray Nation, the Amhara Nation, the Gurage Nation, the Sidama Nation…and however you may not like it the Somali Nation.

Apart from stressing the multinationalism of Ethiopians, Mekonnen, an ethnic Amhara himself, dismissed the official nationalism of imperial Ethiopia as ‘fake’ and a reflection only of ‘Amhara-Tigre supremacy’. Although he called for the establishment of ‘a genuine Nationalist Socialist State’ (in which he imagined all nationalities participating equally in state affairs), he did not refrain from criticising his fellow participants of the Ethiopian Student Movement for not applauding the ELF (Eritrean Liberation Front) and other armed nationalist...

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18Mekonnen, above n 2, 9.
19Ibid 9-10.
20Ibid.
resistances with overt or implicit secessionist agendas.²¹ Quoting Lenin and the resolution of the London International Socialist Congress of 1896, he lent his support for anti-statist self-determination:

I do not oppose these movements [e.g. ELF’s] just because they are secessionists. There is nothing wrong with secessionism as such. For that matter secession is much better than nationally oppressive government.²²

Not all members of the Ethiopian Student Movement subscribed to Mekonnen’s ideas about national self-determination in Ethiopia. Some believed in the primacy or exclusivity of the class question (which in Ethiopian Marxist discourse is, the land question) for Ethiopia’s socialist revolution.²³ Others strongly dismissed the very idea of national self-determination of Ethiopian peoples (or nations) as ‘politics of national nihilism’.²⁴ Disagreement on the nationalities question was one of the primary reasons for the splinter of the Ethiopian Student Movement and Ethiopian Marxism into two: those who support the right of Ethiopian nations to self-determination (e.g. Tigrayan People’s Liberation Front) and those who reasoned ‘the class question needs to be solved first’ (e.g. the Ethiopian Peoples’ Revolutionary Party).²⁵ Hence, the student movement was open to different ways of resolving the nationalities question.

The discourse on the ‘nationalities question’ of the last third of the 20th century included a conversation on (model) legal transfers. First, the adoption of a Soviet-like constitution that recognises the right of nations to self-determination up to secession was suggested by what Bonnie Holcomb and Sisai Ibssa have called the ‘Federationist’ of the Ethiopian Marxists of post-imperial Ethiopia.²⁶ The USSR’s constitutional recognition of the right of nations to self-determination was seen as more progressive than any ‘progressive’ constitutional models from the capitalist

²¹Ibid 12.
²²Ibid.
²⁶Holcomb and Ibssa, above n 25, 327; የหัน(5,5),(994,993)
world. Second, articulating their ideas in the 1970s, pro-national self-determination Ethiopian Marxists saw the survival of the USSR (despite its constitutional recognition of the right of nations to self-determination) as a living example of the prospect of the Soviet model in multiethnic Ethiopia. Third, although western models for the Ethiopian ‘nationalities question’ were dismissed as less progressive for denying the right of secession, answers short of secession (such as regional autonomy, federation, confederation) were also considered in response to fears that the adoption of the Soviet model would lead to the eventual disintegration of Ethiopia.

It is worth noting here that the local discourse on legal transfer (legal modernisation) embraced new models of law and federation beyond that of Japan to include the USSR. As noted in Chapter Four, the ‘Ethiopian Japanisers’ mainly approached the question of legal modernisation from the perspective of Addis Ababa (or ‘Abyssinia writ larger’) and barely called for adoption of legal technologies that implied the preservation of the cultures of the non-dominant nationalities. As seen, some had openly called for homogenisation of the multinational subjects of the empire into the dominant Amhara culture. In contrast, the Ethiopian Student Movement, which approached the issue from the point of view of the peripheral subjects of imperial Ethiopia, condemned assimilation, fostered ‘romantic nationalisms’, and popularised the concept of national self-determination. To the leftist and peripheral nationalist literati of late 20th century Ethiopia, ethnically homogenous Japan and its admired imitation of western European legal technologies was less attractive. Ethiopian Marxists embrace of the Soviet constitutional law as a model for Ethiopia’s ‘nationalities question’ appears to indirectly cast Japan as less relevant than the latter’s northern neighbour, the Soviet Union. It is also worth noting that the leftist literati that held the Soviet Union as a model for multinational federation in Ethiopia were less critical of the Soviet Union’s (1) failure to match its constitutional promise for national self-determination of non-Russians or (2) its role in enabling regimes like

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27 Ibid.
28 Ibid.
29 Ibid 3.
30 See Chapter Four, section 4.4.
the Dargue that denied claims for national self-determination. Finally, the emergence of the Soviet Union as (yet another) symbol of Ethiopian legal modernity shows the ongoing Ethiopian ‘politics of emulation’ that, as will be seen below (section 8.3), impacts upon the Ethiopian Civil Code project and the ways it has been understood since the 1991 Ethiopian revolution of ‘ethnonationalists’.

8.2.2. Peripheral Nationalism Catches up with Ethiopia’s Official Nationalism

The discursive contest between peripheral nationalists and Ethiopian nationalists over the institutionalisation of the concept of self-determination in the Ethiopian legal system transformed into multiple armed contests. The years following the 1974 Ethiopian Revolution, thus, witnessed the formation (and consolidation) of various national liberation fronts that were determined to force the socialist republic to concede more on the nationalities question than it was willing to do.

Despite carrying out far-reaching land reform measures based on the land reform agenda of the Ethiopian Student Movement, the Dargue approved little of the movement’s far reaching prescriptions on the nationalities question. Crucially, socialist Ethiopia did not yield to the agitation of the civilian left that, following the revolution, called for (1) the constitutionalisation of the right to self-determination (including secession) and (2) the institutionalisation of multinational federalism. Instead, like other Afro-Marxist regimes of the Cold War era, the Dargue was interested only in the self-determination of the state, not its numerous nationalities trapped in colonial era legal geographies (state boundaries). That the 1987 Constitution of the People’s Democratic Republic of Ethiopia did not follow the Soviet Union’s example by formally recognising the right of (its) nations to self-determination, is an official reminder of socialist Ethiopia’s position on the issue of national self-determination. Emphasising the unity of the country (and the ‘equality’ of Ethiopian nationalities within an Ethiopia with undivided sovereignty), the constitution stressed the importance of combating ‘narrow

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32See, eg, Scott Newton, Law and the making of the Soviet World; the Red Demiurge (Routledge, 2015) 215 et seq.
nationalism’ (a term pejoratively employed by the Dargue to refer to national liberation movements (representing Ethiopia’s larger ethnic groups) rallying for ant-statist self-determination). Furthermore, the constitution conceived the People’s Democratic Republic of Ethiopia as a ‘unitary state’, as opposed to a socialist multinational federation anticipated by a large segment of the leftist critics of Ethiopian nationalism.

It is interesting to note that the Soviet Union, embraced as a model by both the Dargue and what it called ‘narrow nationalists’, appeared to have contrasting meanings for Ethiopian Marxists of the late 20th century. As noted, the Soviet Union was an attractive model for a section of the civilian left because of its multinational, federal, and socialist outlook. For the Dargue, that shied away from constitutionalising national self-determination or embracing federalism, the Soviet Union was, however, a model for wielding a multinational polity under a highly-centralised socialist state. According to a student of the 1974 Ethiopian Revolution:

[W]hat [the Soviet Union] offered [to the Ethiopian military leaders] was a model of how to weld together (or so it seemed in 1976) disparate peoples into a great unitary state, one defined by the boundaries of previous conquests – by Russians in the Soviet Union and by Amhara in Ethiopia.

However, considering the radical land law reform discussed in Chapter Seven and related developments (including the rise of assimilated Amharas like Major Mengistu Haile Mariam to power), it could be argued the Dargue was not interested in the maintenance of Amhara domination in socialist Ethiopia. Nevertheless, because of the Dargue’s interest to maintain power, and, hence, the self-determination of the state, meant socialist Ethiopia remained Amhara-dominated Ethiopia, at least by default. And, by the middle of the 1970s, four of the five largest ethnic groups (the Oromo, the Somali, the Tigray, and the Sidama) had national liberation movements fighting for their right to self-determination from the ‘prison house of nations’ – that was Amhara-dominated Ethiopia. Apart

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37Ibid.
38Ibid.
39Donham, above n 12, 41.
40Ibid 39-44.
41As per the latest Ethiopian census (2007), Ethiopia’s largest ethnic groups are the Oromo (34.5%), Amhara (27%), Somali (6%), Tigré (6%), and Sidama (4%). In the first ever Ethiopian census (1984), these ethnic groups were reported to have constituted 29.1%, 28.3%, 3.8%, 9.7%, and 3.0% of the total population, respectively. The significant reduction in the size of ethnic Tigre in the latest census is largely a function of the independence of Tigre-dominated Eritrea from Ethiopia in 1991. See central Statistical Authority of Ethiopia, Population and Housing Census Report –Country (2007) 73-74; Transitional Government of Ethiopia Office of the Population and Housing Census Commission -The 1984 Population and Housing Census of Ethiopia (1991) 43 et seq.
from the Eritrean People’s Liberation Front (armed resistance to Addis Ababa’s rule over Eritrea dated back to the time of Emperor Haile Selassie I), the Tigrayan People’s Liberation Front (est. 1975), Oromo Liberation Front (est. 1973), Western Somali Liberation Front (est. 1975), the Sidama Liberation Movement (est. 1977) were all pressing the socialist republic on ‘the nationalities question’. On top of that, the early socialist republic fought with Somalia over the ethnic Somali-inhabited region of Ethiopia (Ethio-Somali War, 1977-1978). Former students of Haile Selassie I University (and participants of the leftist Ethiopian Student Movement) that were disillusioned by socialist Ethiopia’s response to what Mekonnen called ‘the question of nationalities in Ethiopia’ had leading roles in the Eritrean, Tigrayan and Oromo national liberation fronts. These are the fronts that dominated the negotiation for a new constitutional order in the early 1990s.

Although socialist Ethiopia survived the Ethio-Somali War (thanks largely to the help of other socialist states, particularly Cuba), it was not able to defeat the various national liberation movements. When the Soviet Union withdrew its military support towards the end of the 1980s, the exhausted socialist republic conceded autonomous status for select regions. Such concessions were too little too late for the ascendant national liberation movements that for too long had interpreted the socialist republic’s policies and practices as but a reorganisation (hence a continuation) of Amhara hegemony. Furthermore, Addis Ababa lost decisive battles to the Eritrean and Tigrian liberation movements (1988-1989) thereby placing the northern provinces of Eritrea and Tigrai largely under the control of the Eritrean People’s Liberation Front and Tigrayan People’s Liberation Front, respectively. In view of these developments, the collapse of Ethiopia’s socialist republic and the triumphant entry of Eritrean and Tigrayan liberation

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43 Zewde, above n 34, 254.  
45 Young, above n 34, 206 et seq.  
47 Markakis, above n 35, 128-9; Young, above n 34, 165.  
49 Ibid; Young above n 34, 152-171.
fronts’ forces into Asmara and Addis Ababa (1991) was, according to a commentator of Ethiopia’s second revolution, as an ‘almost anti-climactic’ affair.\textsuperscript{50}

While the Eritrean People’s Liberation Front managed to secure the formal independence of Eritrea from Ethiopia in 1993 (thereby returning Ethiopia to its Menelik-era boundaries), the Tigrayan People’s Liberation Front (christened as the Ethiopian People’s Revolutionary Democratic Front (hereinafter EPRDF) assumed a ‘leading position…to influence the political agenda of all Ethiopia’.\textsuperscript{51} A transitional charter (\textit{Transitional Period Charter of Ethiopia, 1991}\textsuperscript{52}) agreed between the Eritrean, Tigrayan and Oromo liberation fronts\textsuperscript{53} laid the foundation for what was to become the Federal Democratic Republic of Ethiopia. Formally adopted at the Addis Ababa Conference of July 1991, the Charter endorsed the right of self-determination of all Ethiopian ‘nations, nationalities and peoples’ as the most important principle of post-socialist Ethiopia.\textsuperscript{54} The further (and expected) consolidation of the concept in the post-transitional period Ethiopian constitution (see below) means Ethiopia was given a unique (at least in Africa) and, according to an Ethiopian constitutional lawyer, a potentially exportable system of multinational federalism.\textsuperscript{55}

\textbf{8.3. THE FEDERALIST RESPONSE TO THE ‘QUESTION OF NATIONALITIES’}

Like socialist Ethiopia before it, ‘ethnic’ federal Ethiopia rearticulated its relations to Ethiopia’s past and reimagined its future through a new set of borrowed as well as created legal concepts. In this regard, the legal concepts introduced to the Ethiopian legal system through the \textit{Constitution of the Federal Democratic Republic of Ethiopia} (1995) that embodies, at least in part, the leftists’ ideas of legal transfer discussed in section 8.2.1. Below, I review the most significant aspects – from the point of view of this thesis – of this constitutional renewal.

