LAW, DEVELOPMENT AND THE ETHIOPIAN REVOLUTION

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ABSTRACT

This thesis explores a series of middle-range hypotheses concerning the interrelation of law and development. These hypotheses are made concrete enough to serve as policy prescriptions by applying them to the problems of Ethiopia, a country which displays most of the development constraints that have been identified in other Third World countries. Development is best understood as a dynamic process, as the broadening of subsistence and small-scale economic, political, legal and social 'markets' that effects a cumulative growth in a wide variety of resources. In Ethiopia, given her highly stratified and fragmented societies, this entails a socio-economic equalisation and integration, a wholesale structural transformation rather than the narrow policies of an economic growth advocated by many development theorists. The magnitude of this transformation, the manifest need for extensive and intensive development planning and the socialist predilections of Ethiopia's revolutionary military rulers (the Derg) suggest that massive state intervention in the economy is both inevitable and the only feasible path to an Ethiopian development which is, nevertheless, fraught with many hazards. It is therefore impossible to segregate economic activity from what is, in Ethiopia, an undifferentiated mass of law, politics and administration. The largest single bottleneck to Ethiopian development is the virtual absence of any political development registered under Haile Selassie or the Derg. The role of law in eliminating an Ethiopian "soft state" (Myrdal's term), which is far from soft on the poor and powerless, is surveyed and law's role in the aggregation, allocation and delegation of a variety of resources, in the formulation and implementation of interrelated policies, and in the amelioration of species of injustice is analysed in detail.

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Part I : Introduction

In September 1973, I began teaching Law and Development at Addis
Ababa (then Haile Selassie I) University and started to research a
Ph.D. thesis I had tentatively entitled "Law and Development in
Ethiopia". The revolutionary events that began in February 1974
caused me fundamentally to re-think the historical processes of Eth-
iopian underdevelopment and the nature of the choices and constraints
related to future development prospects. One purpose of this study is
to offer a tentative interpretation of a Revolution which is still
unfolding and to attempt to convey a measure of the excitement and
frustration the Revolution engendered.[1] The major focus is, however,
the description of underdevelopment in relation to the Ethiopian
legal systems, and the analysis of middle-range hypotheses concerning
processes of Ethiopian underdevelopment and the potential for devel-
opment in the future. I do not claim to have devised a universally
valid general theory of development or law and development, but argue
that the theoretical portions of my analysis can be profitably
applied, after careful modification, to specific problems in many
other countries. An outline of the approach utilised in this study is
presented in the footnote.[2]

The fragmentary nature of knowledge about Ethiopia and its laws,
and about legal and developmental processes generally, makes it
desirable to assemble some of these fragments into coherent patterns
in the first two Chapters. The themes started in these Chapters are
pursued in greater detail throughout the study, with politics taking
the lead in Part II - as it does in the real world of underdevelopment
and development efforts. The socio-economic impact of the new
Ethiopian regime's policies is then evaluated in Part III. Many
examples and analyses have been abridged or even eliminated, in an
attempt to keep this lengthy study within manageable bounds. While
a more detailed analysis of a narrower topic could have been offered,
it is clear that a critical overview of the effects of Ethiopian
policies, past and present, is what is needed at this time, to consol-
idate and update the detailed analyses of the past and to pinpoint
matters for future investigation. That law should provide the

unifying thread for these analyses may seem unusual or even peculiar to
the non-lawyer. If he reads on, I hope he finds this perspective
both interesting and useful, moving as it does towards a genuinely
interdisciplinary approach to Ethiopian underdevelopment and develop-
ment prospects.

Chapter 1 : Images of Ethiopia

We emphasise Ethiopian 'images' in order to reflect the fact
that knowledge about her societies and political, legal and economic
affairs is partial, fragmented and often contradictory, both absol-
utely and in relation to what is known about most African and other
Third World states. Ethiopia remains relatively unstudied because
of a perceived physical, cultural and linguistic inaccessibility ;
an absence of the colonial points of reference that still - like it
or not - provide the framework for most Third World studies[1]; and,
more recently, the disruptions resulting from the Revolution. Most
of the studies that are available do not address themselves to
development-related questions. They have also given rise to many
myths and shibboleths, the result of poorly-documented and excessively
romantic armchair descriptions, sweeping generalisations based on
narrow case studies, the forcing of inaccurate and conflicting data
into preconceived Western moulds, a failure to comprehend local
languages, social stratifications and the nature and impact of Eth-
iopian history, and, most importantly, a failure to deal meaning-
fully with Ethiopia as a whole through analyses linking centres and
peripheries (enclaves superimposed upon vast rural areas) - a major
aim of this study. We therefore discard many of the conventional
criteria regularly applied to Ethiopia and to other African societies,
defending our choice of theories and interpretations of Ethiopian
affairs as we proceed.[2]

The relative lack of interest in her affairs is surprising,
given that Ethiopia is the third largest and third most populous
country in Africa, her strategic position - straddling the African
and Arab worlds - involves her in Middle Eastern geopolitics, and
many of her social groups possess a cultural distinctiveness which
rewards careful study. We shall argue that Ethiopian social systems
are permeated with an indigenous 'feudal colonialism'[3], and that the
tenacity of many Ethiopian cultures and the absence of the disruptions
associated with a European colonialism make for an historical con-
tinuity like that of the states of Western Europe. Haile Selassie
laid claim to traditional sources of legitimacy that were traced back
some 2,000 years, and these claims were accepted automatically by

many Ethiopians, although fervently rejected by others. The absence
of twentieth century European colonialism in Ethiopia (except for the
brief Italian interregnum) is important for at least three reasons:
comparisons between Ethiopia and pre-Revolutionary Russia, European
states on the eve of the Industrial Revolution or contemporary Latin
American states are probably more fruitful than comparisons with
other African states; Ethiopian political independence delayed the
growth of foreign political, cultural and economic influence and a
subsequent dependence on Europe; and the nature of European colon-
ialism can be more fully understood if former colonies are compared
with Ethiopia.[4]

. It is the extraordinary degree of continuity in Ethiopian history
that makes an historical perspective essential to an understanding
of the processes of underdevelopment and the constraints and choices
relating to development in the future. Likewise, the explanatory
effectiveness of any theory, and the middle-range theories we develop
in particular, can only be demonstrated by their application to
concrete historical situations. Any such analyses of events must
fasten upon the points that connect present concerns with previous
experiences. For example, economic change cannot be explained on
the basis of present economic conditions alone; the economic state of
a people emerges gradually from the preceding total situation.[5]

That this is true in Ethiopia, despite the historical watershed
represented by the 1974 Revolution, ought to surprise no one. The
Revolution grows no crops and has not, by itself, changed patterns
of social stratification or bridged the socio-economic distances
between isolated rural groups. Distance, stratification and the
related extreme inequalities in the distribution of wealth and power
evolved slowly over long periods of time and will not be funda-
mentally changed by neutralising or even executing a few traditional
elites or through tentative attempts to broaden the economic - but
not the political - base of wealth and power. Although the content
of the policies pursued in Ethiopia has changed radically since the
Revolution, historic problems of resource allocation remain largely
unresolved and the manner in which politics are conducted remains
unchanged. For example, and despite the new Government's stated

commitments, residents of Addis Ababa have an influence on events
that peasants lack, and the political 'style' continues to follow hist-
oric patterns of manipulation, repression, paternalism and faction-
alism[6] (see Part II). Recent events in Ethiopia are nevertheless
interesting in terms of their actual and potential impact and as an
example of an emerging international trend, the socialist revolution
mounted by soldiers. While these phenomena have occurred in Peru,
Algeria and, initially, in Portugal, they most frequently occur
in north-east Africa. In Egypt and Sudan their impact was soon
dissipated, and in Somalia and Libya strong Islamic strands are in
evidence.

Knowledge about Ethiopia has been subtly but pervasively coloured
by two often-quoted images offered in Gibbon's Decline and Fall and
by Arnold J. Toynbee:

> Encompassed on all sides by the enemies of their religion, the
> Ethiopians slept near a thousand years, forgetful of the world
> by whom they were forgotten. 7

> The survival of her political independence in the midst of an
> Africa under European domination, the survival of her mono-
> physite Christianity in the borderland between Islam and
> paganism, the survival of her semitic language between the
> Hamitic and Nilotic language-areas. . . derive from the same
> cause: that is, from the virtual impregnability of the high-
> land-fastness. This is the explanation of Ethiopian survival-
> power. 8

Toynbee's assertion follows logically from Gibbon's and, taken to-
gether, they seem to explain a cultural distinctiveness, the xenophobia
attributed to Ethiopians, the continuity of Ethiopian history and
the absence of European colonialism on the basis of a few general-
isations. As we shall see, the Ethiopian experience is not suscep-
tible to such gross generalisation. Ethiopia slept only from the
vantage point of Europe; prior to the fifteenth-century Muslim
invasions, Ethiopia's material and non-material cultures were as
advanced as those of Europe. An emphasis on isolation does not
satisfactorily explain certain contradictions within Ethiopian
societies and, while geography is certainly a factor in Ethiopian
history and the processes of her underdevelopment, it is neither the
determining nor, probably, even a predominating factor.

Fairly
extensive trade and marketing networks developed throughout Ethiopian
history, subject to the constraints posed by political fragmentation,
social stratifications and ethnic antagonisms which are largely
unrelated to geography. Traditional notions of chivalry tended to
negate the influence of geography on military outcomes: defenders
did not employ the guerrilla tactics of large-scale fortifications
that would have taken advantage of rugged geographical features,
although shifta (bandits) traditionally used hit-and-run tactics and
contemporary separatist groups are applying the lessons learned in
other guerrilla wars. Although large-scale invasions and internal
wars demonstrate that Ethiopia's impregnability is a myth, her
boundaries are less artificial than those of many other Third World
countries, as Ethiopia's were created and are tenuously maintained through
the ability of an indigenous army to police its borders.
The xenophobic element in Ethiopian attitudes has been grossly exagger-
ated, and such distrust as exists has been and continues to be a
rational response to foreign actions and intentions.[9]

Throughout this study, we shall identify development constraints
and choices which are particularly Ethiopian in the sense that,
although they may be analogous to the constraints and choices found
in many other countries, they exist in a unique combination which is the
product of an historical experience not shared by Ethiopia's
neighbours. We nevertheless argue that the analyses presented are
relevant to other Third World countries. Virtually all of the
development problems stressed by theorists (except overpopulation, for
example) are present in Ethiopia in their most extreme form, and
textbook solutions to development problems have been regularly
murdered by a host of Ethiopian social and political realities.
Ethiopia thus constitutes an important limiting case on the often
partial or dubious successes claimed for particular development theories,
and forces a concentration on the broadening of approaches to develop-
ment. Following Gunnar Myrdal, Ethiopia should not be classified as a
"developing" country: to do so would beg an important question. It
is "underdeveloped" because conscious political processes have given

rise to "a constellation of numerous undesirable conditions for work
and life . . . ." While "development" is "a characterization
afflicted with vagueness", it is nevertheless "definite enough to
permit its use"[10] (see Chapter Two).