Before setting out the significant aspects of the constitution, it must be noted that the legal document, drafted by a team of experts working under a Constitution

\begin{footnotes}
\footnotetext{\textsuperscript{50}Young, above n 34, 64.}
\footnotetext{\textsuperscript{51}Ibid 197.}
\footnotetext{\textsuperscript{52}\textit{Transitional Period Charter of Ethiopia, Charter No. 1, 1991, Neg. Gaz., Year 50, No. 1 [Hereinafter Charter].}}
\footnotetext{\textsuperscript{54}Ibid 38 et seq.; Art 2, Charter.}
\footnotetext{\textsuperscript{55}Tsegaye Regassa, ‘Comparative Relevance of the Ethiopian Federal System to other African Polities of the Horn: First Thoughts on the Possibility of “Exporting” Multi-ethnic Federalism’ (2010) \textit{1 Bahir Dar University Journal of Law} 5.}
\end{footnotes}
Drafting Commission (1992-1994), was ‘very hotly debated’ in the ‘parliament’ of the ‘Transitional Period’ (1991-1995).\(^{56}\) But, the debate appears to be inconsequential for the then parliament (best known in its formal name, the Council of Representatives of the Transitional Government of Ethiopia (1991-1994)\(^ {57}\)) was dominated by ‘a coalition of ethno-nationalist fronts and movements’, particularly the EPRDF.\(^ {58}\) In the 87-seat Council of Representatives, EPRDF held 32 seats.\(^ {59}\) The other major ethno-nationalist party of the ‘transitional period’ (1991-1994), the Oromo Liberation Front, held 12 seats.\(^ {60}\) Most of the remaining seats were taken by ethnic-based parties that were ‘rapidly formed’ in the wake of EPRDF’s takeover of power.\(^ {61}\) The representation of parties formed on a non-ethnic platform, and hence, antagonistic to what I have called the federalist response to the question of nationalities (see below) was limited.\(^ {62}\) It may thus be argued, the federalist response to the question of nationalities discussed below is a response to the demands of multiple peripheral nationalists by the new hegemons in the field of Ethiopian legal modernisation, particularly the EPRDF.\(^ {63}\)

8.3.1. Post-Socialist Ethiopia Reimagined as a Federation of National States

The triumph of peripheral nationalists (non-Amhara Abyssinian nationalism to be exact) is concluded with (1) the secession of Eritrea, and (2) the creation of Ethiopia as a multinational federation. Ethiopia’s fourth constitution of the 20\(^{th}\) century, unlike its precursors, presents itself as a pact of the ‘nations, nationalities and peoples’ of Ethiopia.\(^ {64}\) Defined as ‘a group of people who have or share a large measure of a common culture…and…inhabit an identifiable, predominantly contiguous territory’, nations, nationalities and peoples are conceived in the constitution to be the new sovereigns of the old empire.\(^ {65}\) Article 8 declares ‘all sovereign power resides in the Nations, Nationalities and Peoples of Ethiopia’ and the Constitution of the Federal Democratic Republic of Ethiopia is, we are told, ‘the

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\(^{56}\)Ibid 21.

\(^{57}\)This is a body established by the Transitional Charter. See art 6-9, Charter.

\(^{58}\)Ibid.


\(^{60}\)Ibid.

\(^{61}\)Ibid.

\(^{62}\)Ibid.

\(^{63}\)See also Ugo Mattei,’The New Ethiopian Constitution: First Thoughts on Ethnical Federalism and the Reception of Western Institutions’ in Elisabetta Grande (ed), Transplants Innovation and Legal Tradition in the Horn of Africa (L’harmattan, 1995) 111, 117; see also Jalata, above n 34, 177 et seq.


\(^{65}\)Ibid art 39(5).
expression of their sovereignty’. The constitution, thus, centers what has always been feared and, hence, decentered in the constitutional laws of Ethiopia and postcolonial Africa: sovereignty of what anthropologists would have preferred to call ‘tribes’. The constitution’s emphasis on the sovereignty of ‘tribes’ led a former student of the Ethiopian Civil Code project to liken the constitution to a treaty among reluctant nations.

In an apparent attempt to carve jurisdictional spaces for the ‘sovereign’ nations, nationalities, and peoples, Ethiopia was reorganized into a federal state composed of nine states.

1. The State of Tigray;
2. The State of Afar;
3. The State of Amhara;
4. The State of Oromia;
5. The State of Somalia;
6. The State of Benshangul/Gumuz;
7. The State of the Southern Nations, Nationalities and Peoples;
8. The State of Gambela Peoples;
9. The State of Harari People

Five of the nine member states of the federation are demographically dominated by a single nation. These are the states of Tigray (the Tigrayan People’s Liberation Front’s base), Afar, Amhara (the state of the historically dominant ethnic group), Oromia (the state of the nation’s largest ethnic group), and Somalia. The rest – Gambela, Benishangul-Gumuz, Harari, and Southern Nations, Nationalities and Peoples (SNNP) – are homes for at least two nations, nationalities or peoples as defined in the constitution. The nations (nationalities or peoples) without their own states (which are well over 70 in number) are theoretically allowed to create their own state if they wish to, although there have not been any developments in

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66Ibid art 8(2).
67Accordingly, a former professor of law Haile Selassie I University has described Ethiopia’s latest approach to nation-building as ‘a peculiarly anthropological approach’. Christopher Clapham, ‘Controlling Space in Ethiopia’ in Wendy James et al. (eds), Remapping Ethiopia: Socialism and After (James Currey, 2002) 9, 27.
69The FDREE Constitution defines nations, nationalities and peoples as ‘a group of people who share a large measure of a common culture or similar customs, mutual intelligibility of language, belief in a common or related identities, a common psychological make-up, and who inhabit an identifiable, predominantly contiguous territory’ (art 39(5), FDRE Constitution).
70Ibid art 47(1).
that regard—despite demands—over the last two and half decades of the new constitutional order.\footnote{In ‘ethnic’ federal Ethiopia, demands for ‘autonomous’ sub-state spaces of jurisdiction for nations without their own states have been more successful than demands for own ‘ethnic’ state or secession. See, eg, Markakis, above n 42, 286 \textit{et seq}.; Jon Abbink, ‘Ethnic-based federalism and ethnicity in Ethiopia: reaccessing the experiment after 20 years’ (2011) 5 \textit{Journal of Eastern African Studies} 596, 604.}

\textit{Map1: Member states of the Federal Democratic Republic of Ethiopia, since 1995\footnote{Source of map: <https://ethiopiaturblog.wordpress.com/> (Last accessed 3 November 2017).}}

8.3.2. The Constitutionalisation of ‘anti-Statist’ Self-Determination

Despised by Ethiopian nationalists and sceptics of legal technologies from former socialist republics,\footnote{Source of map: <https://ethiopiaturblog.wordpress.com/> (Last accessed 3 November 2017).} the most (in)famous provision of Ethiopia’s constitution,
article 39, reproduces the ideological commitment of the leftist critics of Ethiopian nationalism such as Wallelign Mekonnen. It reads:

Every Nation, Nationality and People in Ethiopia has an unconditional right to self-determination, including the right to secession.75

By decreeing what international lawyers call an ‘anti-statist’ version of the concept of self-determination,76 this article serves the now triumphant peripheral nationalists as the strongest statement against an Ethiopian past – a past that offended both non-Abyssinian and non-Amhara Abyssinian (Tigrian) nationalists, albeit in different ways and to a different degree.77 Also, this foregrounding of the ‘nationalities question’ which, during the era of ‘land to the tiller’, was overshadowed by or subordinated to the ‘land question’ distinguishes the second Ethiopian revolution from the first one. Although the constitutionalisation of anti-statist self-determination shows the continued hegemony of the leftist discourse on Ethiopian legal modernity, the official embrace of the right of nations to self-determination shows the importance the ‘second republic’78 attaches to ethnicity – a constitutional taboo in numerous multiethnic states in Africa and beyond.79

The minutes of the Constitutional Assembly reveal the heated debate over the inclusion of the ‘anti-statist’ self-determination in the draft. Members of the Assembly, notably those representing Addis Ababa, showed their concern with the inclusion of the notion of self-determination of nations in the constitution.80 Apart from attempting to persuade the Assembly by calling to their love for the country, the opponents of the constitutionalisation of self-determination noted the failure of socialist multinational federations and the absence of comparable provisions in international law and the constitutional laws of other countries.81 On its part, the

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75Art 39 (1), FDRE Constitution.
76Koskenniemi, above n 31, 248.
77For more on this, see Tibebu, above n 16, 167-81. Incidentally, some make distinction between Tigrians and other non-Amhara ethnic groups as ‘subordinated’ and ‘colonized’ (or ‘conquered’) nations (see, eg, Holcomb and Ibsa, above n 25, 315; Seyoum Hameso, ‘The Sidama nation and the solidarity of colonised nations in Ethiopia’ in Asafa Jalata (ed), State Crises, Globalisation and National Movements in North-East Africa (Routledge, 2004) 165.
80Minutes of the Constitutional Assembly, the Transitional Period Council of Representatives (1994) [on file with the author].
81Ibid.
majority view responded that the absence of comparable provisions in the laws of other countries or international law was no reason to dismiss the demand for the constitutionalisation of the concept, especially after witnessing decades of civil war over the matter in Ethiopia and elsewhere. Further, it reasoned the recognition of self-determination of nations as a guarantee for the viability of the Ethiopian state in contrast to what it proponents claimed. The debate seems to linger on as was witnessed in the hotly contested Ethiopian general election in 2005.

Consistent with its recognition of the right of nations to self-determination, the 1995 Ethiopian constitution recognizes the right of each nation (1) to promote its culture (arguably including their law) and (2) to ‘a full measure of self-government which includes the right to establish institutions of government in the territory that it inhabits’. Furthermore, the constitution devolved wide legislative, executive, and judicial powers from Addis Ababa to the new member states of the federation. The constitution has also established what it has called ‘the federal houses’: the House of Peoples’ Representatives (the HPR) and the House of the Federation (HoF). Composed of representatives elected for a term of five years, the HPR has the power of legislation in matters assigned to the federal government. Whereas, HoF is ‘composed of representatives of Nations, Nationalities and Peoples’ elected by member states of the federation. An important function of HoF pertains to the interpretation of the constitution, including the determination of ‘civil matters’ requiring the enactment of uniformly applicable laws by the federal government. As will be seen further in section 8.4, the division of (legislative and judicial) sovereignty among the federal government and member states has implications for the Ethiopian Civil Code project and the way it has been contested since the advent of the new constitutional order.