I. An Ethiopian 'Morphology'[11]

Tom Farer argues that the "depth of Ethiopian misery is pretty
much invulnerable to exaggeration" and that, for most Ethiopians.
life displays the Hobbesian characteristics of being nasty, brutish
and short.[12] Although some anthropologists might quarrel with these
assertions, they are certainly borne out by the application of
criteria commonly adopted by development theorists. 1968 estimates
of per capita incomes in Ethiopia range from US $60 - 85 per year
($90 in 1973), which means that Ethiopia lags behind roughly 39 of
the (then) 43 countries in Africa - the most impoverished continent.
When gross inequalities in the distribution of land and income are
taken into account, the vast majority of Ethiopia's people must be
regarded as among the poorest in the world. Ethiopia has also failed
to progress in comparison with other African countries: the annual
rates of increase of her Gross Domestic Product (and population)
were slightly below the African average during the years 1950-73.
Per capita food consumption in Ethiopia averages 1600 calories per
day, a shortfall of about 400 calories compared to what is deemed
necessary to maintain minimal nutritional standards. Only about
7% of the population is literate, compared to an African average of
15% and a Kenyan literacy rate of 20 - 25%. A Physical Quality of
Life-Index has been calculated for various countries on the basis of
life expectancy, infant mortality and literacy, by the Overseas
Development Council. Ethiopia scored 16 on this Index, compared to,
for example, 38 for Iran, 83 for Sri Lanka and 88 for Taiwan.[13]

Approximately 27 million people live in the roughly triangular
472,000 square mile (1,221,900 sq. km.) area bordered by the Red
Sea, Djibouti, Somalia, Kenya and Sudan. Ethiopia's population
structure is fairly typical for an underdeveloped country: 90%
of the people live in rural areas, and a pyramidal population struc-
ture, in which each age group is smaller than the younger group just
below it, results from a fairly high annual birth rate of 2.6%.

Estimates made in 1967 show that half of the Ethiopian population is under the age of 20, 44% were aged 0 - 15 years, and only 51% were in the economically-active bracket of 15 - 59 years of age. Ethiopia's population density is low relative to that of other Third World states and to the amount of potentially arable land available, although land is in short supply in many densely-populated areas. In development terms, the absolute size of Ethiopia's population poses few problems in the absence of severe drought, since the population would not have grown so large if, historically, the economy had been incapable of supporting it. The problem is, rather, the fairly rapid rate of population increase that places a strain on facilities such as schools and hospitals, makes for a smaller percentage of economically-active taxpayers, and progressively results in a labour force which expands faster than it can be absorbed into agriculture and industry. For example, a modest annual growth in Ethiopian agricultural production of 1.8% throughout the 1960s was swamped by annual population increases of 2%, resulting in a net deterioration in living standards.[14]

Ethiopia can be divided into three climatic zones: Afro-alpine areas with altitudes of over 8,000 feet and temperatures from 60 degrees F to near freezing; temperate areas with altitudes of 5,000 - 8,000 feet and a climate and vegetation similar to those of the milder Western European seasons; and hot and tropical or arid areas below 5,000 feet with a temperature range of 80 - 120 degrees F. Highland areas, the traditional 'homeland' of Amharas and Tigreans, have the highest population densities and consist of a network of plateaux varying widely in size and degree of isolation. The climate, agriculture, cultures and political orientations found in the lowland areas, on the other hand, have more in common with those of adjacent countries than with the highlands. Soil types and rainfall vary widely -from 2.5 inches/year near the Red Sea to 106 inches on the Southwestern plateau. All of these variations make for a wide variety of crops and farming and animal husbandry techniques. 90% of the population are engaged in agricultural pursuits and they generated 54% of Gross Domestic Product (GDP) and 97% of exports in 1970-71. About 45% of GDP is produced at the subsistence level. The low productivity of the traditional sector and transport and storage

difficulties contrast sharply with the high productivity associated
with the growth of sugar and cotton output in the recently-national-
ised estate sector. This tiny sector has accounted for most of the
growth in agricultural production in recent years. Fifty years
ago, forests covered one-half of Ethiopia's surface area but they
now account for only about 4%. Alternate fuel and building supplies
are urgently needed; deforestation, combined with over-grazing and
cultivation methods inimical to conservation, have resulted in serious
erosion problems. Ethiopia has the highest livestock population in
Africa - about 72 million animals (plus 53 million chickens) in
1974, or 2.7 animals per person. A high proportion are over-grazers
- sheep, 22 millions and goats, 17 millions - and most of the 25
million cattle are of little economic value and are kept as trad-
itional status symbols.[15]

Stressing the interrelatedness of the rural and urban areas of
Ethiopia, Gerard Gill offers a useful interpretation of the facts
cited in the last few paragraphs:

> It has been estimated . . . that the Ethiopian labor force will
> grow by perhaps 3.5 to 4 million over the next decade, but even
> the most optimistic forecasts suggest that not more than 1
> million new jobs will be created outside of agriculture, so
> that the farm sector must become capable of productively absorb-
> ing the surplus. . . . The indirect economic, and even finan-
> cial cost of labor displacement /from agriculture_7 stem
> largely from increased pressure on urban facilities caused by
> the influx of rural migrants. 16

The absorptive capacity of the urban areas is extremely limited,
owing to the retardation of Ethiopian urbanisation that resulted
from the absence of European colonialism and from traditional
factors such as the lack of an influential permanent capital during
the eighteenth and nineteenth centuries. Urban populations are,
however, growing at the rate of 6.6% annually (7% for Addis Ababa).
Only 10% of Ethiopians live in 'urban' areas and, once the indep-
endent chartered municipalities - Addis Ababa (with a population of one
million), Asmara and Gondar - are accounted for, few genuinely
urban areas remain. Almost half of these supposedly urban dwellers
live in the towns of less than 20,000 inhabitants that are really
rural groupings and follow a rural lifestyle. Living conditions in
the major urban areas are deplorable: there are few employment

opportunities; many of the minimal services provided in the urban areas
of nearby countries are unavailable; housing is overcrowded, substan-
dard and often inaccessible by road; overcrowding aggravates poor
transportation, sanitation and health facilities; relatively high
infant mortality rates and malnutrition are in evidence; and the
retail price of food and drink increased 67.5% from 1963 to 1971,
while wages for unskilled labour remained virtually unchanged at
Eth. $ 1 per day (Eth. $2.08 = U.S. $1).[17]

Meagre employment opportunities in urban areas of Ethiopia are
explained by the low productivity of traditional commerce and the
small size of the manufacturing sector; meaningful industrial growth
cannot be sustained by so small an urban population. Following a
pattern common in much of the Third World, Ethiopian industrial
manufacturers accounted for about 5.3% of GDP in 1970, compared to
25 - 27% in such agricultural countries as Denmark and Australia and
to the roughly 5% of Ethiopian GDP which represents traditional
handicrafts. About 90% of the gross value of Ethiopian manufactures is
produced by firms with more than fifty employees and, as these firms
constitute infant industries in an international context, they produce
expensive import substitutes for a small domestic market, protected
by high tariff barriers and transport costs. The reported profitabil-
ity of these firms averaged only 10 - 15% annually prior to the Revol-
ution, yet products were sold at an average of 60% above the price of
equivalent imports (minus the relevant import tariffs). The growth
in Ethiopian manufacturing attained through import substitution has
come to a dead end; levels of domestic demand for additional products
are presently below the output of the minimum size of factories
employing modern technology, although both income distributions and
the kinds of technology used may change as a result of the Revol-
ution. Manufacturing is currently dominated by food and beverages,
36% of total manufactures, and textiles and clothing, 32%. The value
added in Ethiopia to the finished product is estimated to average
only 40% for manufactures as a whole. Prior to the Revolution, many
firms operated at 60 to 80% of capacity and suffered from inexperienced
and inefficient management and labour, lack of demand for their
products, and difficulties in securing raw materials. Through

licensing policies, investment and tax incentives and tariff structures, Haile Selassie's Government played a decisive role in determining the structure of manufacturing output.[18]

Ethiopia also displays familiar patterns of underdevelopment with regard to foreign trade: exports consist almost entirely of primary produce, and imports are dominated by manufactures and raw materials. Export prices and earnings are subject to great cyclical swings while the prices of imports have risen steadily. Despite these trends, the terms of trade altered in Ethiopia's favour from 1968 to 1973: the weighted wholesale price index of Ethiopian exports stood at 158 in 1973 (1968 = 100) while the import index reached only 123.8, and net foreign exchange earnings stood at Eth. $421.6 millions in March 1974. This state of affairs can be attributed largely to favourable international coffee price trends; coffee accounted for at least half of total export earnings from 1964 to 1972, although its relative importance is declining. Ethiopia must obviously diversify its exports towards goods with more stable prices, such as animal products, processed foods and manufactures, and seek new markets. Only 7% of her exports are sold in Africa, for example, and 80% of these are sent to Djibouti.[19]

In 1969, mining accounted for only 0.3% of Ethiopia's GDP. Mineral deposits which could foster large-scale industrial activity have not been discovered, although gold, platinum, potash and salt are mined. Small quantities of iron ore, copper, manganese, nickel, asbestos and natural gas have been discovered, and exploration for oil continues fitfully in the Ogaden. As Somalia asserts what she considers to be good claims to the Ogaden, the fact that geological conditions favour the existence of large oil reserves constitutes a serious and permanent source of friction. 431 million kwh of electricity were produced during fiscal year 1971-72, 70% of which was hydroelectricity. The consumption of energy in Ethiopia is the lowest in the world on a per capita basis, although demand has not exceeded supply, given the small size of the manufacturing sector and per capita incomes. Ethiopia has a vast potential for producing hydroelectricity and for generating electricity by geothermal means.[20]

Ethiopia has about 9,000 km. of all-weather roads, a very small total for so large a country. Extensions of the trunk road system outpaced the construction of access and feeder roads, although these

priorities were somewhat reversed in the Third Five Year Plan
(1968 - 73). If we consider a 10 kilometer strip on either side of
a road as being within easy reach of it, only 12% of the population
has ready access to a road. Transport deficiencies constitute a
major development bottleneck in Ethiopia, as an extensive transport
network is needed to organise the division of labour and regional
specialisation, collect raw materials, increase the competitiveness
of exports by reducing transport costs, disperse goods (particularly
food) to isolated markets, enable 'agents of change' such as agri-
cultural extension workers to travel more widely, and, of-course, to
permit a mechanised army to be mobilised quickly. One study has
shown that the traditional transport of goods by pack animals takes
50 times as long and costs ten times as much as transport by lorry.
90% of domestic freight and 95% of all passengers in the modern
transport sector are carried by road, and 70% of both were carried
in vehicles provided by individual owner-operators prior to the Re-
volution. Ethiopia also has two narrow-gauge railways running
from Addis Ababa to Djibouti (880 km.) and Asmara to Massawa (306 km.);
they operate at a loss despite high freight charges and are frequently
 inoperable due to sabotage by separatist movements. There are few
navigable inland waterways and only three seaports of any importance.
As Assab, which is linked to road transport and has an oil refinery,
and Massawa are in Eritrea, and Djibouti has recently become 'inde-
pendent', Ethiopia faces the prospect of being totally cut off from
the sea. Air transport is used extensively for access to remote
areas. Ethiopian Air Lines serves 30 domestic airports regularly
and carried 125,000 domestic passengers and a freight volume of
414,000 ton-miles during 1971.[21]

Internal telecommunications are adequate and, surprisingly,
more towns have telephone services than have postal services. The
media are underdeveloped in comparison with those of most Third
World countries, and low literacy levels require that much public
information be dispersed through local speeches or radio loudspeakers
installed in town squares. Censorship is stifling and puts an
unbearable stress on positive achievements,[22] but it has been relaxed
periodically during the course of the Revolution. As a result of

censorship, cultural traditions and underdeveloped media, the rapid-fire underground dissemination of information has developed into an art form. Although rumours are also propagated, they often have the character of self-fulfilling prophecies. Like people in many other countries, Ethiopians tend to pride themselves on being well-informed and, given a secretive bureaucracy, information constitutes a potent source of personal power.