Although legal scholars see scope for indigenous land rights within the concept of self-determination, the Ethiopian concept of self-determination does not

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82Ibid.
84Art 39, FDRE Constitution.
85Ibid arts 50, 52, 80.
86Ibid arts 53 et seq.
87Ibid arts 54-55.
88Ibid art 61.
89Ibid art 62.
90See, eg, Mohammud Abdulahi, ‘The Legal Status of the Communal Land Holding System in Ethiopia: The Case of Pastoral Communities’ (2007) 14 International Journal on Minority and Group
expressly include the land rights of nations, nationalities, and peoples. Perhaps because of its anchorage in Soviet legal technologies of self-determination, the Ethiopian version of the concept is alien to what in other ‘federal’ jurisdictions (with histories of settler colonialism) is known as ‘indigenous’ peoples’ rights to land. Its emphasis on subnational self-rule apparently prioritizes the concerns of the handful of Ethiopia’s more visible ethnic groups that, as seen, are given their own subnational ‘nation-states’. As will be seen below, the ‘second republic’s preferred response to the ‘land question’ draws from socialist Ethiopia’s land law precepts.

8.3.3. Legitimating Socialist Ethiopia’s Response to ‘the Land Question’

The national liberation front at the core of the Ethiopian People’s Revolutionary Democratic Front – the Tigrayan People’s Liberation Front’s – is in part an ‘offspring’ of the leftist Ethiopian Student of Movement that was not as divided on the land question as it was on the nationalities question.¹ The Tigrayan People’s Liberation Front’s 1975 Manifesto was, thus, less critical of socialist Ethiopia’s land reform measures. In fact, a reading of the relevant sections of the manifesto suggests the front’s approval of the land reform measures.² Its critique is directed mainly against what it calls chauvinist and opportunist Amhara elites (including Marxist Amharas) that made the liberation of ‘oppressed’ non-Amhara nations impossible.³ As it did not have a major disagreement with socialist Ethiopia’s approach to the land question, the tenets of the 1975 land reform measures are retained in the 1995 constitution. As I have noted in Chapter Seven, the 1975 land reform measures themselves probably reflected the peripheral nationalism of the leftist intelligentsia that participated in the drafting.

Article 40(3) – (6) of the 1995 Ethiopian Constitution reads:

3. The right to ownership of rural and urban land, as well as all natural resources, is exclusively vested in the State and in the Peoples of Ethiopia. Land is a common property of the Nations, Nationalities and Peoples of Ethiopia and shall not be subject to sale or to other means of exchange.
4. Ethiopian peasants have right to obtain land without payment and the protection against eviction from their possession […]
5. Ethiopian pastoralists have the right to free land for grazing and cultivation as well as the right not to be displaced from their own lands...

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²Young, above n 34, 80-91.
³Manifesto of the Tigrayan People’s Liberation Front TPLF (February, 1975) [in Amharic and Tigrinya].
⁴Ibid.
6. Without prejudice to the right of Ethiopian Nations, Nationalities, and Peoples to the ownership of land, government shall ensure the right of private investors to use of land on the basis of payment arrangements established by law.

The first three sections (3-5) of the quoted constitutional provision are very similar to those in the ‘basic laws’ of socialist Ethiopia (see Chapter Seven). The insistence on public ownership of land and the recognition of the rights of Ethiopian peasants and pastoralists over the land they use are apparently attempts to retain and, arguably, enhance socialist Ethiopia’s radical land laws the effects of which had been the sidelining of Haile Selassie’s land laws (within and beyond the 1960 Civil Code). What is perhaps a more significant departure from socialist Ethiopia’s revolutionary land laws relates to the conceptual pluralization of the collective owners of land in post-1991 Ethiopia. Land in the second republic is, constitutionally speaking, owned in common by ‘the nations, nationalities and peoples of Ethiopia’. This was not the case in socialist Ethiopia where peoplehood, at least for the purposes of land law, signified the Ethiopian people (no nations, nationalities and peoples).

As can be inferred from the last limb of above-quoted constitutional provision on the right to landed property, the post-Cold War Ethiopian state does not seem indifferent to the property interests of private investors, unlike its socialist predecessor. Furthermore, although no direct reference is made to the 1960 Ethiopian Civil Code or its concept of individual ownership, the constitution reproduced the ideas of Article 1204 of the Civil Code as follows:

Every Ethiopian citizen has the right to the ownership of private property. Unless prescribed otherwise by law on account of public interest, this shall include the right to acquire, to use and, in a manner compatible with the rights of other citizens, to dispose of such property by sale or bequest or to transfer it otherwise.94

The ownership of private property can, thus, be established over ‘any tangible or intangible product which had value...’95 But, land in ‘ethnic’ federal Ethiopia is not what the constitution conceives as a product over which ownership of private property can lawfully be established. As noted, the right to ownership of land is ‘exclusively vested in ‘the State and in the Peoples of Ethiopia’.96 It is, however, generally agreed buildings, what the 1960 Civil Code conceives as immovable

94Art 40 (1), FDRE Constitution.
95Ibid art 40(2).
96Ibid art 40 (3).
things,97 are ‘products’ over which ownership of private property can be
established.

The minutes of the Constitutional Assembly reveal the reintroduction of individual
landownership vis-à-vis public landownership was the major point of discussion.98
With the opening of a new constitutional moment that coincided with the end of
the Cold War (and resultant projects of ‘transition’ from state socialism to
capitalism in various corners of the globe that ‘has brought’ individual ownership
of land and other means of production to an ‘unexpected level of importance’ 99),
proponents of a private property regime argued for the extension of the
constitutional concept of private property to land. The minority opinion of the 1994
Property and Economic Rights Committee of the Constitutional Assembly
reasoned the reintroduction of individual landownership is the most appropriate
answer to the agenda of ‘land to the tiller’ set by the Ethiopian Student Movement
out of which the incumbent vanguard party grew.100 The minority view also
underlined the importance of taking lessons from the experience of what it called
‘developed countries’ which embrace of private property regimes was ‘decisive for
their successful economic breakthrough’.101

For its part, the Ethiopian Peoples’ Revolutionary Democracy Front-led majority
responded to these assertions by drawing attention to the peculiar historicity of the
Ethiopian situation in comparison with ‘developed nations’ where individual
landownership (or its variants) was firmly institutionalized.102 In particular, the
majority view (1) challenged the view that private ownership of land was decisive
in the economic successes of the ‘developed’ world, (2) questioned the possibility
of squarely addressing the ‘land to the tiller’ slogan through a regime of individual
landownership, and (3) argued the reintroduction of individual landownership
endangered the survival of ‘smaller’ nationalities and peoples and the economic
wellbeing of Ethiopian peasants and pastoralists that reportedly contributed to
50% of the Gross National Product and 85% of the country’s labor force.103

[Hereinafter Civil Code].
98 Minutes of the Property and Economic Rights Committee of the Constitutional Assembly, the
Transitional Period Council of Representatives (1994) [On file with the author].
99 Gianmaria Ajani and Ugo Mattei, ‘Codifying Property Law in the Process of Transition: Some
Suggestions from Comparative Law and Economics’ (1995-1996) 19 Hastings International and
Comparative Law Review 117; Antonio Gambaro, ‘Property Rights in Comparative Perspective:
100 Minutes of the Property and Economic Rights Committee, above n 96.
101 Ibid.
102 Ibid.
103 Ibid.
The dominant view also warned the nascent non-agrarian segment of the national economy could barely absorb – unlike the ‘developed’ nations with a comparatively miniscule agrarian work force and a very large industry-led national economy – the country’s largest work force that, with the reintroduction of individual landownership, may be exposed to mass evictions and urban migration. Finally, it emphasized the incompatibility of individual landownership with indigenous landholding systems among some Ethiopian communities (e.g. pastoralists) without, however, explaining much about how public ownership of land (by the Ethiopian state and the nations, nationalities and peoples) relate to the indigenous landholding system. Minutes of the constitutional drafting convention also show the majority view benefited from the importance peripheral nationalists attached to public ownership of land without which, it was suggested, the right of Ethiopian nations to self-determination could be subverted by economically powerful groups that, like the landlord class of imperial Ethiopia, may work to alienate agrarian and pastoralist peoples of the highland and lowland peripheries from their traditional land.

In a manner that seems to meet one of the stated goals of the constitution (that is, ‘rectifying historically unjust relationships’ and promotion of ‘shared interests’), it goes some way to acknowledge the colonial foundation of the Ethiopian state vis-à-vis its non-Abyssinian nations. As noted in Chapter Four, Addis Ababa and other smaller towns in the highland and lowland peripheral parts of Ethiopia were originally garrisons for Menelik’s army that conquered the non-Abyssinian parts of Ethiopia. As the empire consolidated its grip on the multinational polity created at the turn of the 20th century, Addis Ababa began to look like ‘an Amhara city in the midst of the Oromo area’. And, this was not lost to the early 1990s negotiators of the Ethiopian constitution, particularly the Oromo nationalists. Accordingly, the 1995 Ethiopian constitution concedes what it calls ‘the special interest of the State of Oromia [the state of the Oromo nation, the largest among the ‘conquered’ nations]’ in Addis Ababa, the capital city of the Federal State and the State of Oromia. Article 49(5) of the Constitution proclaims:

104Ibid.
105Ibid.
106Ibid.
108Note that Oromo nationalists, particularly members of the Oromo Liberation Front (OLF), were among the influential negotiators of the post-Dargue transitional charter and the 1995 constitution. Yet, the ethno-nationalist alliance between OLF and TPLF-dominated EPRDF was short-lived. See, eg, Young, above n 34, 206 et seq; Vaughan, above n 53.
The special interest of the State of Oromia in Addis Ababa, regarding the provision of social services or the utilization of natural resources and other similar matters as well as joint administrative matters arising from the location of Addis Ababa within the State of Oromia, shall be respected. Particulars shall be determined by law.109

This legal concept parallels that of agricultural communities of the Civil Code and peasant associations of the 1975 Public Ownership of Rural Lands Proclamation. It does this by including what has often been written out by (imported) modern laws: the interest and/or claims of ‘traditional’ peoples of the non-western world.110 In a sense, the concept embodies the spirits of what in other contexts has been articulated as indigenous land rights. As Tsegaye Ararssa posits, the concept of special interest is ‘a method of presenting’ the Oromo nation that are indigenous to the place but were dispossessed, invisibilised, and hence made ‘absent’ in the constitutional laws of imperial and socialist Ethiopia.111

However, following the constitution of the new era, the second republic however, replaced Dargue era land laws with new ones. Posturing as a ‘developmental state’,112 it enacted land laws that, *inter alia*, aim at providing for ‘the value of land utilization to be expressed in terms of money’ and, thereby, generate revenue (for the ‘developmental state’) through lease of urban land.113 It abolished, or rather

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109Art 49(5), FDRE Constitution.

110The individual-owner centered legislative technique of the western legal tradition (e.g. continental civil codes) criticized for their inadequacy to satisfy the demands of changing times and contexts in 20th century’s global South where demand for land reform was prevalent. Continental civil code that have been widely imported to non-European countries ‘had so little to say about the legal treatment of the peasants of the South’ which, as noted in Chapter Four (from an Ethiopian point of view) were subjected to colonial dispossession. It is also persuasively argued that western property law played a major role in legitimating colonial appropriation of the global south. See, eg, John H. Merryman and David S. Clark, *Comparative Law: Western European and Latin American Legal Systems Cases and Materials* (The Bobbs-Merrill Company, 1978), 975; Joseph R. Thome, ‘Land rights and agrarian reform: Latin American and South African perspectives’ in Julio Faundez (ed), *Good Government and Law: Legal and Institutional Reform in Developing Countries* (Macmillan Press, 1997), 208-213; Duncan Kennedy, ‘Three Globalisations of Law and Legal Thought: 1850-2000’ in David Trubek and Alvaro Santos (eds), *The New Law and Economic Development: A Critical Appraisal* (Cambridge University Press, 2006) 19, 36; Lee Godden, ‘The Invention of Tradition: Property Law as a Knowledge Space for the Appropriation of the South’ (2007) 16 *Griffith Law Review* 375.