Government revenue (excluding foreign aid and loans) accounts for less than 20% of GDP, and revenue estimates for the last few years have been over-optimistic, in light of disruptions related to the Revolution. The Budget for 1976-77, for example, envisaged domestic revenues of Eth. $845 millions, and only 21% of this sum was to be raised through direct taxation. Indirect domestic taxes were expected to contribute 23% and tariffs 32%. More than 55% of domestic revenue was thus to be obtained through easily-collected but highly-regressive forms of indirect taxation. When anticipated foreign aid and loan funds, totalling Eth. $280 millions, are added to domestic revenue, a deficit of Eth. $341 millions remained, against anticipated expenditures of Eth. $1,466 millions. The manner in which governments allocate budgetary expenditures is a revealing indication of their overall priorities. In the Ethiopia of 1976-77, defense and internal security accounted for more than 24% of total expenditures (about the same as the Latin American average of 25%), education for 12%, health for 5%, justice for 0.9% and planning for 0.3%. While domestic revenue expanded at an annual rate of 7 - 12% during the 1960s, two-thirds of this increase was absorbed by a growth in defense and internal security expenditures. Ethiopia's income tax ratio of 8% of GDP is low even by Third World standards, and export tariffs cannot be increased further without damaging her international competitiveness.[23] The foundations of a dynamic tax system must therefore be laid.

It is paradoxical that the only sub-Saharan country with a 2,000 year old literate culture should have the lowest literacy rate in Africa. The usual obstacles to educational advance in Africa - poor communications, lack of finance, shortages of qualified staff and teaching materials and irrelevant curricular content - are present in Ethiopia in their most extreme form. Only about 15%

of the relevant age group are attending primary school, only 3%
are at secondary school, and there is a particularly high dropout
rate in the lower primary grades. Traditional education is oriented
towards training clergymen for the extremely conservative Orthodox
Church, and is irrelevant to modern needs. The educational system has
created a surplus of low-level clerical manpower, while shortages of
skilled workers of all kinds persist, particularly in agricultural
and technical fields. There is also a general shortage of very
competent and experienced high-level manpower in all fields,
particularly in engineering and medicine.[24]

In 1970 it was estimated that the average life expectancy of
Ethiopians is 35 years, and infant mortality before one year is
somewhere in the range of 16 - 30%. The major endemic diseases,
malaria (where the altitude is below 5,000 feet) and tuberculosis,
affect 30 - 40% of the population, and relatively high levels of the
following diseases have been noted: parasitic and gastroenteric
infections (including Bilharzia), leprosy, venereal diseases, small-
pox, typhus, typhoid, cholera, trachoma, conjunctivitis and the
common childhood diseases. The general state of health is also
affected by nutritional and sanitation deficiencies and the narrowly
limited availability of medical and public health facilities. Health
care under Haile Selassie was oriented towards curing the ills of
wealthy citydwellers. In 1969 for example, there was one doctor
for every 2,300 residents of Asmara, while the ratio in the rural
areas was 1:63,000. Although annual expenditures in the areas of
health and education increased by an average of 10 - 12% during the
1960s, these expansions operated upon a desperately small base and
benefits were conferred almost exclusively on tiny, privileged social
groups.[25]

II. Social Stratification and Ethnic Antagonisms

The preceding Section suggests that, while Ethiopian under-
development displays patterns which are commonly found throughout the
Third World, life in Ethiopia tends to be nastier, more brutish and
shorter than it is in other countries. While they have deep hist-
orical roots, the phenomena of underdevelopment have only become
apparent and acquired political significance in Ethiopia recently.
She did not lag behind the rest of Africa (Southern Africa apart) in

economic development at the end of the nineteenth century yet, by
the 1960s, Ethiopia was far behind most of the newly-independent
countries. If, as Walter Rodney argues so forcefully, Europe under-
developed Africa, how much more was Ethiopia underdeveloped through
her traditional political systems? In this Section, some of the social
and political factors that underlie processes of Ethiopian underdev-
elopment will be examined. Our analyses emphasise the impact of
two major organising principles of Ethiopian social systems, strat-
ification and ethnicity.[26]

A. A Brief Ethnology

There are at least 95 distinct languages in Ethiopia, but lin-
guists group them into three families: the Semitic - about 37% of
the population, the Cushitic or Hamitic - about 58% and the Nilo-
Saharan or Negroid - about 4%. Numerous differences in forms of
social organisation, dress, customs and religious beliefs both overlap
and reinforce the many linguistic boundaries. Although religious
distinctions can become quite blurred among some ethnic groups, the
major religions are Ethiopian Orthodox or Coptic Christianity - about
35%, and Islam - about 45%. Much of the balance consists of a
variety of localised religions, termed animist or tribal by anthro-
pologists and pagan by some Ethiopians. There are a number of small,
submerged or pariah groups which are despised and feared because of
their religious beliefs and/or their occupations - blacksmiths, potters,
dressers of skins and hunters of "unclean" animals. For example,
some 30,000 Falasha are scattered throughout the population and
practice an archaic Judaism; they are thought to possess the capabil-
ities associated with the 'evil eye' and engage in despised occupa-
tions, largely because they were prevented from acquiring permanent
land rights prior to 1975. Finally, there is a small foreign com-
munity of about 65,000 consisting largely of Yemenis, Saudi Arabians,
Armenians, Italians and Greeks. These people are insulated from
political power and traditional social relations, and are typically
engaged in commerce or pursue skilled and professional occupations.[27]

Linguistic, cultural, religious and physical differences have,
over the centuries, had a major influence on the course of Ethiopian
social relations. In Ethiopia and elsewhere, tolerance in the face
of cultural differences is always in short supply when harsh material

conditions coexist with virile and sophisticated non-material cultures, deeply-rooted antagonisms and glaring disparities in the distribution of wealth and power. Most Ethiopians pursue their interests within a narrowly-defined cultural group or locality and display prejudice and hostility towards stereotyped "outsiders"; an Ethiopian national society is but a remote abstraction. Although assertions of ethnic identities can be found in all 'plural' societies, the feudal and imperial character of Ethiopian politics has exacerbated ethnic tensions to the point where regional rebellions have become virtually continuous.[28]

The politically-dominant Amharas, about 25% of the population, and Tigreans, about 9%, form the bulk of the Semitic population and live in the central and northern highlands, respectively. Despite the numerous cultural differences perceived by these groups, they have much in common, including an austere indigenous Christianity, a spirited military tradition, and a pragmatic peasant agriculture closer to the Mediterranean traditions of, say, Sicily than to those of Africa. The foundation of their social relations is a regularised inequality (often accompanied by what is termed corruption in the West) in the social roles of individuals, resulting from the gross disparities in the distribution of wealth and power that have evolved from the organisational requirements of traditional armies. Although some family and sociable relations occur among equals, many relations which are significant economically and politically can be reduced to some form of vertical, patron-client relationship. These hierarchical relations generate a degree of vertical social integration at the expense of effective horizontal relationships, tend to reduce antagonisms between strata, and achieve an unstable balance between localised forces of social integration and disintegration. While "clientelism" is found in most states where political processes are deficient, bureaucracies are inefficient and markets are imperfect, patron-client relations in Ethiopia are sufficiently distinct to warrant further discussion in Chapters Three and Six.[29] We argue that crude Marxian analyses are largely irrelevant to a consideration of social stratifications among the Amhara-Tigre because, as in many other Third World states, their social strata do not form classes in any politically relevant sense of that term: social interactions tend to be personal and localised, while the distribution of wealth

is almost entirely a consequence of antecedent political structures, military requirements and legal rules. Economic "substructures" do not, in other words, determine the content of political and cultural "superstructures" to any great extent.[30]

Social stratification patterns among the Amhara-Tigre and ethnicity among Ethiopians as a whole tend to operate as independent social forces. The Ethiopian state, dominated by Amhara-Tigre social structures for some 1200 years, and by Amhara from Shoa Province in the twentieth century, lacked the power and authority needed to overthrow the generally more egalitarian and communitarian traditions of other ethnic groups. Military conquest did give rise to a feudal and imperial political system, but imperialism achieved only modest economic successes, particularly the intermittant exaction of tribute, usually in the form of small agricultural surpluses. Half-hearted attempts at political and cultural imperialism were not, for the most part, successful in rural areas. Many of the conquered peoples saw little reason to adopt Amhara culture and, like English colonists, the Amhara did not allow themselves to become assimilated by local ethnic groups. Only a few non-Amhara were absorbed by the Amhara political system, and their participation was limited to distinct and subordinate roles, to localised functions within a system of 'indirect rule' and, more recently, to those of an educated but politically-isolated group of modernisers within the bureaucracy. Non-Amhara were kept far away from the levers of a national political power, and low levels of national integration were preserved largely through the application of military force. Many contemporary Ethiopian problems can therefore be viewed as the outcomes of divergent interests asserted by distinct and increasingly militant ethnic groups.[31]

Most separatist groups in Ethiopia are to be found among the Cushitic peoples, all of whom live along the Red Sea coast, the border with Somalia or in the South: the Oromo (Galla) – about 40% of the population; Somali – about 5%; Afar (Danakil) – about 3%; Sidamo – about 8%; and Saho, Beja and Agau – about 2%. Although many of these peoples are at least nominally Muslim, Islam has not proved a unifying force among them, unlike the Christianity of the Amhara-Tigre, and is clearly dominant only on the Eritrean coast and in a

few towns. Islam is more tolerant and flexible than Ethiopian
Christianity in countenancing tribal or animist religious practices,
and numerous admixtures of religious beliefs have been noted. The
Sidamo have become partially Amharicised and have a highly-developed
system of terraced agriculture and animal husbandry. The Gallas
appear to be divided evenly among Islamic, Ethiopian Christian and
traditional religious beliefs. Although the Galla are a pastoral
and semi-nomadic people in hot lowland areas, many have successfully
adjusted to sedentary agriculture in the uplands. Geographical
dispersion and religious and cultural differences have meant that a
pan-Galla (Oromo) ethnic identity has only begun to be rediscovered
in the twentieth century. Despite the diversities, Galla social life
has numerous common elements such as a emphasis on group action,
neighbourliness in political and everyday affairs, a mobility from
one community to another, and traditional assemblies of elders,
often with elected leaders - the virtual antithesis of Amhara social
life.[32]