112For an articulation of ‘developmental state’ by the late Meles Zenawi, the long-serving chairman of EPRDF, see Meles Zenawi, ‘States and Markets: Neoliberal Limitations and the Case for a Developmental State’ in in Akbar Noman et al, (eds), *Good Growth and Governance in Africa: Rethinking Development Strategies* (Oxford University Press, 2012) 140.

reorganized, peasant associations into newer government structures appended to the newly established states of the federation. It also revived expropriation by laying down a law on ‘expropriation of (rural and urban) landholdings for public purposes’. The widespread invocation of the ‘public purpose’ justification by the state in its extensive eviction of rural and urban landholders since the 1990s, coupled with its insistence on keeping the proceeds of land leases for itself made ‘ethnic’ federal Ethiopia a new ‘landlord’ rather than a guarantor of the idea of ‘land to the tiller’ or the ‘special interest’ of subnational states. As shall be seen in section 8.4.2, the land policies and practices of the second republic have thus informed contests over property regimes (hence, the Ethiopian Civil Code project).

In sum, the federalist response to the ‘nationalities question’ included (1) the adoption of an anti-statist concept of self-determination, (2) the reconstitution of Ethiopia into a ‘multinational’ federation, and (3) the modified retention of ‘public ownership’ of land of socialist Ethiopia as an important supplement to the notion of national self-determination. As noted, the constitutional debate on the notion of self-determination, and private ownership of land demonstrate the continued contest over state-society relationships and, hence, Abyssinian imperialism and modernisms. A reading of the Ethiopian Civil Code now, in the federalist temporality, cannot, therefore, ignore the continued inter-temporal contest over state-society relationships Ethiopia and the lingering legacies of Amhara hegemony and semicolonial legal modernity that informs it. In the remainder of the chapter, I elaborate on the truncated but, contested, continuity of Haile Selassie’s Civil Code in ‘ethnic’ federal Ethiopia.

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114 John W. Bruce, Allan Hoben, and Dessalegn Rahmato, After the Derg: An Assessment of Rural Land Tenure Issues in Ethiopia (the Land Tenure Center, University of Wisconsin-Madison, and the Institute of Development Research, Addis Ababa University, 1994)


8.4. HAILE SELASSIE’S CIVIL CODE IN THE ‘NATION OF NATIONS’

8.4.1. The Curious Continuity of a ‘Uniform’ Civil Code in ‘Ethnic’ Federal Ethiopia

Because of ‘ethnic’ federal Ethiopia’s federalist responses to ‘the nationalities question’ and the new conception of the diverse Ethiopian ethnic groups as the embodiment of an all-embracing sovereignty, the future of the Ethiopian Civil Code, a symbol of Amhara hegemony in late imperial Ethiopia, looked for some more uncertain than it was during the ‘first republic’. For instance, taking his cue from the new constitutional division of legislative power between Addis Ababa and the ‘ethnic’ states of the federation, a German jurist argued the 1960 Ethiopian Civil Code ‘has become an unconstitutional law ipso jure’ since 1995:

[The Ethiopian Civil Code] was enacted...when Ethiopia was a unitary state under the rule of an absolute Emperor...Under the present [constitution], [Ethiopia] would however not be allowed to promulgate [civil code] without having a decision to this end by [the House of Federation]. In the absence of transitional provisions in [the current constitution], it could even be argued that [the 1960 Civil Code] in total has become an unconstitutional law ipso jure, by operation of law itself, in the moment when, with the adoption of the [current constitution], the legislative power devolved from the central state...to the member states.\(^{118}\)

The constitution that, as Menno Aden noted, failed to include a transitional provision regarding the continuity of the Haile Selassie’s imported legal codes, nevertheless lends some legitimacy to the form of codes. It includes the commercial code and the penal code – that formed part of Ethiopia’s legal tradition since the time of Ethiopia’s last emperor – among the list of laws the federal legislative chamber, the House Peoples’ Representatives may enact or retain as federal laws.\(^{119}\) Further, in exercising this power, the House Peoples’ Representative enacted the Criminal Code of the Federal Democratic Republic of Ethiopia in 2004.\(^{120}\) This code, a revised version of the 1957 Penal Code drafted by a continental jurist as part of imperial Ethiopia’s mid-20th century legal self-civilization, shows the

\(^{117}\)I am borrowing the phrase ‘nation of nations’ from Fasil Nahum, who uses it in his monograph on the 1995 Ethiopian constitution. See Fasil Nahum, Constitution for a Nation of Nations: the Ethiopian Prospect (the Red Sea Press, 1997).


\(^{119}\)Art 55, FDRE Constitution.

absence of transitional provisions in the 1995 constitution regarding Haile Selassie’s legal codes was not a cause for its abandonment in so far as the ‘nation of nations’ is concerned. In fact, ‘ethnic’ federal Ethiopia showed its intent to keep other legal codes from Haile Selassie’s era including the Civil Code (which was not mentioned in the constitution) by, *inter alia*, subjecting them to a partial revision with a view to bringing them in line with the constitution. The 2000 Revised Family Code, a revision of parts of Book I and Book II of René David’s work, is an example.121

The ‘second’ republic which saw it fit to bring parts of Book I and Book II of the 1960 Civil Code in line with its constitution did not, however, heed calls to do the same with other books of the code, including Book III.122 In fact, the modified retention of socialist Ethiopia’s notions of land law (e.g. public ownership of rural and urban lands) can be read as the sustained leftist and peripheral nationalists push back against proponents of individual ownership-based property regime that the Ethiopian Civil Code represented (see 8.3.3 above).

It is not, however, clear if Addis Ababa can revise or enact the Civil Code, including Book III, without generating constitutional controversy as demonstrated in the case of the 2000 Revised Family Code of Ethiopia.123 A reading of the relevant sections of the constitution suggests that the power to enact civil laws which, according to one interpretation, mean ‘all matters covered by [the 1960 Ethiopian Civil Code]’ and not expressly federalized by the new constitution (e.g. copyright and intellectual property) are deemed ‘reserved to the States’.124 Also, as noted, member states of the federation have the constitutional power to enact their own laws (including constitutions) and interpret them through their state-level adjudicative organs.125 Member states of the federation do, therefore, have the ‘residual’ power to enact their own civil codes or retain Haile Selassie’s Civil Code as their own in the same way as Eritrea did after independence.126

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122Aden, above n 118. See also Getahun Worku, ‘የመን ማለጋ የላልተለወጡት ይልጋጌዎች’ [Outdated Codes] Ethiopian Reporter Amharic Version (online), 15 September 2013 <http://www.ethiopianreporter.com/index.php/other-sections/law-and-politics/law/item/3286-%E1%8B%98%E1%88%98%E1%8B%8A%E1%89%BD-%E1%8B%A5-%E1%8B%B2%E1%88%88%E1%88%88%E1%8B%8A%E1%8C%A5-%E1%8B%A5-%E1%8B%8A%E1%88%8B%E1%8B%88%E1%8C%A1%E1%89%BD>.123See, eg, Mandefrot Belay, ‘Public Consultation toward Ethiopia’s Family Law Reform and the Revised Code’s Response’ (2016) 10 *Mizan Law Review* 244, 248-9.
124Fiseha, above n 59, 305.
125See section 8.3.2 above.
126Fiseha, above n 59, 305; see also Tecle Hagos Bahta, ‘Federal and State Legislative Powers in Civil and Commercial Matters in Ethiopia: Striking the Balance and Maintaining it’ in Eva Brems and
wants to enact civil laws (hence a civil code), it must seek approval from the House
of the Federation. As noted, the granting of such an application depends on
whether the House of Federation deems a purported federal civil codification
‘necessary to establish and sustain one economic community’. 127

Although enacting civil law is generally believed to be within the competence of
the new ‘ethnic’ states, some argue the legislative power to enact Book III-style
land law belongs to Addis Ababa. 128 It is, however, disputed whether land (or
property in general), a ‘traditional’ civil law matter, falls within the exclusive
jurisdiction of the federal government. A leading property law expert maintains
that the jurisdiction over property law does not ‘automatically fall’ within the
legislative competence of the federal government, given legislative jurisdiction
over property law, he maintains, is at best concurrent. 129 The House of Federation
which, in one of its decisions affirmed the constitutionality of the practices of some
states to legislate and administer their own land laws, has reinforced property law-
making in the new Ethiopia is at least concurrent. 130

Irrespective of the uncertainties regarding the exclusive power of the federal
government to enact a nationally applicable civil code (for our purpose, ‘the law of
things’ comparable to Book III of the 1960 Civil Code), legal academics with a lot of
respect for Haile Selassie era legal codes call for the overhaul of the ‘outdated’
code. 131 Yet, the second republic does not seem interested in comprehensive re-
systematization of the Civil Code, not least when the area of law involves Book III
that I argued (Chapter Seven) was rewritten imaginatively by socialist Ethiopia’s
‘constitutional acts’ and further legitimated by the current constitution (see section
8.3 above). 132 But, this new administration was not either interested in encouraging
the new member states of the federation to capitalize on their legislative power to
enact their own civil code and cut themselves off from the de facto ‘uniform’ civil

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127 Art 55(6), FDRE Constitution.
128 Fiseha, above n 59, 305.
130 See Biyadglegn Meles & et al v. the Amhara Regional State, Council of the Constitutional Inquiry, the
131 See, eg, Aden, above n 118.
132 In contrast, works on the revision of other existing codes have been ongoing for some years now.
See ‘New Maritime Code Fit for a Landlocked Ethiopia’, Addis Fortune (Addis Ababa), 2 February
2014; ‘Experts Developing New Commercial Code for a Modern Ethiopia’, Addis Fortune (Addis
Ababa), 2 March 2014.
code that continues to shape legal practice and legal education in the ‘nation of nations’. To date, the constitutionally recognized legislative power of subnational states of ‘ethnic’ federal Ethiopia is largely reflected in their adoption of federal laws as their subnational laws. It is a common practice of states to avoid attention on their legislative agenda (e.g. introducing laws that significantly differ from federal laws) for fear of ‘negative reaction from’ from the federal government. And, attempts by some member states (e.g. the state of Oromia) to revise Haile Selassie era codes as part of their nationalist construction of their subnational legal systems were interrupted by Addis Ababa.

As noted above, the only successful regional civil codification project pertains to family law. Following the decision of the House of Federation against a nationally applicable family code in 2000, states were encouraged to codify (‘copy’ the ‘standard setting’ Revised Family Code that the federal government enacted with the intent to impose it nationally). And, the states did copy the national law. One may, thus, wonder why ‘ethnic’ federal Ethiopia, that legitimated its power by fostering peripheral nationalisms, gives little room for attempts by its new subnational states to cut themselves off from a code written in the era of Amhara hegemony? As I shall elaborate below, the answer is to be found in the internal working principles and anti-federalist practices of the vanguard party ruling the second republic since its inauguration in the early 1990s.

8.4.2. EPRDF and the New Abyssinian Imperialism

Established just a few years before the Tigrayan People’s Liberation Front’s forces successful entry to Addis Ababa, the vanguard party of post-socialist Ethiopia (Ethiopian People’s Revolutionary Democratic Front) is made up of four ethnic-based parties with power asymmetries. These are the Tigrayan People’s Liberation Front itself, the Amhara National Democratic Movement, the Oromo Peoples' Democratic Organization, and the Southern Ethiopian People's Democratic Movement. The creator and the senior partner of the front is the the Tigrayan People’s Liberation Front, whose long-time chairman Meles Zenawi was the Prime Minister (1995-2012) of the ‘second republic’ for much of the period under

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134Ibid.
135Interview with judges and legal professionals in Oromia National Regional State (August 2015, Addis Ababa, Ethiopia).
136See, eg, Smith, above n 17, 180.
The second most senior member of the front is the Amhara National Democratic Movement. Like the Tigrayan People’s Liberation Front, the Amhara National Democratic Movement’s roots can be traced back to the leftist Ethiopian student movement. It was a breakaway faction of the oldest but anti-Tigrayan People’s Liberation Front Marxist party to grow out of the Ethiopian Student Movement, that is, the Ethiopian People’s Revolutionary Party (EPRP). The Amhara National Democratic Movement was supported by the Tigrayan People’s Liberation Front since its formative years. And, it was the first to join forces with the Tigrayan People’s Liberation Front in creating the Ethiopian People’s Revolutionary Democratic Front in 1989. The two senior parties of Ethiopian People’s Revolutionary Democratic Front represent (or claim to represent) the two ethnic groups of historic Abyssinia, the Amhara and Tigre, that, to Wallelign Mekonnen, were unequal partners in the national domination of the non-Abyssinian others of the Horn of African polity. When the collapse of socialist Ethiopia was on the horizon, the Tigrayan People’s Liberation Front moved to create the Oromo Peoples' Democratic Organization (1990) out of its ethnic Oromo prisoners fighting for the socialist state, thereby extending the representational outlook of the Ethiopian People’s Revolutionary Democratic Front beyond the Oromo region. The process of coopting non-Abyssinian elites into the Ethiopian People’s Revolutionary Democratic Front was complete with the inclusion of the newly established Southern Ethiopian People's Democratic Movement (1992) into the front in 1994 as the representative of the non-Oromo peoples of the highland peripheries.

Four of the five largest member states of the federation have always been ruled by the Ethiopian People’s Revolutionary Democratic Front’s parties: the Tigrayan People’s Liberation Front (Tigray); the Amhara National Democratic Movement (Amhara); Oromo Peoples’ Democratic Organization (Oromia) and the Southern Ethiopian People's Democratic Movement (SNNPRS). The remaining five member states of the federation (most of which are geographically located in what I have called the lowland peripheries) were ruled by ethnic-based parties that, despite formally being independent of the Ethiopian People’s Revolutionary Democratic Front

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138Ibid.
139Young, above n 34, 111.
140The Ethiopian People’s Revolutionary Party (EPRP), one of the two Marxists parties to evolve out of the Ethiopian Student Movement; see Zewde, above n 23, 229 et seq.
141Young, above 34, 111; Markakis, above n 35, 193.
142Young, above n 34, 166.
143Mekonnen, above n 2, 11.
144Aalen, above n 137, 6.
146Ibid 82.
Democratic Front, maintain ‘tight links’ to it. At the federal level, the two houses of the federation – the legislative HPR and the non-legislative the HoF – have always been dominated by members of the Ethiopian People’s Revolutionary Democratic Front and its affiliates. Although parliamentary elections are held regularly (every five years both at the federal and state levels), the hegemony of the Ethiopian People’s Revolutionary Democratic Front and its affiliates remains intact largely because of the authoritarian practices of the vanguard party.

The Ethiopian People’s Revolutionary Democratic Front, which for many is more of the Tigrayan People’s Liberation Front in an Ethiopian appearance than a coming together of ethno-nationalist parties with comparable powers and resources, is known for its continued adherence to Leninist approaches to party politics such as ‘democratic centralism’. This approach subverts the federalist spirit implicit in the 1995 Constitution of the Federal Democratic Republic of Ethiopia (e.g. legislative division of powers over civil matters). The working of this organizational principle within the Tigrayan People’s Liberation Front (hence, within the Ethiopian People’s Revolutionary Democratic Front) is summarized as follows:

Executive and central committee party members are in charge of all major policy decisions. These are transmitted to party officials and state administrators and must be adhered to; party members bear personal responsibility for their assignments. TPLF central committee members consider themselves not only vanguard of the party, but also of the Tigrayan people, whose will is represented and interpreted by the party. While debate is possible within the party, criticism by members once a decision has been made is considered factionalism. The nine-member executive committee takes decisions collegially, before they are approved by the central committee.

Also, the Ethiopian People’s Revolutionary Democratic Front is not tolerant of what it calls ‘chauvinist’ and ‘narrow’ nationalists. It persecutes both. ‘chauvinist’ and ‘narrow’ nationalists. In doing so, the Ethiopian People’s Revolutionary

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147Ibid 83.
151Hagmann, above n 83, 6.
Democratic Front reenacts the Dargue that saw it as a constitutional mission to fight chauvinists and narrow nationalists. Seen from the point of view of non-Abyssinian peripheral nationalists (particularly Oromo nationalists), ‘ethnic’ federal Ethiopia’s break from its socialist and imperial past does not, thus, seem as marked as the letters of the most important legal document of the post-socialist Ethiopia, the 1995 Constitution, seems to suggest. The new Ethiopian state (and hence this temporality) is imperial Ethiopia cum socialist Ethiopia in a federalist mask. The strong centralizing attitude of previous temporalities is not only maintained through the instrumentality of the vanguard party dominated by the Tigrayan People’s Liberation Front and its continuation of democratic centralism. The federalist dispensation is also subverted by the continued frustration of demands for the decolonization of the relationship between Addis Ababa and its non-Abyssinian peripheries.153 This new continuity in the coloniality of Addis Ababa’s power vis-à-vis its peripheral peoples, I argue, sustains the 1960 Civil Code beyond the 1991 ethno-nationalist revolution and the constitutional rhetoric that, as noted, strongly if not unequivocally, suggested the end of Haile Selassie’s Civil Code as Ethiopia’s uniform civil code.

8.4.3. The Truncated Continuity of Book III of the 1960 Civil Code and Related Contests

As noted, the second republic retained imperial Ethiopia’s well-known artifice of legal self-civilisation despite creating the illusion of the end of the uniformly applicable civil code known for its politics of exclusion by inclusion (see Chapters Four and Five). As it was not officially abandoned, rather partially undermined, Book III of the 1960 Ethiopian Civil Code remains a ‘core’ part of Ethiopian property law.154 Apart from making it practically impossible for the new ‘ethnic’ states to free themselves from Haile Selassie’s civil code, the second republic promises its acclaim by freeing its judiciaries from the jurisdictional constraint placed upon them during the Dargue era (see Chapter Seven). Following the collapse of socialist Ethiopia, courts are back as adjudicators of land-related civil disputes.155 And, as was the case during late imperial Ethiopia, land-related

155Chapter Nine, FDRE Constitution.
disputes constitute the major source of civil cases in ‘ethnic’ Ethiopia, particularly at subnational levels.156

Despite the reintroduction of courts as venues for land dispute settlement and the simultaneous resurgence of civil disputes on land-related matters, courts both at the federal and regional levels seldom rely on Book III in writing their judgments.157 Conversation with judges and practicing lawyers in select subnational states show Book III is relied upon when (1) ‘gaps’ exist in recently enacted land laws, and (2) disputes involve what under the Civil Code is known as ‘possessory action’.158 My review of reported land-related cases brought before the Federal Supreme Court of Ethiopia (2005-2014) also reveals the application of Book III’s rules in only about 30% of the cases.159 In contrast, the Civil Code remains the most important applied law in civil disputes involving what under the code are conceived as ‘succession’ (Book II), ‘obligations’ (Book IV), and ‘special contracts’ (Book V).160 Courts often rely on various federal and subnational land laws in writing their judgments on land disputes.161 Also, courts of ‘ethnic’ federal Ethiopia interpret and apply the Dargue era land laws which, as seen in Chapter Seven, excluded ordinary courts from jurisdiction in land-related civil disputes.162

The current ‘ethnic’ federal set up has also created a demand unforeseen by the actors in the codification process: a demand for a civil code accessible in local languages including Somali, Afan Oromo, Afar and Tigrignya which are now languages of legal practice in the Somali, Oromia, Afar and Tigrai national regional states, respectively. The 1960 Civil Code, the draft of which was prepared in French, is officially published only in Amharic and English. While the English version continues to dominate legal education, the Amharic version – the only version officially available in a local language – is considered more authoritative in

156Interview with Amare Ashenafi, a court administrator at a federal court and a former judge in Amhara National Regional State (28 September 2015, Addis Ababa, Ethiopia); Interview with Berihun Adugna, Supreme Court Judge at Amhara National Regional State (3 October, 2015, Bahir Dar, Ethiopia); Interview with Manguday Wondimu, Practicing Lawyer in Southern Nations, Nationalities and Peoples’ Regional State (20 September, 2015, Hawassa, Ethiopia); Interview with judges and legal professionals in Oromia National Regional State (August 2015, Addis Ababa, Ethiopia).

157Interview with Berihun Adugna, Supreme Court Judge at Amhara National Regional State (3 October, 2015, Bahir Dar, Ethiopia); Interview with judges and legal professionals in Oromia National Regional State (August 2015, Addis Ababa, Ethiopia).

158Ibid.

159This is based on a review of civil cases classified under the ‘property’ sections of the Cassation Division Judgements (vols. 1-15 (2005-2015)), Federal Supreme Court of Ethiopia, Addis Ababa.

160Ibid.

161Ibid.

162Ibid.
legal practice. Whenever there is discrepancy between the Amharic and English versions of statutory laws, Ethiopian courts have normally picked the Amharic one as the authoritative version. However, the ‘translation’ problem is not limited to the lack of fluency between the French, English and Amharic versions of the code that has long drawn the attention of commentators and practitioners. Practicing lawyers (and law students) in today’s Ethiopia complain about the difficulty of comprehending the old Amharic used in the Code as well as translating it to other local vernaculars of legal practice. As it stands now, the legacies of Abyssinian imperialism (more specifically, its dependent legal modernism) and ‘ethnic’ federal Ethiopia’s anti-federalist practices appears to be shouldered by lawyers in peripheral Ethiopia who study Ethiopian law in English and Amharic and practice it in yet other local languages.

The Federal Supreme Court of Ethiopia (its cassation bench) was introduced in 2005 as the final interpreter of subnational and federal laws which for most practicing and academic lawyers, include Haile Selassie’s era legal codes. Inter alia, the introduction of the Federal Supreme Court of Ethiopia as the ultimate interpreter of laws in the new Ethiopia was meant to discipline divergent interpretations of ‘federal’ laws including the 1960 Civil Code, by subnational courts (e.g. State Supreme Courts which are arguably the highest and final judicial arbiters of the interpretation and, hence, application of the Civil Code in their respective jurisdictions. However, the introduction of the Federal Supreme Court (the cassation benches) as the ultimate interpreter of the Civil Code and other Ethiopian laws, like the de facto continuity of the Civil Code as a federal law, casts doubt on that. And, it is reflects the ‘strong centripetal pull…that has prevailed in Ethiopia’ since pre-codification times.


Interview with a judge in Oromia National Regional State (29 September, Addis Ababa, Ethiopia). Also, my recollection as a law student and, later, teacher in Bahir Dar University (2001-2013).

A panel of five supreme court judges acting as an appellate court of the highest instance and rendering a decision that binds lower federal and state courts in future cases.


Ibid; art 80, FDRE Constitution.