While a fair degree of integration was achieved by co-opting
a few Galla leaders into a Government dominated by Amhara and through
the influence of Amhara culture on the Gallas, the Muslim and nomadic
or semi-nomadic Afar and Somalis remain all but unadministered by
central government. Although clans and lineages within these groups
quarrel over water and grazing rights in an arid environment and
rarely unite, they have fought, usually in small groups, against the
Amhara-Tigre for centuries. Somali antagonisms have been reinforced
by the growth of Somali nationalism across the border. Nilotic or
Negroid peoples live along the western border that bisects closely-
related ethnic groupings in Ethiopia and Sudan. These peoples were
among the last to be incorporated into the Empire and the derogatory
name given to them by the Amhara - shankella - means both black and
slave, a reflection of the fact that Ethiopia was one of the last
countries to attempt to abolish slavery.[33]

While the Amhara-Tigre can be validly termed subsistence
peasants (even though some of them were tenants on the land of an-
other prior to 1975), many sedentary agriculturalists belonging to
other ethnic groups - except, for example, the Gurage and Sidamo

peoples - can be more accurately compared to the subsistence <u>farmers</u>
found in other parts of Africa. Throughout history, peasants have
been the "prey of civilisation" and the broad base of social strat-
ifications, and Ethiopia is one of the few countries in which they
have not been drawn into either market or socialist systems of
production. Some Ethiopian farmers have become peasants as a result
of twentieth century contacts with Amhara-Tigre land tenures and
farming practices, especially among the Galla. For these peasants,
a self-perpetuating family farm is the major unit of property,
socialisation, sociability and welfare; if anything resembling a
village can be found in rural Ethiopia, it is virtually self-con-
tained. There was little contact between the nobility, who often
lived in urban areas under Haile Selassie, and peasants, who usually
dealt with the lords' retainers; the upper social strata are usually
vacant in the rural areas. Levels of living may not differ signif-
icantly within a given area, but differentials in status and economic
prospects are nevertheless maintained between those who must work
hard and those who do little or no work. Peasants may have recog-
nised that their enforced social obligations amounted to exploi-
tation, and patron-client relations offered the only hope for security
during hard times, but feelings of injustice seldom achieved pol-
itical results because they lacked shape and organisation prior to
the Revolution. By definition, all Ethiopian subsistence producers
are dependent on neither imports to nor exports from their locality,
and an economic subsistence combines with small-scale and subsistence
political and social 'markets' to create an impoverished and powerless
rural lifestyle (see Chapters Two and Six). There is little
specialisation of labour, or communication with farmers or peasants
living outside the narrow community, and the individual's knowledge
of the outside world, and hence of the possibility that socio-economic
relations can be organised in a different way, is extremely limited.
One result of the Revolution is, however, the progressive politic-
isation of the peasantry - as we shall see in Chapter Six. The
effects of urban-oriented modernisations on the rural areas are
negligible, apart from the drain on rural resources caused by
urbanisation, and struggles within and among elites had almost no
impact on living conditions prior to the Revolution, except when

warfare destroyed the peasants' and farmers' livelihood.[34]

B. The Amhara-Tigre Empire

Like many other countries, Ethiopia has experienced recurrent patterns of integration and disintegration, from local isolation to a 'universal' empire with a fair degree of cultural assimilation within the upper strata, and back again to a "new age of localism", or feudalism.[35] Simplifying the richness of Ethiopian history, the political formula or myth[36] of an unbroken dynasty stretching back to Solomon and Sheba which marks Ethiopian Christians as God's chosen people, the embalming of cultural traditions within the Orthodox Church and the capacity to unite in the face of foreign aggression prevented a complete dismemberment of the Empire. Answers to the question of who was an Ethiopian varied from time to time, in accordance with the amount of power and authority wielded at the core of an Empire-state manned by the Amhara-Tigre. The forces of localism predominated during the seventh to twelfth centuries, but a mediaeval period (1250 - 1450) saw the re-establishment of territorial unity under scholar-fighter emperors who encouraged art, literature and codifications concerning civil and religious institutions. The growing ethnic diversities in an expanded Empire, the Jehad of Ahmed Gran and periodic Galla invasions in the sixteenth century, greatly weakened the Amhara-Tigre state at the centre, although a brief renaissance and re-assertion of central administrative authority has been noted, culminating in the reign of Yasu the Great (1682 - 1709). The 150-year Era of the Judges (as in the Old Testament) followed, when puppet-kings were completely at the mercy of ambitious nobles who usually grouped themselves into two warring camps.[37]

To generalise a bit, the Amhara-Tigre Empire can be viewed as consisting of two groups, although no simple dichotomy of rulers and the ruled can be identified. There were several categories of elites who, while they quarrelled among themselves, were bound together by a common interest, that of dominating the localised and fairly diverse societies of the Empire. The latter group usually deferred, willingly or unwillingly, to the elites but exerted a measure of influence by periodically displaying their discontent. In a pre-industrial society such as the Empire, the interests of two such groups were fundamentally opposed, yet feelings of 'us' and

'them' did not often acquire political significance; meta-social
guarantees of the political order profoundly legitimated the power of
the elites among the Amhara-Tigre. The political formula of a
Solomonic dynasty closely linked to the Orthodox Church provided a
sophisticated and elaborate justification for the survival of what
was seen as the natural order of things, in which each 'estate'
performs essential functions. In a world of unavoidable scarcity
and seemingly inevitable hardship, minimal subsistence and the safety
of life and limb depended upon the protection of the strong. This
protection of the weak by the strong was granted in return for a
recognition of the right of the powerful to control large landholdings.
Given the abundance of land and the virtual non-existence of capital,
new technologies and entrepreneurship, the value of these landholdings
lay in an ability to command labour time, from those with little or
no land, in excess of what was needed to secure subsistence. It was
not always possible to attain subsistence by expending the maximum
of human effort however, even in the absence of pillage or natural
calamities. Growing inequalities in landholding led to little capital
accumulation: rent or tribute was rendered in a perishable form which
could be exchanged for few goods or services - apart from the services
of unspecialised courtiers or hangers-on - in the absence of large-
scale trade, urbanisation or a marked division of labour.[38]

Although the Empire of the Amhara-Tigre always contained aris-
tocratic, socially-stratified components, many Ethiopianists agree
that specifically feudal political arrangements only emerged in the
seventeenth century, as a result of internal and external conflicts
which sapped the Emperors' political, administrative and military
strength.[39] As in the German Standestaat, this feudalism was the
fallback position adopted after premature efforts to centralise the
Government of a large territory. The element of personal dependence
was pushed to extremes, and there occurred an almost total fusion
of localised economic control, the exercise of political and military
power and the impact of legal rules and institutions, especially with
regard to the administration of justice. In an agrarian system which
was rare in Africa, extremely complex systems of land tenure evolved
to form the base of a large, hierarchical structure of claimants to

the peasants' output. A landed 'gentry' moved increasingly from a preoccupation with military matters towards taxation and administrative activities; they represented a fragmentation of political power resulting from the granting of 'service tenements' or 'fiefs' (gult) in lieu of salary, under the ultimate, if theoretical, authority of an Emperor. Most of the characteristics of a European-style feudalism could be found in Ethiopia but, as the concept of feudalism has no precise agreed content, some semantic quibbling has occurred among Ethiopianists. The new military Government has, however, analysed this system as a feudal one in the 1975 Land Reform Proclamation,[40] and this perception has influenced the policies discussed in Chapter Six.

When Kassa came to the Throne as the charismatic Tewodros in 1855, he displayed a genuine commitment to the ideals of the traditional political formula and attempted to reunify and reconstruct the Empire. New means were used to pursue this traditional goal, however. Tewodros's attempts to create a national army and salaried bureaucracy collapsed and were temporarily forgotten when, in 1872, he was succeeded by the last Tigrean Emperor, Yohannes IV. Menelik II, ruling from 1889 to 1913, was an Amhara from Shoa Province who revived Tewodros's policies and used them to establish the Shoan hegemony that constitutes a festering cause for dissatisfaction among Tigreans and Amhara from Gojjam Province to this day. Although Tigre is the cradle of both the ancient Aksumite and Ethiopian Christian civilisations, the locus of Imperial power slowly shifted southward from the seventh century. The periodic loss of the Red Sea coastline to Muslims and the Italians, and the declining soil fertility and populations that resulted from overcropping and continuous warfare, encouraged attempts to extend the Empire to the east, west and south. Menelik expanded the Empire to its present ill-defined boundaries in a search for food, tax revenues and commercial possibilities. Compared to the conquered peoples, the Amhara combined a military aptitude and access to an adequate supply of modern arms with a relative material poverty. The Amhara conquerors displayed - and to some extent still display - attitudes surprisingly similar to those of European colonists.[41]

Menelik's military prowess quickly outpaced modest improvements
in his regime's political and administrative capacities; his Empire
expanded much faster than did the assimilation of new and diverse
ethnic groups. Tewodros, Menelik and Haile Selassie pursued distinct
but interrelated goals of centralisation,modernisation - albeit
at a snail's pace - and integration, but integration was thought of
as a natural outcome of the progressive implementation of the other
policies. Amharisation was pursued in a rather complacent fashion
and there were few formal attempts to spread Orthodox Christianity
and the Amhara culture, although traders and soldiers occasionally
acted as culture brokers. The Church lacked the centralised organi-
sational control and the keen interest in missionary activity that
would have made wholesale conversions possible, and most non-Christians
rejected outright the political formula of a Solomonic rule. Amharas
saw their function as one of administering a desirable status quo,
of consolidating an imperial rule by displacing localised, often
democratic institutions and creating more centralising Shoan ones.
These new political arrangements operated so as to stifle local
initiative and many traditional forms of cooperation in the South,
yet the new rulers lacked the political and economic strength
necessary to create locally-useful central institutions. The lack of
local participation in an Amhara state has promoted feelings of
alienation and quietism, both symptoms of powerlessness, as well as
subversive and rebellious attitudes. These attitudes were manipul-
ated by provincial leaders, and ethnic rivalries and dissatisfactions
were blended into a centrifugal regionalism; narrow, Shoan Amhara
definitions of a national identity called forth the equally narrow
reactions that served only to reinforce feudal arrangements among
the Amhara. In the South, justice was seen as the prerogative of the
descendants of Menelik's armies, who dominated the courts and used
them to expropriate additional lands. Even today, the social dis-
tance between Amhara and non-Amhara in the rural areas is so great
that little social change can take place through peaceable inter-
action.[42]

C. Haile Selassie's Empire

John Cohen and Dov Weintraub argue that Ras Tafari, who became Regent in 1917 and Emperor Haile Selassie in 1930, simply took up Menelik's feudal and colonial southern policies and applied them throughout the country. This kind of involuted imperialism has the effect of keeping the populace in a permanent state of underdevelopment and has been termed "despotism" by Wheeler, who maintains that this type of regime can only be eliminated by some form of revolution. [43] The realities of Haile Selassie's reign are much more complex, however.

Continuing to press for centralisation and, in the early years of his reign, modernisation, he also made some attempt to secure a greater degree of national integration by diffusing the Amharic language and the culture and political formula of the Amhara, through the emerging educational processes and communications media that radiated outward from the geographic centre established by Menelik - Addis Ababa. New and subordinate elite groups, typically distinguished by the possession of secondary school certificates, emerged to gain access to a few of the privileges previously reserved for the nobility. These new elites, microscopically small in relation to the population as a whole, consisted largely of Amhara occupying bureaucratic posts. In 1962, for example, 104 top officials were surveyed and the 95 respondents included 66 Amhara, nine Tigreans from Tigre Province, thirteen Tigres from Eritrea (including one Protestant and at least one Muslim), and seven Gallas. A few persons entered these elite groups through indigenous commerce or by serving as window-dressing for the growing number of foreign corporations. Many bureaucratic and business activities were dominated by what were termed modernising members of the feudal nobility, and the patron-client relations found among rural Amharas and Tigreans were reproduced in the new urban areas. Commerce and government continued to suffer from poor horizontal communication, secrecy and intrigue. Beginning with Tewodros, Emperors began to elevate larger numbers of capable men who had no ancestral claims to high position. These new members of the ruling elite usually served as counterweights to parochial and isolationist rural rulers. Yet, as late as the end of

Haile Selassie's reign, key tasks in provincial governments and in the Defense and Interior Ministries could only be performed by men whose authority stemmed from the traditional sources. Every care was taken to ensure that traditional agrarian institutions were not undermined. It is interesting to note that Ethiopia is often compared to Japan,where the nobility countenanced modernisation by an autocratic oligarchy, the continuity of an Imperial tradition served as the focus of a new national identity, and the loyalties of the population were drawn towards the centre by bureaucratic means. The similarities are exaggerated: although Japan's experiences could conceivably have been replicated in Ethiopia, the bulk of the Ethiopian nobility was unwilling to permit the massive changes that would have been necessary.[44] These issues are dealt with in greater detail in Chapter Three.

While there is some evidence to suggest that Rene Dumont's "bureaucratic bourgeoisie" began to emerge in Ethiopia, generalised statements about the growth of an Ethiopian bourgeoisie, middle class or petty bourgeoisie are premature.[45] Lower-level elites were locked into personalised patron-client relations with the nobility, which prevented the emergence of the solidarity associated with Marx's concept of a "class for itself". Except for a few students, teachers and businessmen, new elites were usually under the political control of the aristocracy and were unable fully to work out independent lifestyles; new elites lacked the power and economic independence necessary to refashion government in a manner that would satisfy their demands. The growth of indigenous and foreign capitalism complemented rather than replaced fuedalism.

In sixteenth century Europe, a slow metamorphosis - the grafting of a mercantile economy onto a feudal one - initially resulted in few conflicts of interest or changes in feudal structures, yet it enabled the nobility to diversify its consumption patterns. A roughly analogous process occurred in twentieth century Ethiopia, but there were numerous differences too. As in pre-Revolutionary Russia, Ethiopia was exposed to Western technology, economic penetration and modernising educational values, the state controlled many of the modern means of production, and a Western-style liberalism never emerged as a

political force to be reckoned with. Foreign investors, their governments and the Ethiopian nobility found a community of interests in the preservation of the political and social status quo, particularly in an avoidance of expropriation and the redistribution of wealth.[46]

Given an extremely small industrial and commercial sector, retarded processes of urbanisation and, in the 1960s and early 1970s, the privileged position of organised labour in relation to peasants and the unemployed, it makes little sense to speak of an Ethiopian proletariat and lumpen proletariat. Although Haile Selassie's politics ignored peasants who were not rebelling, he did attempt to deal with the threat posed by dissatisfied city dwellers who periodically asserted a political independence and an ability to communicate with each other and organise a rudimentary opposition. While genuine threats to the regime materialised only briefly, during the abortive 1960 coup, disgruntled workers and the unemployed, encouraged by intellectuals and students, participated actively in the 1974 Revolution, although they were quickly overshadowed by the military. Prior to about 1965, Haile Selassie managed to co-opt most students by offering them relatively well-paid bureaucratic posts which prevented them from giving political effect to their modernising ideas. While activist students tended to be idealistic and radical, most students eventually acted so as to protect their privileged position. From the mid-1960s onwards, however, fundamental changes in student commitment, organisation and ideology occurred; they became the militant and extremely radical "conscience of the nation" that could not be repressed by the most brutal of means.[47]

On the eve of the Revolution, the Ethiopian regime was no longer a purely feudal one, although historical processes of stratification and the growth of ethnic antagonisms continued to exert a major influence on the course of events. Centrifugal tendencies were more evenly balanced by the centripedal military, national bureaucracy and commercial/industrial enclaves, but this balance was an unstable one. Perhaps the most accurate model of this composite of ethnic groups within the stratified Ethiopian state is Gerhard Lenski's "agrarian society" or S.N. Eisenstadt's "centralized empire".[48] Although the

initiative for the creation of such a state came from those already
in power, specialised political and administrative institutions could
only be manned by other, newly-created elites. Ethiopia displayed
Lenski's "matter-of-course confusion of public business with private
enterprise" and the virtually continuous struggles and intrigues
associated with this proprietary concept of a state, in which wealth
follows power in a largely pre-market economy.[49]

Despite the unique history of Ethiopia and the continuity of
her socio-political traditions, she also shares much with many other
countries - her underdeveloped status. For example, Uphoff and
Ilchman's "suggestive inventory" of Third World social groups could
have been devised for Ethiopia, containing as it does feudal land-
lords, middle-level peasants, moneylenders, landless labour, tenant
farmers, priests, teachers, regionalists, feudalists, small business-
men, industrialists, minority group merchants, the military, high-
level civil servants, other civil servants, intellectuals, moderate
workers, radical workers, and pro-Peking communists.[50] Once students,
the urban unemployed, nomads, overlapping ethnic identities and the
large number of groups within the military are added to the list,
there is a large number of groups who have to be treated as distinct
from one another. Most of them have periodically asserted divergent
demands and, therefore, presumably have distinct interests which
make an analysis based on the concept of class and, more importantly,
the creation of an overarching political consensus, virtually impos-
sible. Contrary to typical Marxian assumptions, intermediate social
groups expanded upon their privileges rather than becoming absorbed
into an Ethiopian "proletariat", yet these groups do not constitute a
middle class either. Looking from the bottom up, peasants are an
exploited group and urban workers are privileged; from the top down,
all but the upper levels of the elite appear to be underprivileged.
The only realistic picture of Ethiopian social strata is one "of a
continuum of influence and a combination of conflicts and converging
interests of different groups".[51]

Within this continuum, the criteria for judging social status,
in addition to wealth and power, are occupation, cultural background,
educational attainment, the ability to speak "clean" Amharic, the

following of an Amharicised (rather than Westernised) "civilised way
of life" and (as in England) "good manners" - a sensitivity towards
status differences. Although the Revolution of 1974 will undoubtedly al-
ter the composition of the various strata somewhat, many deeply-rooted
rural social relations are presently immune to centralised control and
it is likely that occupational categories and the criteria of status
differentiation will not change markedly. At least the first
five criteria listed above - wealth, power, occupation, cultural
background and education - constitute the basis for social strat-
ification in most socialist countries, where stratifications based
on merit criteria such as educational attainment tend to favour the
children of non-manual workers.[52]

As a result of attempts to liquidate feudalism and, until 1978 at
least, to lessen the political dominance of the Shoan Amhara, the
new military Government faces, for the first time and in an extreme
form, virtually all of the modern problems associated with nation-
building in the Third World.[53] A feudal and virtually absolute
monarchy cannot provide the basis for a modern state late in the
twentieth century; it is too late to replicate Japan's experiences.
Political development and development in general can only be secured
through governmental policies which foster a simultaneous socio-
economic equalisation, political participation and a meaningful
national integration (see Chapter Two). Some form of social strat-
ification (not necessarily a class structure) is inevitable in Revol-
utionary Ethiopia, and new and just strata in which status distinctions
no longer coincide with ethnic divisions must be fostered nationwide,
as an alternative to further 'retribalisation'.[54] Amhara peasants
and the non-Amhara must have access to the centre.

III. Conflict or Consensus?

Many sociologists explicitly or implicitly adopt one of the
grand images or models of society, a consensus model which has been
most fully elaborated by Talcott Parsons or a conflict model derived
from insights found in the writings of Marx and the Rationalists.
Owing to a lack of space, we shall paint these complex models in
broader strokes than they perhaps deserve. Although it is no longer
fashionable among sociologists to argue over these issues, the

theoretical difficulties they have failed to resolve satisfactorily continue to plague many other social scientists.

Those sociologists who see a consensus omnium or volonte generale as outweighing all possible differences of interest among individuals and groups, perceive an "integrated" society in which common interests, the functional requirements of social systems, the internalisation of norms and roles and the success of social control mechanisms such as law guarantee consensus, conformity and stability. Through a process analogous to homeostasis in biology, social systems are held in equilibrium through patterned and recurrent processes which permit only incremental, long-term changes. Conflicts are to be avoided, managed through dispute settlement processes, treated - somewhat unhelpfully - as isolated instances of deviance from socially-approved norms, or seen as reflections of the fact that something is missing from the social system. The consensus image of society thus contains a conservative bias against social change, postulates a one-sided relationship in which man is the passive perceptor of and reactor to social forces, and serves to reify or even to mystify the status quo, providing little basis for the criticism of social reality.[55] Julius Stone notes that if the legal order is substituted for Parsons's social system, much of his theory would be regarded as true and even as commonplace by most Western jurists.[56]

The image of a societal consensus can be regarded as diametrically opposed to the conflict model of society, where the central postulate is the ubiquity of conflict and change resulting from struggles for goods and services in short supply. These struggles occur in successive stages and social systems are viewed as unstable and continually reach beyond themselves, in the sense that the forces of unending social change are produced from within the systems. Under this image of a society, exploitation is rife and order can be achieved only through domination, constraint and coercion, the moving forces of social integration and stratification and the outcomes of differences in the distribution of power and wealth. This slightly simplistic image of a society continually moving under the impetus of ruthless power and typically organised into clearly-defined classes offers effective interpretations of many events in which political interests dominate.[57]

A. The Models Applied to Ethiopia

It is, of course, the existence of at least a minimal degree of
localised consensus which makes organised social life possible,
enables individuals and groups to understand one another and gener-
ates the expectations of predictable behaviour that are the pre-
conditions to all types of transactions. We have, however, seen that
a single system of values, which theorists of a societal consensus see
as universally accepted within a unitary social structure, does not
exist in Ethiopia. Talcott Parsons's schema assumes the existence of
a high degree of voluntary activity within a society dominated by a
market economy, in which overtly political processes have little
effect on the distribution of wealth or on the settlement of the
disputes of individuals. These conditions do not obtain in Ethiopia,
where the conflict theorists' perceptions of divergent and conflicting
values, subscribed to by different strata and ethnic groups and
selectively imposed by those in power and rejected by others, are far
more realistic. Many sociologists have concluded that the image of
an integrated social system is clearly contrary to the observable
characteristics of most societies. Hugo Jaguribe, for example, argues
that:

> There is no criterion for forming an adequate consensus in a
> severely underdeveloped community where the area of social
> integration is minimal and the differences in expectations
> founded on the extreme differences in participation are
> maximal. 58

As this statement characterises Ethiopia fairly accurately, it can
be viewed as a polar extreme on a continuum of integration and non-
integration (see Chapter Two).