Bahta, above n 126, 83.
Also, Book III of the 1960 Ethiopian Civil Code still dominates the highly centralized curriculum of property law in Ethiopian law schools. The exposition of Ethiopian property law often starts and ends with a detailed look at Book III's legal categories. While leading Ethiopian property law scholars do not see anything wrong in Book III dominating the property law curriculum, practicing lawyers point out the problems they face in understanding post-imperial Ethiopia's land laws as a result of their code-based studies. The continued dominance of the 1960 Ethiopian Civil Code in the field of legal education raises questions as to why the radical land laws of the post-imperial period struggle to get the attention of the law schools their practical relevance demands. Codified laws, unlike the 'piecemeal amendments to the Code’s provisions regarding private property', command more respect among Ethiopian legal scholars.

Ethiopia's legal education is a highly centralised affair. Although the establishment of several law schools and judicial training centers in various parts of the country since the 1990s (temporarily) marked the beginning of a new era of decentralized legal education, 'ethnic' Ethiopia has later embarked on the Justice System Reform Program to overhaul and adapt the justice system of the nation to 'the new constitutional and global reality'. Funded by the United Nations Development Programme (UNDP), the federal government carried out various reform activities including the revision and harmonization of LLB curriculum of public and private higher education institutions. As part of the harmonization project, numerous course syllabuses and textbooks have been written and endorsed by Justice and Legal System Research Institute (JLSRI). Currently, all Ethiopian law schools are required to use, at least as regards courses included in the nationally administered Exit Examination for Students of Ethiopian Law Schools, the syllabus and textbooks developed under the supervision of JLSRI. This includes the syllabus and textbooks for 'Property Law' that remain largely based on Book III of the 1960 Ethiopian Civil Code. See New Curriculum, Curriculum Implementation Committee, Justice and Legal System Research Institute (Addis Ababa, 2011) 142-151 (on file with the author) [hereinafter New Curriculum]; Federal Democratic Republic of Ethiopia Ministry of Capacity Building, Comprehensive Justice System Reform Program Baseline Study Report (2005).

New Curriculum, above n 170, 142 et seq.

Interview with Elias Nour (PhD), St. Mary University, September 9, 2015, Addis Ababa, Ethiopia; Interview with Muradu Abdo (PhD), Addis Ababa University, August 25, 2015, Addis Ababa, Ethiopia.

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Abdo, above n 154, 177.

Interview with Professor Tilahun Teshome, Addis Ababa University (9 October 2015, Addis Ababa, Ethiopia); Interview with Manguday Wondimu, Practicing Lawyer in Southern Nations, Nationalities and Peoples’ Regional State (20 September, 2015, Hawassa, Ethiopia). See also መረጃወንድማገኘሁ፣የኢትዮጵያዐቢይ ለእርነት ከወንበር 50ኛ በገኝ ፈር ለእር ከማስከረም፣ ታምሩወንድማገኘሁ፣የኢትዮጵያ (ሚያዝያ 2002) [Tamiru Wondimagegnehu, 'The 50th Anniversary of the Codification of Ethiopia’s Major Laws', (2010) 6 Wonber]; መረጃወንድማገኘሁ፣የኢትዮጵያዐቢይ ለእርነት ከወንበር ያስገን ለማስከረም፣ ያጫ ለእር ከማስከረም፣ 2003] [Mekbib
This respect is garnered, I argue, because these scholars were themselves products of code-based legal education that remained intact despite post-imperial Ethiopia’s modernisms that produced radical land and constitutional laws. Further, as may be evidenced by their scholarly writings, they were also consumers of the globally hegemonic literature on private property that related more to the 1960 Civil Code than the laws of post-imperial Ethiopia which, as I have noted, impacted the Civil Code project significantly.\(^{176}\) Hence, their hostile attitude towards the various property laws that, in their view, make the first-rate Code-based system fragile may, in part, explain the continued dominance of Book III in the field of property law teaching, if not local legal scholarship.

In keeping with the tradition set by Harrison Dunning, the teaching of Book III in law schools excludes the unconventional parts (e.g. the title on agricultural communities).\(^ {177}\) Moreover, unlike the concept of individual landownership the legitimacy of which appears to have gained momentum with the second republic’s embrace of the free market economy, agricultural communities did not figure as a concept for critiquing the policies and practices of the Ethiopian state. Instead, legal scholars draw attention to the ‘need to remove’ the provisions regarding agricultural communities from the Civil Code for they now belong to ‘the back seat of history’\(^ {178}\).

Despite its pro-pluralistic tone, some prefer to remember René David’s creative legal concept as late imperial Ethiopia’s incomplete attempt to facilitate the privatization of tribal lands through a legal technology that could have enabled imperial Ethiopia to coopt village chiefs in the same way as customary land tenure systems in colonial Africa.\(^ {179}\) As such, the power of agricultural communities as both a symbol of state sanctioned legal pluralism or land reform (see Chapters Two, Six, and Seven) is forgotten after the second revolution.

\(^{176}\) This is based on my review of works published by my interviewees as well as other local legal scholars with interest on Ethiopia’s property and land laws. Also, a recent survey of scholarly works published in Ethiopian law journals since 1960s has shown that doctrinal works (most of which were code-based) constitute over 93 % of the total legal research output. See Wondemagegn Tadesse, ‘Legal Research Tools and Methods in Ethiopia’ (2012) 25 Journal of Ethiopian Law 93. See also ‘Major Legal Reference Materials’ (2003/4) (First Annual Edition) Ethiopian Legal Directory, 47-97.

\(^{177}\) New Curriculum, above n 170, 142 et seq.

\(^{178}\) Abdo, above n 154, 174.

\(^{179}\) Interview with Muradu Abdo (PhD), Addis Ababa University, August 25, 2015, Addis Ababa, Ethiopia.
The claim that agricultural communities belong to ‘the back seat of history’ is perhaps related to the federalism and modernism embraced by legal scholars. David’s ideas about keeping tribal land tenure as autonomous as possible (from public ownership or individual ownership) is now couched in the language of the constitution that, as noted, guarantees the use rights of traditional users of rural lands and national self-determination. For instance, a longtime critic of the Ethiopian Civil Code project and a sympathizer of post-revolutionary Ethiopia’s radical land laws, Paul Brietzke posited post-peasant associations Ethiopia could do better if it aims to ‘reduce’ what he called ‘the effects of internal colonialism’ within the framework of the new constitution. Brietzke thought the new constitution ‘would allow the granting of property rights ‘akin to “aboriginal” rights in Australia or Canada’. Similarly, an Ethiopian legal scholar who maintains agricultural communities belong to the ‘back seat of history’, argues ‘the affirmation of the constitutional principles [on property]’ fosters ‘multiple conceptions of land rights’ (and, hence, the legitimation of the claims of Ethiopian peasants and pastoralists). These were the ideas that, at least in part, led René David to suggest agricultural communities as a supplement for a Roman-Germanic Book of Goods known for their indifference to what Muradu Abdo calls ‘multiple conceptions of land rights’.

As I have noted in earlier chapters, the study of agricultural communities as a case study was crucial in demonstrating how the contest over land, state, and society relationships in Ethiopia shaped the Ethiopian Civil Code project. Agricultural communities’ replacement with peasant associations (in 1975), and now, with constitutional property right notions comparable with indigenous land rights that countries with colonial history recognise. The shift away from the concept of agricultural communities, without, however, ignoring the ideas behind them, reflect the inter-temporal contest over what Brietzke called ‘the effects of internal colonialism’ in Ethiopia.

In contrast to agricultural communities that, as noted, failed to regain the attention of legal scholars after the 1974 Ethiopian Revolution, individual landownership (or its constitutional equivalent private property) continues to test the hegemony of the concept of public ownership of land. As noted, led by former Marxists, ethnic federal Ethiopia has resisted the call for the reintroduction of individual ownership of land. But, some of the most notable opposition political parties that challenged the hegemony of the Ethiopian Peoples’ Revolutionary Democratic Front in the

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180 Brietzke, above n 68, 34
181Ibid.
182Abdo, above n 154, 174.; Srur, above n 116, 301-303.
183Ibid 301.
most openly contested general election Ethiopia ever had (the 2005 Ethiopian
general election) promised the reintroduction of individual landownership
together with the abolition of the right of nations to self-determination.184
Similarly, international agencies such as the World Bank and USAID push the
resistant ‘ethnic’ federal Ethiopia towards the re-institutionalization of individual
landownership which, according to some, insures the consistency of Ethiopia’s
land tenure system with its post-socialist ‘road toward a market economy’.185
Ethiopian legal scholars have also joined the debate by suggesting the
‘developmental’ Ethiopian state draw some lessons from Asian ‘developmental’
states by at least widening the scope of individual land use rights under Ethiopian
law that deny formal transactions in land (e.g., sale and mortgage).186

But, ethnic federal Ethiopia has also drawn criticism for its ‘developmentalism’
that effectively favored private investors over small-holder farmers and
pastoralists.187 The second republic, unlike the socialist republic, encouraged
private investment in areas where ‘there is tribe based communal holding systems’
(reintroducing the practices of late imperial Ethiopia).188 It also failed to honor the
notion of ‘the special interest’ (of the state of Oromia in Addis Ababa) that
appeared to guarantee the end of Addis Ababa’s (with its non-Oromo culture)
further expansion into areas settled by smallholder indigenous Oromo peasants.189
As such, some argue the notion of public landownership is a façade for the
effective privatization of land in ‘ethnic’ federal Ethiopia for the benefit of foreign
and local investors.190 ‘Ethnic’ federal Ethiopia’s legitimation of ‘land grabbing’
through the notion of public landownership also led former champions of the ‘land
to tiller’ motto to call for the abandonment of the concept to which introduction
they contributed directly.191

From the point of view of the Ethiopian Civil Code project, the contest over the
abolition of public ownership of land (and/or the reintroduction of individual
landownership) is indicative of the continuity of the contest over the ideas/ideals

184Zeleke, above n 83, 122 et seq.; Hagman, above n 83, 9.
185Bruce, Hoben, and Rahmato, above n 114, 62; see also Wibke Crewett and Benedikt Korf,
186Elias N. Stebek, ‘Overview of Country Experience in Land Rights and Developmental Statehood:
South Korea, Taiwan, China and Singapore’ (2013) 7 Mizan Law Review 207, 239.
187Rahmato, above n 116; Fouad Makki, ‘Development by Dispossession: Terra Nullius and the
Social-Ecology of New Enclosures in Ethiopia’ (2014) 79 Rural Sociology 79; Abera Yemane-ab,
“‘Land to the Tiller”: Unrealized Agenda of the Revolution’ (2016) 16 Northeast African Studies
39, 54 et seq.
188Abdulahi, above n 90, 102; Fouad Makki, ‘Power and property: commercialization, enclosures,
189Ararssa, above n 111.
190Interview with Tadesse Lencho (PhD), Addis Ababa University (8 September, 2015).
191Yemane-ab, above n 187, 59.
of individual landownership and agricultural communities in the federalist temporality. It is suggestive of the continued contest over the Ethiopian Civil Code project in a new temporality the arrival of which meant, at least for some, the end of the Ethiopian Civil Code project.

As noted, the continuity of the 1960 Civil Code remains under a shadow of continuous threat from potential regional codification. This worries proponents of Haile Selassie’s legal modernisation projects. For some of these proponents the survival of the code after the downfall of socialist Ethiopia epitomizes (1) the ‘vitality’ of the imported legal text and (2) the inadequacy of the opinion of the sceptical students of the Ethiopian Civil Code project such as Paul Brietzke.192 Writing against the tendency for regional codification in ‘ethnic’ federal Ethiopia, Heinrich Scholler, a German jurist who taught law at Haile Selassie I University (1972-1975), singled out the importance of bringing together the ‘different codifications from different law families [and earlier eras] in a new modernised system’ that avoids ‘too much decentralisation’.193 Similarly, Ethiopian legal scholars – trained to be favourably disposed towards the legal codes from Haile Selassie’s era and the official nationalism on which it was embedded – rely on the ‘one economic community’ clause of the current constitution in their ideological battle to save the codes from being sacrificed to the new shrine of ‘legal diversity’, that is ‘ethnic’ federal Ethiopia.194 In contrast, some legal scholars bemoan the continued hegemony of centrally enacted or retained laws and policies.195 Reminiscent of the old debate on ‘unification of laws’ in postcolonial Africa (and Asia), these views on the continued importance of Haile Selassie’s codes reflect the newest frontier of contest regarding the Ethiopian Civil Code project.196 It also demonstrates the ambivalent and curious relationship ‘ethnic’ federal Ethiopia maintains with Haile Selassie’s imported legal codes and, generally, the modernisms of late imperial Ethiopia and socialist Ethiopia.

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193 Ibid.
8.5. CONCLUSION

In 1991, Ethiopia carried out its second revolution of the 20th century. This revolution brought a left-oriented national liberation front to the forefront of political power. And, in 1995, the revolution was consummated with the adoption of a constitution that, as noted, reconstituted Ethiopia as a multinational federation with nine states, introduced the notion of the right of nations to self-determination (including and up to secession), and retained socialist Ethiopia’s ideals on public ownership of land. The retention of the idea of state ownership of land, coupled with the introduction of the right of nations to self-determination in the 1995 constitution, apparently makes Ethiopia’s second revolution a heightened version of the socialist revolution ‘with its emphasis on “national self-determination’”.

Still, because of its contradictory practices with regard to the notion of national self-determination and the continued hegemony of Ethiopian politics by the Ethiopian Peoples’ Revolutionary Democratic Front, the second revolution suggests a change of power between the Amhara and Tigre elites who, according to Wallelign Mekonnen, were unequal partners in the domination of multiethnic Ethiopia.

The implications of the second revolution for the Ethiopian Civil Code project are far reaching. First, the federalist response to the nationalities question implied the abrogation of Haile Selassie’s civil code. Nevertheless, the 1960 Civil Code continues to form part of Ethiopian law, in part, because of the practices of the second republic that forgets the Constitution’s federalist promise and hence discourages legislative plurality, as did late imperial Ethiopia. Second, because of its serious ideological differences to the society imagined in Book III, the second republic renders the continuity of the 1960 Civil Code less complete than would have been liked by the proponents of Haile Selassie’s Civil Code. Crucially, Book III, which has been a subject of considerable layering since the 1974 Ethiopian Revolution, cannot be read in isolation from the laws enacted since that time. As a corollary, individual landownership remains as marginal as it was during the era of ‘land to the tiller’ in ‘ethnic’ federal Ethiopia’s modernism. However, Book III of the 1960 Civil Code which, as noted, was eclipsed by other laws in the field of land dispute settlement, remains deeply integrated with the curriculum of Ethiopian law schools. Also, in contrast to agricultural communities (which ideas are captured, at least partially, by the constitutional notions of peasant and pastoralists property rights), individual landownership has replaced public ownership as the language of critiquing Ethiopia’s land policies and practices.

198 Mekonnen, above n 2, 11.
Within the context of the wider thesis, this Chapter reiterates that the Ethiopian Civil Code project, which has been partly subverted, consolidated, and hence, complicated by the ambivalent modernisms of the new republic, remains a contested project. Thus, it should not be wrongly cast as a failed or triumphant legal transfer project as has been depicted by the modernist stories (see Chapter Two). While the second republic’s insistence on the notion of public ownership of land can be read as a rejection of Rene David’s ideas for imperial Ethiopia’s legal modernization, the arrival of actors demanding less (as well as more) space for Haile Selassie’s legal codes attest to the continuity of contest today and in the future.
9. CHAPTER NINE

CONCLUSION

We have to admit that Others live in their own time and although part of it can be translated into our own, another part, a core of radical difference, cannot and should not.¹

The Ethiopian Civil Code project has been a subject of legal transfer studies since its enactment in 1960, particularly during the first two decades that succeeded it. It is largely known for its ‘failure’ or unsatisfactory localisation. Several observers particularly those I have called the optimists emphasised the assimilatory and evolutionary possibilities of what they have viewed as the symbol of Ethiopia’s semicolonial legal modernity. However, the dominant narratives belonged to the pessimists’ and their ‘failure’, undesirable, and impossibility theses. This thesis establishes that the Ethiopian Civil Code project is not a failure; it is, as this thesis established, an inter-temporally contested project of legal self-civilisation by a former semicolonial state with an imperial root. A consequence of Ethiopia’s encounter with European legal imperialism, the Ethiopian Civil Code of the 1960 was, as the drafter would agree, the new Fetha Negast. However, as I have argued, the Code is also more than that. It is a contested project about ‘imagined sociality’² – modernisms. These modernisms were enacted by actors with different positions and roles in the Ethiopian Civil Code project across three historical times. Putting to one side the old question of whether Ethiopia is (over time) succeeding in its technical grasp of the imported code, this thesis has revealed aspects of the project (e.g. the double coloniality and the entangled temporalities) that were either ignored or only looked at to some extent by what I have generally called the modernist stories of the Ethiopian Civil Code.

As noted in Chapter One, the lack of new research and the continued (but varied) importance of the legal transfer project in post-imperial Ethiopia raises several questions, which I have sought to answer. First is the question how the inter-temporal contest over the interpretation of Ethiopia’s pasts, presents, and futures and their (re)imagination of Ethiopia’s legal modernity shaped the Ethiopian Civil Code project over and through three different historical times? The answer to that question raises the second question as to what this tells us about the modernist stories that still shape our understanding of the legal transfer project over time? By asking these two questions in this thesis, I have attempted to address shortcomings in existing research on the Ethiopian Civil Code project that had tended to focus on

whether or not the legal transfer project was ‘effective’. As shown in Chapter Two, such lines of enquiries assume teleological temporality, reveal little about the politics and contests the project has generated, and, often, end up in ‘wrong comparisons’ that sustain legal orientalist understandings of the legal transfer project. This thesis has approached the Ethiopian Civil Code anew by diverting attention to the politics and contests amongst agents involved in the project. Moreover, the questions asked in this thesis have not assumed any particular teleology. This has allowed the thesis to integrate temporal structures that were not analysed before.

This thesis – *that the Ethiopian Civil Code is not an inevitable, impossible or failed exercise but a contested project of semicolonial legal modernity with multiple spatiotemporal inflections and effects* – is built on more recent developments in comparative law research on legal transfer. As I have noted in Chapter Three, more recent scholarship on legal transfer is shifting away from the modernist paradigm that for so long informed theoretical debates and research on legal transfers from the West into the non-western world. I have assembled an analytical framework drawing on an actor-centred field approach to legal transfer that students of legal transfer in law-importing non-western countries are beginning to employ in their non-essentialist and non-teleological reading of legal transfer projects (Chapter Three).

The major attraction of the field approach to my project is its usefulness to introduce (inter-temporal) actors involved in the Ethiopian Civil Code project and, thereby, aid the reading of the legal transfer project differently than by way of measuring progress ‘towards…modernity’. Focusing on the (inter-temporal) actors enabled a different reading of the Ethiopian Civil Code project. This approach also required attending to the temporal complexity within which context the Ethiopian Civil Code project was initiated, performed, and contested. Further, my reading of the Ethiopian Civil Code project assumes the inevitability of hybridity (a concoction of resemblance and departure in appropriated laws vis-à-vis their purported models) and the capability of the code and the legal concepts imported with it to lend themselves to multiple interpretations. As noted in Part One of the thesis (chapters One to Three), such an understanding of the legal code is a rejection of former students’ supposition regarding (1) one-way trouble-free transfer of laws and (2) its antithesis the impossibility of the project.

By asking a new set of questions, Part Two (chapters Four to Eight) reveals that the Ethiopian Civil Code project is a contested project with temporal effects and affected

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by its times also. First, the thesis sets out Ethiopia’s semicolonial encounter with European powers during the first half of the 20th century and how the attendant articulations of legal modernisation was decisive in triggering the massive codification of laws in late imperial Ethiopia. In this regard, the discourse of Ethiopian Japanisers that heralded the emergence of what I have called the field of Ethiopian legal modernisation is worth noting. As Chapter Four shows, Ethiopia’s nationalist intelligentsia of the early 20th century embraced Japan – the first non-European imperial power to graduate from semicoloniality – as a model for Ethiopia’s semicolonial legal modernity. Their modernist discourse included prescriptions regarding legal codification, land reform, and assimilation that in several ways anticipated the Ethiopian Civil Code project and its European drafter. An analysis of these contests demonstrates that the Ethiopian Civil Code project had more to do with Ethiopia’s semicolonial legal modernity and less to do with its determined attempt at ‘socio-legal engineering’ as has often been portrayed in the optimist strand of the modernist story.5

Second, the thesis demonstrated the Ethiopian Civil Code project was an idealised form of modernity adopted and incorporated by the Christian Amhara landed elites to consolidate their hegemony within Ethiopia. This was a post-semicolonial Ethiopia which was to experience two temporally significant events: the 1974 Ethiopian Revolution and the 1991 Ethiopian Revolution. The ruling Amhara landed elites, who were late in responding to the call by the local literati regarding legal codification, were finally persuaded to retain European jurists and subordinate their laws to European modernity. Their tardiness was in part a function of their internal contestation – which was evident during the codification process. There was disagreement about the trajectory for Ethiopia’s semicolonial legal modernity in general and aspects of the Ethiopian Civil Code project in particular. The primary motivation for the power wielders of late imperial Ethiopia in engaging codification was, as shown in Chapter Four, their desire to produce an ‘appearance of progress’.6 This was perceived as critical in a time that witnessed the decline of imperial Ethiopia’s cultural self-confidence which had been inflated by victory over European colonialism in the late 19th century. The ruling class led by the well-known Emperor Haile Selassie I, who in the 1930s, resisted European requests for an international mixed court by insisting ‘Ethiopia’s own legal traditions permitted “civilized” judgments’,7 did not dare to risk image collapse in a temporal setting that

brought additional pressures on his government to carry out legal self-civilization and ‘late nation-building’. 8

Third, as I demonstrate in Chapter Five, the ruling Amhara landed elites’ participation in the codification process was more significant than usually thought. Members of this group contested aspects of late imperial Ethiopia’s project of semicolonial legal modernity. Despite their understanding of the attractiveness of subordinating imperial Ethiopia’s law to European modernity for the purposes of ‘perfecting their’ colonial project, they resisted property law concepts that were believed to either undermine the hegemony of Amhara landed elites (e.g. agricultural communities) or depart from the logics of the rist system (e.g. the notion of usucaption). This reveals that the European drafter’s legal modernist interpretation of imperial Ethiopia’s reality and imagination of its future in land, state, society relationships was contested and moulded to local agendas from the very beginning. As such, Book III of the Ethiopian Civil Code project presents itself as a repository of late imperial Ethiopia’s ambivalent performance of semicolonial legal modernity as much as it inscribed traces of Abyssinian imperialism.