The almost complete absence of national integration does not
necessarily mean that the ubiquity of change postulated by the conflict
model of society exists in Ethiopia. Myrdal's generalisation can be
applied to Ethiopia:

> All our evidence suggests that social stability and equilibrium is
> the norm and all societies, particularly underdeveloped
> societies, possess institutions of a strongly stabilising
> character. In view of these findings the real mystery is how
> they can escape from equilibrium and can develop. 59

In a fragmented society composed of isolated groups, no political
significance attaches to many potential sources of conflict because

individuals and groups with conflicting interests simply do not enter into competition or even into contact with one another. Localised patterns of social stratification, especially among the Amhara-Tigre, foster integration at the community level, but only to the extent that differentiations are seen as justice fulfilled or virtue rewarded and as a part of the natural order of things. In a tightly-bound community of sentiments, the individual is encouraged to identify that which ought to be with that which already exists yet, even so, doubts creep in about the naturalness of established hierarchies:

> the sense of being surrounded by injustice without knowing where justice lies . . . is the political side of that general sentiment of arbitrariness and even absurdity which gradually enters into the consciousness of every social group. 60

These half-formed and largely dormant attitudes do not, of themselves, constitute a social force to be reckoned with. In traditional Ethiopian societies, there is little awareness of explicit common goals and few attempts are made to organise groups in pursuit of these goals, apart from voluntary associations among a few groups and the establishment of patron-client relations among the Amhara-Tigre. The latter dissolve when the interests of patron and client come into conflict unless, as often happens, the patron can convince his clients of a community of interests. All of this is beginning to change under the military Government but, for the present, low levels of group organisation and the diffusion of political power at the local level continues to inhibit the formation of the large, monolithic conflict groups that are characteristic of many industrial societies.61

The high degree of social stability displayed by most ethnic groups contradicts expectations of social changes arising out of conflicts that have persisted for centuries in Ethiopia. Most of these armed rebellions were localised and remote from the everyday lives of peasants and farmers who were not directly involved, and rebels - often led by disgruntled aristocrats - struck like lightning in the pursuit of specific, personal and short-term goals, and then disappeared without having made much of an impact on the slowly-working forces that operate upon Ethiopian social structures and

institutions. The permanent monopoly of power held by the Amhara-
Tigre, and later by the Shoan Amhara, was exercised in such a way as
to prevent the emergence of the national consensus that some socio-
logists see as a natural byproduct of a pluralist society,[62] yet
the Empire did not dissolve. Numerous tightly knit but small and
isolated groups tried to ignore Imperial governments, lacking the
power to overthrow them. Whether this state of affairs will change
markedly as a result of the broad social changes advocated by the
military government and by some separatist groups, remains to be seen.

Our analyses suggest that neither the consensus nor the conflict
model accurately and adequately explains stratification and ethnicity
within and among Ethiopian societies, although each model has a
comparative advantage, in that it explains certain things better
than its rival. Additionally, numerous areas of social life in
Ethiopia (and elsewhere) reflect an ignorance of possible alternatives,
an absence of clearly-defined individual and group goals, or in-
decision, rather than consensus or conflict. These conclusions are
hardly surprising, since many sociologists have reached similar ones
after applying the consensus and conflict models to societies other
than Ethiopia's. Although several syntheses of the two models have
been attempted, we agree with Ralf Dahrendorf that such a synthesis
is impossible, requiring as it does the resolution of most of the
contentious issues found in Western philosophy, including the view
that ought to be taken of human nature. He analyses conflict and
consensus in the following manner:

> We cannot conceive of society unless we realize the dialectics
> of stability and change, integration and conflict, function and
> motive force, consensus and coercion. [63]

This dialectical image is a useful one: human existence, in Ethiopia
and elsewhere, displays a curious intermingling of good and evil
which leads to demands for both liberation and constraint; individuals
never totally accept or reject the vague value systems ascribed to
particular groups, and conflicting value systems can operate within
the same person, especially during periods of rapid modernisation;
coercion is an inevitable and necessary part of social control, and
the exercise of control fosters both consensus and the changes
brought about through conflict; patterns of social organisation can
only flow from the contradictory yet interrelated needs and demands of

men; and, in societies which aspire to modernisation, the simple maintenance of order is insufficient to satisfy individual and group needs and demands. Social arrangements must be consciously created and justifiable in terms of attractive images of the "good life".[64]

Like much of sociological analysis, the consensus and conflict models are not value-neutral and amount to ideologies supporting and opposing the status quo. For this reason we ought to state briefly what we feel to be the appropriate value judgements for a study of Ethiopian societies. There is little reason to foster the pattern maintenance emphasised by Parsons since the pattern to be maintained is still developing. If the status quo of Ethiopian underdevelopment that we described is regarded as indefensible, a critical examination of potential processes of change is in order, and the spirit - but not always the letter - of Marxian inquiry ought to be incorporated into our analyses.[65] We have, however, tried to describe the persistence of Ethiopian social stability within low-level equilibriums; the centuries of conflict and social, economic and political activity that were all but fruitless from the standpoint of development and social change. We cannot ignore the fact that the conflict model offers inadequate explanations of these processes. The balance of this Section will be devoted to drawing out the insights offered by consensus and conflict models in relation to Ethiopian politics, law, process of conflict regulation and the potential for social change and development in general. Additional analyses of the inadequate explanations of Ethiopian legal processes offered by the jural analogues of the consensus and conflict models, analytical positivism/social engineering and socialist jurisprudence, are postponed to Chapters Two, Three and Five.

B. <u>Social and Political Change</u>

The conflict model leads us to believe that the potential for political conflict nears its theoretical maximum in Ethiopia, where most political, industrial, regional, rural/urban, religious, and ethnic conflicts can be superimposed to form a single and all-embracing antagonism at the national level, and where heterogeneous but partially-interchangeable elite groups uniformly dominate what they see as undifferentiated masses of rural and of urban dwellers. There is little basis for political cooperation in Ethiopia, apart from

temporary expedients such as patron-client relations and, as in some
Latin American states, there is a cultural tradition, particularly
among the Amhara-Tigre, of dissent and rebellion for its own sake, of
a militant 'machismo' in a harsh material environment. Given the
persistence of traditional antagonisms, it is doubtful whether any
government could resolve or even hope to contain them, barring rad-
ical changes in political practices and social structures; merely
changing the content of policies will accomplish little. Discussion
must precede decision-making processes resting on consensus, and
dissension and stratification in Ethiopia confine debates over
political issues within extremely narrow social spectra. The virtual
absence of widely-shared values associated with competitions for and
the exercise of power mean that Ethiopian politics are not "econ-
omical", in the sense that the workings of Government are often
unpredictable.[66]

Despite high levels of conflict and an even higher potential for
conflict, few long-term political changes occurred during Ethiopia's
long history; in the politically unstable twentieth century, Haile
Selassie was able to maintain an effective and largely traditional
political power from about 1922 to 1935, and from the expulsion of
the Italians in 1941 to the beginning of 1974. All political
struggles in Ethiopia (and elsewhere) are intermittent and inconclusive,
for no individual or small group possesses the means of permanently
guaranteeing political victory and political institutions evolve
slowly and only serve to regulate those areas of political life where
temporary coalitions of elite interests can be maintained. The
patron-client relations we describe at various junctures foster a
narrow and vertical consensus; each patron looks after the interest
of his clients and, as a client himself, relies on favour from his
own patron. Since the power of a leader in a feudal system is
contributed from below, nothing was done in Ethiopia until the inter-
ests of a great number of people had been dealt with. This was the
pattern of Haile Selassie's reign, the achievement of a minimal
consensus by suppressing some demands, under-representing others and
carefully balancing the rest - what the new military Government has
correctly characterised as the politics of divide and rule. The
pursuit of these policies may also be termed the politics of subsistence,

in which the minimum degree of law and order necessary for survival was maintained in the urban areas and by an occasional show of force in rural areas to keep presumptive nobles from overreaching the centre. This Government was stable because it reflected with a fair degree of accuracy the distribution of traditional power, although a failure to deal meaningfully with emerging loci of power within the military, bureaucracy and separatist groups eventually led to its downfall. Haile Selassie's main political aim was to prevent the consolidation of organised or institutional sources of power, and modernising institutions which did not contribute directly and narrowly to the strengthening of mechanisms of Imperial control were either never created or were made monuments to formalism, having little actual influence over events. The only significant exceptions were found in the new commercial and industrial enclaves, where businesses were either controlled directly by the powerful or provided state revenue without asserting demands which conflicted with the interests of ruling elites. Old institutions were preserved and assigned new functions because they were conducive to the preservation of power within the nobility. If we discount the warnings given during the abortive 1960 coup – as Haile Selassie subsequently did – the only effective domestic challenges to his policies prior to 1974 came from conservative opposition to his extremely mild reformist efforts.[67]

We have argued that the nature of traditional Ethiopian politics and social structures inhibited socio-political change. Can high levels of social change, oriented towards development, now be fostered under the new regime? A revolution does not substitute one social structure for another; it merely overthrows the existing balance of power within the political order. The means by which individuals are recruited to the upper social strata usually change, but it is by no means a foregone conclusion that the developmental dimensions of a radical social change – an increase in the number of occupants of the upper strata and alterations in occupational structures to favour more productive individuals – will be pursued actively. It is only after such changes take place, accompanied by a growing consensus concerning basic social values and the legitimacy of the state, that political

struggles serve to further a national integration and social
changes which are conducive to modernisation. It is the absence of
these elements throughout much of Ethiopia's history that contributed
to the perpetuation of conflict-prone societies which are nevertheless
static and isolated. A conscious policy of altering traditional
political practices and social stratifications and of encouraging
integration would relax the change-inhibiting factors in Ethiopian
societies which, we argue, are otherwise predisposed to change;[68]
the explicit recognition and regulation of conflicts of interest
among numerous groups would ensure fairly high rates of change, while
socio-economic equalisation and integration would help to build a new
consensus and to keep these changes within manageable bounds.