Fourth, this thesis has demonstrated that the Ethiopian Civil Code project was a subject of intense contest in social spaces where the Amhara landed elites (the most dominant Ethiopian voice in the field of codification in late imperial Ethiopia) were marginal – the field of legal education (Chapter Six) and legal codification in post-imperial Ethiopia (Chapter Seven and Eight). The involvement of Americans in Ethiopian legal education was a function of (1) ‘American legal imperialism’ that popularised legal education as a new instrument for consolidating ‘Old World’ extraterritoriality in Latin America, Asia and Africa. 9 Partners in America’s fight against communism, the political elites in imperial Ethiopia (who, as noted had had issues with European legal imperialism) saw the Americans more dependable, more wealthy and more resourceful than the Europeans in their performance of ‘modern imperialism’. 10

Nevertheless, an important effect of the ‘American Era’ 11 in Ethiopian politics in general and legal education in particular was the further pluralisation of the actors, and hence the transformation of the field of Ethiopian legal modernisation. The

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appearance of a new generation of elites versed with the languages of imperial Ethiopia’s newly imported laws and Marxism (another discourse of modernism gaining momentum in postcolonial Africa\textsuperscript{12}) are a case in point. The launch of a US-funded law school for training the future custodians of the 1960 Civil Code and the coincidental emergence of new social forces (e.g. left-oriented social critiques of late imperial Ethiopia and its reluctant modernisms) during the 1960s, thus, added to the inter-temporal contestability of the Ethiopian Civil Code project.

As Chapter Seven demonstrates, the contest between the landed elites engaged in the theatrics of legal self-civilisation and these new breed of local modernists (the participants of the Ethiopian Student Movement) ultimately revealed itself in the rejection of Book III’s basic legal concepts such as individual landownership and agricultural communities in post-imperial Ethiopia, that is ‘the era of land to the tiller’ (1974-1991). Further, the arrival of ‘ethnic’ federal Ethiopia in 1991 empowered proponents of the ‘nationalities’ question of the Ethiopian Student Movement that ensured the continuity of contest and what Christopher Clapham has called the ‘[Ethiopian] politics of emulation’.\textsuperscript{13} Crucially, ‘ethnic’ federal Ethiopia chose to cling to the juristic articulation of land, society(ies), and state relationships introduced by the ‘basic laws’ of the ‘era of land to the tiller’ (1974-1991) than move back to the imagined socialities of Book III.

Demonstrating (the vitality of) the contests in these social spaces is important to show how profoundly the inter-temporal contest over the nature of state, law and society relationships (as articulated by ‘Ethiopian Japanisers’, the landed, elites, transnational clients of imperial Ethiopia, and the left-oriented Ethiopian intelligentsia of the second half of the 20\textsuperscript{th} century) impacted on the Ethiopian Civil Code project. It is also meant to indicate how Abyssinian imperialism has engendered – despite dampening it during the codification stage – consequential inter-temporal contests over Ethiopia’s semicolonial legal modernity. Even then, the highly-contested project of the Ethiopian Civil Code can temporalize local practice as may be evidenced by, for example, the continued dominance of Book III in the field of legal education long after the marginalisation of its core concepts.

Approached through non-modernist methodologies and with different questions than those about the clichéd notion of ‘failure/success’, the Ethiopian Civil Code, emerges as other than a failure (a la the modernist stories). Book III of the Civil Code was an idealised form of modernity adopted and incorporated by Christian Amhara landed elites – whose lack of or little ambition for radical reform can be contrasted

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with other local leadership groups challenging local imperialism. As a result, the code was subject to profound contest and reimagining locally that challenged its interpretation of Ethiopia’s past and present and the imagination of the future. Despite sailing through three different historical times (marking its half centenary along the way) and continuing to influence local practices, the Ethiopian Civil Code project is still subject to ongoing contest and reinterpretation. As such, the Ethiopian Civil Code project was initiated, performed, and contested over three historical times and in multiple social spaces, or fields. It is a repository of multiple, entangled, and contested modernisms in Ethiopia; a ‘smaller’ semicolonial empire that was compelled to engage in projects of legal self-civilisation.

The findings of the thesis demonstrate why it is not enough to limit the discussion about the Ethiopian Civil Code project around the question whether ‘Western laws have been, and can be, transplanted’ effectively. Further, this finding has implications for comparable legal transfer projects into former semicolonial states. As imported laws are capable of multiple meanings and are subject to interpretation by multiple actors situated in different social spaces and times, the Ethiopian Civil Code project was neither impossible nor an inevitable or failed exercise in legal transfer. The continuous contestation and simultaneous resilience of the project show this.

An important implication of this is that modernist narratives about the Ethiopian Civil Code project are too simplistic. Such narratives perceive the legal transfer project in ways that reify and misunderstand the legal text, the actors, and their spatial and temporal contexts. As demonstrated in this thesis, an approach that integrates both an actor-centred field approach and a temporal approach can help reveal some of the unaccounted for multidimensional aspects of the legal transfer project and expose the limitations of existing accounts of the legal transfer project. By moving away from the modernist paradigm that informed existing studies of the Ethiopian Civil Code project and adopting an approach that relativises the temporal and spatial contexts of imperial Ethiopia’s project of semicolonial legal modernity, we can finally start the much needed ‘new ways of talking about’ the Ethiopian Civil Code project.

Although the application of my approach is limited only to Book III, a similar approach would arguably render the many faces of the Ethiopian Civil Code project relating to, for instance, family law visible. I believe the appreciation of the

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16Clifford Geertz, Local Knowledge: Further Essays in Interpretive Anthropology (Basic Books, 1983) 222.
entangled and multiple temporalities and spatialities within which the project was initiated, performed and contested, in the way demonstrated in this thesis, is the way forward for research on the Ethiopian Civil Code and, by implication, comparable legal transfer projects.
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Appendix 1 – Interview Guide

Interview Guide for Participants

Introduction

As noted in the Ethics Application Form, the data collection technique used in undertaking the research include interviews. More particularly, the methodology adopts semi-structured interviews that contain flexible questions aimed at eliciting perceptions and opinions of important actors (as identified by the researcher in advance) about various aspects of the implementation of the Ethiopian Civil Code (1960- to date). The researcher intends to undertake the interviews within a period of 3-4 months following ethics clearance from the University of Melbourne. The data is hoped to generate insights into aspects of the implementation of the Civil Code that are not immediately noticeable from documentary sources but are, nonetheless, an important source of data for the study.

Participants

The researcher expects to interview 40-60 respondents drawn from a group of informants believed to have some knowledge of the introduction and implementation of the Civil Code. Most of the interviewees are Ethiopians and are either judges, advocates, academic lawyers, or politicians. A small number of non-Ethiopians – whose knowledge of the matter under study is critical – will also be interviewed.

Participants are identified based on the assumption that the introduction and implementation of the Ethiopian Civil Code involved a group of actors the most important of which include the above listed categories of informants. As noted in the Application Form, the number, identity, and diversity of participants is explained, inter alia, by the qualitative nature of the research. Put in other words, it is argued the quality and validity of the research will not be affected by the limited number of participants and the purposive selection of them.

Interview plan

Participants will be interviewed in-person (except where the participants are geographically inaccessible and will therefore be interviewed by telephone/Skype/email about the reception and adaptation of the Ethiopian Civil Code.

- I will verbally confirm the plain language statement and the informant’s consent to be interviewed as well as confirm their consent for the interview to be digitally recorded at the beginning of the interview.
- Demographic data including official position will be collected
Participants will be asked to indicate whether they wish to be anonymous or named.

As the majority of participants are trained lawyers and legal researchers, they will be given wide latitude to reflect on the process of reception and adaptation of the Code since its introduction in 1960. This is in accordance with the interactive and semi-structured interview method to be used.

With respect to some participants who will be approached for their particular role (official or otherwise), specific questions may be asked (e.g. why did the attempted revision of the Ethiopian Civil Code in the 1980s fail to materialise?).

Finally, participants will be given a chance to pose questions about the research and add some general reflection on the Code and its place in the Ethiopian legal system.

Common set of questions

Three key questions shape the research project. These are:

a. What are the social and historical contexts that led to the reception of the Ethiopian Civil Code? And what does that tell us about law, state and society relations in Ethiopia at that time? Since that time?

b. How have the changes and continuities in the composition of political and legal actors and their discourses influenced the local responses to the received civil code?

c. How, if at all, has the Civil Code remained an important source of private law when the state’s vision of the ideal society has arguably been changing? And, what does that imply about the role of received laws and how might that develop our understanding of Ethiopian and global discussions regarding legal transfer?

These sets of questions frame the data collection method and the data to be collected through interview and archival research. In so far as the semi-structured interview technique to be used is concerned, main and common questions include, but are not limited to:

- What do you make of the changes and continuities in the evolution of Ethiopia’s property law (including the Civil Code)
- Do you think the land reform projects (implemented after the codification) affected the place of the Code in the statist legal system? If yes, how? If not, why not?
- Do you think the Code is a federal law? If no, should it be taken as one?
- What do you think of the role of the Federal Cassation bench in transforming Ethiopia’s property law?
- How important do you think are space and time in the development of Ethiopia’s civil code?
- Are there any specific developments (related to the Civil Code) that surprised, disappointed, or encouraged you?
- What is your opinion on the future role of the Civil Code in the Ethiopian legal system?

Other than the main questions listed above, additional questions that take into account the specific position of some respondents will be asked (see below for examples). Similarly, clarifying questions that aim at giving interviewees the chance to expand on some of their reflections will form part of the interview questions that nonetheless are not listed here.

a. Judges and Practicing Lawyers

- How often did/doyou deal with land related disputes?
- Do you see any changes in the importance of the Civil Code’s Book III as a source of property law?
- How do you deal with layers of property statutes from three different historical periods with varying ideological orientations?
- How do you deal with the reality of practicing law in languages others than Amharic and English (NB: the Civil Code is officially unavailable in languages other than Amharic and English)
- How has property law been taught in Ethiopia?
- How significant (central) is Book III of the Civil Code to how property law has been taught in Ethiopia?
- How significant (central) is the Civil Code generally to Ethiopia’s legal education?

b. Academic lawyers and researchers

- How has property law been taught in Ethiopia?
- How significant (central) is Book III of the Civil Code to how property law has been taught in Ethiopia?
- How significant (central) is the Civil Code generally to Ethiopia’s legal education?
- Do you thing American-oriented legal education distanced the code-based system from its Romano-Germanic origins? If yes, how significant was that?
- How do you think property law should or could be taught in the coming years?
  c. Parliamentarians, politicians, and members of various interest groups

- Is a reform of the Civil Code (particularly Book III) was/is on the agenda? Why/not?

- How do you see foreign influences shaping local responses to land law reform? How has this changed over time?
Appendix 2 – List of Select Interviewees
(Excluding anonymous interviewees)

• Professor Tilahun Teshome, Addis Ababa University (9 October 2015, Addis Ababa, Ethiopia)
• Professor Harrison Dunning, Professor of Law Emeritus UC Davis School of Law (Jan. 7-10, 2016, Email Interview)
• Interview with Dr. Elias Nour, St Mary University College (September 07, 2015, Addis Ababa, Ethiopia)
• Tadesse Lencho (PhD), Addis Ababa University (8 September, 2015)
• Manguday Wondimu, Practicing Lawyer in Southern Nations, Nationalities and Peoples’ Regional State (20 September, 2015, Hawassa, Ethiopia)
• Muradu Abdo (PhD), Addis Ababa University (August 25, 2015, Addis Ababa, Ethiopia)
• Amare Ashenafi, a court administrator at a federal court and a former judge in Amhara National Regional State (28 September 2015, Addis Ababa, Ethiopia)
• Berihun Adugna, Supreme Court Judge at Amhara National Regional State (3 October, 2015, Bahir Dar, Ethiopia)
• Ato Mekasha Abera, Practicing Layers, Addis Ababa (September 4, 2015, Addis Ababa)
• Ato Aklilu Wolde Amanuel, Practicing Lawyer (October 6, 2015, Addis Ababa)
• Associate Professor Zekarias Keneaa, Addis Ababa University (September 8, 2015, Addis Ababa)
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