Such a process would undoubtedly be violent, uneven and imper-
fect, but it is also virtually the only means by which the stated aims
of the Ethiopian Revolution, which are nation-building and the disman-
tling of traditional social and political processes in order to foster
development, can be achieved. If the existing facts of social strat-
ification, ethnic fragmentation, and underdevelopment in general were
created primarily through political actions, they can also be dis-
mantled politically. This point has never been grasped by theorists
who explicitly or implicitly adopt a consensus model of society.
They have, nevertheless, offered numerous development prescriptions:
an international consensus can be fostered through industrialisation
and the transfer of technology rather than, for example, through the
elimination of neocolonialism, exploitation and military intervention;
social harmony and increasing socio-economic equality will be the
outcome of slow and gradual changes; a middle class will emerge
to adopt Western values and to halt the polarisation of other social
groups; and government ought to be helping disoriented individuals to
adjust to change. These prescriptions have little relevance in
Ethiopia, where the historic trend is towards higher levels of
inequality, conflict and recurrent starvation - conditions to which
it is difficult to adjust.[69]

It is, of course, true that social organisation and conscious-
ness (the collective counterparts of an individual's behaviour and
values or beliefs) are inseparable in their social effect, yet we

choose to emphasise conscious attempts to change structures rather than values for a variety of reasons. While an appropriate ideology can, for example, have important but indirect effects on integration and development, changes in systems of social stratification directly alter the way in which people relate to each other and act within a social system. The extent to which peasant associations and kebelles can perform these functions is discussed in Chapters Six and Seven, while the military government's vague ideology is analysed in Chapter Four. For the present, we note that it is within the realm of influencing behaviour rather than belief that law and governmental policies in general can have their best effect, and that development ultimately occurs as a result of what people do rather than what they think. There is, in any event, a marked confusion among sociologists concerning the relationship between social change and the kinds of values adopted by particular individuals and groups, and this confusion is reproduced in numerous analyses of an Ethiopian peasant "fatalism", irrationality, resistance to change and high rates of perceived social mobility, which are discussed in the footnote.[70]

It is difficult to determine whether these images of Ethiopians reflect accurate interpretations of observed behaviour, Western anthropological preoccupations, or ethnocentric preconceptions of particular observers. To some extent, the value systems of Ethiopian groups - assuming that they can be identified and generalised meaningfully - must reflect the vitality of people who feel at home in their culture and with the past, but they must also mirror the fact that peasants and farmers, unlike their observers, must somehow survive in the face of harsh material conditions, exploitation and oppression. Change these circumstances, we argue, and many social values will change, slowly but automatically, because they are no longer rational responses to changed living conditions. Ethiopians are no different from 'us', save that different conditions have left different marks on their minds and bodies. Since it is unlikely that the criteria of status differentiation within Ethiopian societies will change markedly as a result of the Revolution, social change will depend upon more people obtaining the means to fulfil these criteria. If a peasant fatalism persists, there is little that can be done

about it anyway, and it is best dealt with as a 'given', a constraint
on development which cannot be manipulated, like the absence of huge
copper deposits. This perspective parallels the interesting way in
which Hutton and Cohen deal with issues related to social change:

> We all resist changes that are threatening. . .; and need not accept
> in an a priori manner that anyone is expecially resistant to change.
> Rather we should ask: Who is resisting whom? What is the
> content of this resistance? Who defines the behaviour in
> question as resistant?
>
> . . .The 'diffusion of innovations' studies called one set of
> persons 'planners', 'initiators', or 'change agents' . . . .
> The other set was known . . . as 'receivers'; who . . . were
> supposed to accept gratefully the well intentioned ministrations
> of the former. Where they did not, resistance to change was
> discovered. But how sensible was the plan? Whose interests
> did it serve? Did resistant behaviour follow, after a genuine
> trial, the discovery of error or impractibility on the part of
> the initiators? 71

In Ethiopia, the answers to questions of who resisted whom and
how reflect the social cleavages brought about through stratifi-
cation, ethnicity, education, urbanisation and a host of other
factors. Answers to the kinds of questions posed by Hutton and
Cohen would also promote an understanding of the manner in which
laws are adopted, ignored, distorted or rejected in Ethiopia. Whose
interests were and were not served by various laws? Were the chosen
legal solutions the relevant and practical ones? These questions are
treated throughout this study.

C. Conflict and Consensus in Law

At the most general level, laws are simply recurring modes of
interaction which, like all other social structures, generate reciprocal
expectations. Laws are formal structural frames which reflect,
albeit imperfectly and subject to time leads and lags, what goes on
within more informal processes of social stratification and ethnic
fragmentation. The Lilliputian nature of this relationship was
grasped by Karl Renner:

> Legal ties are mere threads compared with the Herculean power of
> natural life. Yet this Hercules stretches his limbs so grad-
> ually and imperceptibly that the threads do not suddenly snap
> in all places. 72

Abstract legal concepts like citizenship define an ideal if unreal-
ised social equality, while specific rules describe categories and
rights which express and support particular group differences, values
and ideologies.

In the West, law is seen to flourish in countries where the most fundamental of social values are not at issue, where enforcement problems are not too acute and where society conserves more than it wishes to change. Marginal disequilibria are eliminated through trial and error, ad hoc and incremental legal changes. Rule by the few is replaced, not by a _volonte generale_ but by the Rule of Law that, in the eyes of its proponents, serves both to harmonise private wills and to protect the rights of minorities. Legal institutions, especially constitutions and courts, are seen as perpetual and impartial umpires of peaceable competitions for wealth and power within an agreed framework. This consensus model of law is employed as an ideological bulwark of the free market and as a justification for limitations on state power.[73] Haile Selassie formally subscribed to this model and promulgated many Western-style laws to placate educated elites and foreign aid donors, but the realities of stratification, ethnicity and traditional politics gave a different face to the Ethiopian law-in-action.

In highly stratified societies such as Ethiopia's, individuals at both ends of the social spectrum tend to feel that law is of no concern to them, try to manipulate or to ignore its strictures and often succeed in doing so. Haile Selassie's state was not strong enough to resist the pressures of the powerful, yet it was sufficiently strong to override nominal, Western-style legal restraints on political action. The ideal of legality is not achieved when, as is all too often the case in Ethiopia, arbitrary rules bearing no clear relation to concrete goals are created without consulting those affected. Errors and policy confusion reflect the fact that internal principles of legal criticism, such as those utilised under the rubrics of judicial review, the Rule of Law or socialist legality, were and are almost never used effectively. Under Haile Selassie, legal rules were extremely cool towards the interests of emerging elite groups, the political conflicts inherent in landlord-tenant and labour-management relations were not successfully regulated within a positivised civil law (see Chapters Six and Seven), and Government's courts were seen to be exceedingly partial to Amhara belonging to the upper social strata.[74] Far from being an umpire, Ethiopian law is a weapon of political struggle, and laws which are advantageous to particular individuals and groups do not survive their political eclipse.

All of these tendencies are accorded clear recognition in the conflict models of law devised by socialist jurists, but they have also been observed in Western legal systems. Some Western theorists argue that formal law presupposes a climate of conflict, that most rules are not shared norms and are often in dispute or even created by disputes, that a legal system is little more than a sequence of sets of rules which are continually changing, and that law can be used actively to foster social change where such changes are congruent with the interests of the powerful. Law and power are viewed as coexisting in a continual state of tension: law needs the support of force when disobeyed and, while law does more than merely preserve the power of ruling elites, to the extent that law aims at the preservation of peace and order, legal values must be roughly consistent with the interests of those elites who are in power.[75] A study of the use of law in Northern Ireland demonstrates, for example, that in areas of social and economic life which are not endangered by political in-stability, law stands above and apart from society, helping to regulate and control it; political and social disruption, on the other hand, cause law to recede into the background and the realities of political, economic and military power come to the fore.[76] This dialectic of consensus and conflict represents the most accurate image of Ethiopian legal systems: the prominence of numerous areas of political conflict should not blind us to the existence of many areas of a (often localised) legal consensus.

Having adopted such an approach, conflict regulation (or tension management) through law becomes much more problematic than a consensus model would lead us to expect. If a democratic consensus is assumed, a legislature becomes a well-patronised framework for discussion and decision and creates the legal conduits that govern but do not predetermine the outcome of individualised and temporary disputes. Particular disputes are then permanently resolved by courts following widely-accepted procedures.[77] These conditions do not exist in Ethiopia (see Chapters Three and Five) and are subject to numerous and significant qualifications in all countries. The problem is that, while a complete national integration can only be brought about through the resolution of all serious conflicts, conflict cannot be merely suppressed: it simmers and then erupts, even if an incremental

satisfaction of demands takes place. Conflict regulation is impossible where both sides are not organised, and conflict can only be brought within the reach of legal systems if the right of groups to organise is recognised legally - guerrillas cannot be regulated. A degree of recognition makes the most violent forms of conflict unnecessary and therefore less likely, although conflicts such as a media-oriented terrorism will continue to be a problem. Further, the proliferation of organised groups with conflicting interests tends to diffuse the areas of conflict: fewer antagonisms are superimposed and power and wealth are spread more widely. Many Ethiopian conflicts, and particularly those involving separatist groups, have not been institutionalised: the parties have not demarcated, by legal or other means, the point at which victory is achieved, and losers feel unable to concede or even to know when they have lost. All of this argues for broad and legally-guaranteed forms of political participation and political and material rights, in order that law can serve as a safety valve which helps to avert confrontations,[78] but these conditions do not obtain in Ethiopia. Finally, conflicts must be encouraged rather than suppressed in some areas, if rapid social change is to be achieved. While Haile Selassie usually succeeded in forcibly suppressing conflicts, this policy is becoming increasingly untenable. There is a growing scarcity of coercive resources relative to the strength of newly-organised, militant expressions of interests that often remained latent under Haile Selassie.

D. The Economic Dimension

Social stratifications always have an economic dimension and in many traditional African societies such as Ethiopia's, the polity dominates the formation of strata by circulating land and profitable honours and offices in accordance with the political needs of the moment. There is a greater degree of political and military specialisation than there is a division of labour in the economic sphere, and traditional Ethiopian societies are manipulated politically and exploited economically, although the nature of this exploitation has changed markedly as a result of the Revolution. The five means by which an agricultural surplus can be extracted for the benefit of elites - feudalism, imperialism, colonialism, centralised taxation and differential

pricing - have all been utilised in twentieth century Ethiopia; recip-
rocal benefits conferred on farmers were minimal and recurrent famine
resulted. The potential for economic growth through this sheer
extortion of tribute is obviously limited, and much revenue was con-
sumed immediately rather than used to increase economic productivity.
Ethiopian stratifications and political processes were economically
irrational, in the sense that they rewarded economically unproductive
people whose political and military productivity benefited only
themselves and their retainers, and this was not conducive to national
development or integration. As Amhara-Tigre social systems were
overwhelmingly based on an unstable control over land (see Chapter
Six), these systems lacked the economic and social complexity,
security or incentives to foster development or to make them attrac-
tive to other ethnic groups. Economic activity was splintered into
unintegrated and isolated sectors which traded but little with each
other, as a result of political fragmentation, chronic warfare,
customs posts between regions and a rugged typography.[79]

The introduction of cash crops, wage labour and Westernised
education and the extension of the money economy stimulated the
formation of new social groups, particularly those which reflect a
specialisation by occupation. There were few points of contact between
traditional social strata and these new groups, whose access to
political power by virtue of occupation was limited. As in other
colonial states, the growth of education was not a consequence of
development processes or of the desire for development; educated
groups became the agents of traditional rulers within the expanding
legal, administrative and educational institutions of imperial rule.
The growth in the number of educated persons outstripped economic
growth during the 1960s. Burgeoning expectations of unlimited
employment opportunities for the educated were frustrated, and dissat-
isfactions with Haile Selassie's regime mounted. Even today, the
Ethiopian bureaucracy probably consumes more than it produces and
constitutes yet another burden on productive processes. An indigenous
'primitive' capitalism emerged, but resources within the new enclaves
continued to be allocated in accordance with traditional political
criteria. These new economic activities were little more than
extensions of the old ones: commerce was emphasised at the expense of

the production of goods, and small and poorly-serviced channels of
collection and distribution were not rapidly expanded or diversified.
Manufacturing was partly controlled by foreigners who cheerfully
remitted revenue to the State and their profits abroad. In general,
these twentieth century changes represented logical extensions of
feudal and colonial processes of exploitation, only modest rates of
economic growth were recorded, and new institutions and social strata
made virtually no contribution to a broadly-based development and
social change.[80]

An economically rational restructuring of Ethiopian social
strata would attempt to reward those who apply enterprise and know-
ledge (including new forms of technology) and exercise authority
effectively in the production of socially-valued goods and services -
particularly inexpensive food, clothing and shelter, in a society
hovering near subsistence. These activities need not be regarded as
the entrepreneurial function of a tiny minority, as in classical econ-
omics and Western-oriented social change theories; they are the kinds
of things a predominantly rural and isolated people could do with
small inputs of capital and labour, if social, political and economic
strictures on incentives and security were removed. Development and
socio-economic equalisation would then cause traditional antagonisms
to lose much of their relevance, although new conflicts would undoubtedly
emerge. As de Tocqueville noted, however, the love of equality
paradoxically increases with every step taken towards equalisation,
and we argue that these new conflicts would tend less towards frag-
mentation and more towards modernising social changes. The apparently
complex motivations of Ethiopian social groups make them both a
potential obstacle to and a vehicle for development, depending on
what kinds of elites represent them and, more importantly, the kinds
of programmes that are implemented.[81]

IV. Dualism and Distance

A dualistic pattern of social and economic organisation - small
urban areas and enclaves of agrarian progress superimposed upon a
huge rural subsistence sector - has been detected by many Ethiopian-
ists. John Cohen has argued for a "dynamic dualism" in which
changes in feudal patterns are small and confined to a few areas,[82]

John Markakis sees "a society bisected by an urban-rural dichotomy",[83] and Assefa and Eshetu add that "Ethiopia is basically a nation masked behind its capital city and the facade of modernism. . . ."[84] These kinds of arguments are more fully elaborated by Detlev Karsten:

> A remarkable feature of the Ethiopian economy is the prevailing dualism, that is the existence of almost completely separate traditional and modern sectors. There is a wide discrepancy between the two with hardly any contact between them and consequently little prospect for an evolutionary change of the traditional sector. The dualism partly coincides with the imbalance in regional development – some towns and a few cash-crop areas are developing relatively quickly/¯?_7 while the remainder of the country remains stagnant. This backwardness can partly be explained by the fact that the very idea of development is relatively new to Ethiopia. . . .
> . . . There are, on the one hand, relatively modern factories working with imported machinery and methods, and, on the other, the traditional handicrafts, which in rural areas are the only supplementary to the main occupation of farming. More than 90 per cent of all industrial establishments are concentrated in less than 1 per cent of the area of the country. . . .85

These opinions, we argue, are based on accurate observations but offer misleading interpretations of complex processes of Ethiopian under-development.

A. <u>Dualism and Ethiopia</u>

Dualistic theories of underdevelopment and development were first advanced systematically in 1953 by J.H. Boeke, who attempted to explain economic conditions in Indonesia on the basis of "a distinct cleavage of two synchronic and fully grown social styles"[86] – the East and the West of Kipling's poem, subscribing to divergent economic theories. Boeke was right to emphasise that a single policy would not promote development in both rural and urban areas, and that policies which benefit one sector often disadvantage another. While many theorists postulate useful dichotomies and, for some analytical purposes, Ethiopia and many other countries can be divided into rural and urban areas which are structurally and behaviourally so different that they deal with each other largely on the basis of trade, much oversimplification results from the excessive reductionism found in Boeke's theory. There are a large number of distinct but overlapping Ethiopian dichotomies and continuums which are not accounted for by so simple a theory.[87]

Boeke might be forgiven his oversimplifications, but they have had pernicious consequences when adopted and adapted by economists such as W. Arthur Lewis and Ragnar Nurkse. In their theories of development based on "unlimited supplies of labour", the contribution of a "closed" rural economy to development is, in effect, to supply Marx's "reserve army of the unemployed", which is unwilling or unable to respond to agricultural production incentives. Development is viewed as the outcome of "transferring" this seemingly-homogeneous "surplus" labour to the capital-intensive and large-scale industrial and agribusiness sectors, where wages remain low because labour supplies are virtually unlimited and the higher profitability brought about by low wages will stimulate further investments. This was the development strategy that many foreign experts advised Haile Selassie to adopt, despite the fact that its assumptions have been disproved, theoretically and empirically, in Ethiopia and elsewhere. Peasants and farmers do tend to maximise meagre resources, respond to incentives and, given the opportunity, accumulate savings; unemployment or underemployment is almost non-existent in rural areas, especially if a feudal hierarchy must be supported; markets for new manufactures do not expand rapidly because workers cannot afford to purchase the goods they produce; additional profits are often spent on luxury goods or remitted abroad; most investments continue to run in pre-existing channels towards cash crops, commerce and speculation in real estate; and the spread of capitalism in the enclaves is accompanied by deteriorating living conditions in rural areas because the benefits associated with economic growth are not diffused widely.[88]

Despite these difficulties, Haile Selassie adopted, explicitly or implicitly, many of the policies associated with surplus labour models. From the standpoint of traditional Ethiopian politics, rural labour was surplusage if it was not needed to till the farms of the powerful or if an incompetent bureaucracy was unable to extract tax revenue from relatively impoverished, isolated and small-scale producers who, far from being a political asset, were potential trouble-makers. Given these apparent political constraints, it is not surprising that Government did little to promote small-scale agriculture and concentrated its meagre efforts on economic growth in areas where

taxes and the fruits of political control were relatively easy to
collect. The result, over the years, was the growth of elitist
(administrative, military and industrial) enclaves or centres, small
and fragile islands of modernity floating increasingly free of their
social bases and, eventually, open to a relatively easy and perhaps
temporary capture by the willing and able. This tendency has been
noted throughout the Third World yet, under the surplus labour model
and many other development theories as well, politicians, bureaucrats
and businessmen are encouraged to ignore the so-called dead weight of
traditional societies and to get on with the expansion of enclaves
which perpetuate and intensify instability, foreign dependence and
processes of underdevelopment.[89]

The undifferentiated mass of rural people assumed by dualistic
theories of development (and by those who continually refer to "the
masses") may exist in a few countries, but ethnically-fragmented
Ethiopia, where numerous reciprocal relations between rural and urban
areas have been observed, is not one of them. An Ethiopian pluralism
would therefore be a more descriptive rubric than dualism but, as
pluralism has already acquired a definite meaning among sociologists
who adopt the consensus model, we prefer to discuss a wide variety of
physical, political, social, economic, technological and legal
distances between Ethiopian individuals, groups, sectors and regions.
These distances have arisen because a variety of social forces have
been exempt historically from the control of those who are kept at
a distance through the policies of internal colonialism we have
described. Differences in distances reflect varying degrees of dis-
engagement of political, social and economic activities from diver-
gent traditional social structures and processes of production. One of
the criteria of development, then, is a decreasing of these distances,
a linking of peripheries with centres which is distinguished from
economic growth in enclaves by the number and types of links that are
created – a process to be described in Part III of this study.
Although political processes are extremely important, there are
distinct limits to what can be done through conscious political changes
in patterns of stratification, ethnic fragmentation, conflict and
dependence; economic forces must also be set free in an attempt
indirectly to remould the social order.[90]

B. Illustrations from Ethiopia's Legal Systems

· One of the best ways to appreciate the variety of these distances
in Ethiopia today is to analyse her numerous and overlapping systems of
laws. Adopting attitudes analogous to those of theorists of a
developmental dualism, many jurists and anthropologists describe a
simple dichotomy of customary and 'modern' law in the Third World. For
a variety of reasons, this image is extremely misleading, in Ethiopia and
elsewhere. Numerous economically, socially and politically isolated
and ethnically-fragmented Ethiopian groups utilise a wide variety
of customary (the term typically adopted) rules to regulate their
daily lives. Overlapping and impinging upon these normative orders
are rules which may be termed traditional, in that they were used to reg-
ulate affairs within the Amhara-Tigre Empire and the Orthodox Church
from the fourteenth century onwards. As in all premature attempts to
create a centralised empire and the establishment of subsequent
feudal arrangements, these rules have a fairly narrow compass and
are confined to successions to power, the application of penal
sanctions to preserve order, ecclesiastical and family matters and the
regulation of trade and, more importantly, rights in land. These laws
were a part of the baggage that followed in the wake of Menelik's
southern conquests, and their impact on indigenous rules was similar
to that of the laws transplanted to other parts of the Third World
under European colonialism. Designed to further interests expressed
within traditional Amhara-Tigre society, these laws were not responsive
to demands arising within the emerging enclaves, and Haile Selassie
saw fit to complement and, in many cases, to supplant them with
Western imports or adaptations of indigenous practices. The Revol-
ution of 1974, in turn, rendered much of this nominally national legal
system irrelevant to the achievement of new political aims, and
important rights and duties are increasingly regulated under social-
ist-inspired proclamations emanating from the military Government.
Localised normative systems are thus modified in part by three suc-
cessively overlapping layers of national laws, and differing legal
distances ('pluralism') stem from legal and ethnic complexity, the
divergence of customary and non-customary rules, and the fusion of
these laws with extremely large amounts of the traditional administrative
discretion that is seldom circumscribed by national laws. To the

extent that an individual comes into contact with agents of the
centre, he may live a poly-normative or even a partially normless life.[91]
Despite the numerous conflicts that arise between these normative orders,
Ethiopian governments have never adopted conflicts of law (private
international law) rules, and conflicts are settled solely on the
basis of political expedience. No hierarchy can be confidently post-
ulated among these legal systems, as particular outcomes depend
upon who is taking the decision and for what purpose.

There are few contemporary, reliable and detailed studies of
Ethiopian customary laws, apart from portions of the work of William
Shack, Herbert Lewis, Billilign Mandefro, Alice Morton, Norman Singer,
John Bruce and Alan Hoben,[92] and even the few generalisations that
warrant a brief mention are hazardous. For example, James Paul's
characterisation of customary Ethiopian laws as "unwritten, . . .
personal, ad hoc, geographically particularistic, informal, and
undifferentiated from other norms and usages"[93] is undoubtedly a
valid generalisation, but it is subject to numerous qualifications
when the rules of particular ethnic groups are considered, especially
with regard to a lack of differentiation. Compared with adjudication
in the West, customary Ethiopian processes place a greater emphasis
upon correct procedures and the persuasive presentation of facts
rather than the complex interpretations of substantive rules, upon
a quick, flexible and local conciliation or arbitration which restores
social harmony rather than the implementation of abstract concepts
of justice and, in some areas, upon supernatural sanctions and
processes of adjudication. Many groups - and the Amhara in part-
icular - are noted for their high development of and keen interest
in litigation; as among pre-Revolutionary Russian peasants, much of
procedure involves wagering on the outcome and determining who will
take the oath that decides the dispute. Guarantors play the same role
that they did in early Anglo-Saxon procedure. There is a large gap
in Ethiopian studies concerning the precise influence of the Koranic
core of Islamic law on localised customary rules, and national Ethio-
pian laws have never followed coherent and consistent policies with
regard to the status of Islamic laws.[94] Particular rules of cust-
omary laws are discussed throughout this study.

The traditional laws of Empire and Church seem to date from the fourteenth century ; the apparently indigenous Ser'ata Mangest (Law of the State), for example, was compiled from the fourteenth to seventeenth century and regulated the organisation of the royal court, the status of dignitaries and, to some extent, the civil liability of the royal family.[95] The origins of the Senodos, Didascala and Fetha Negast are even more obscure, although they seem to take their structure from the Egyptian Coptic Church Codes compiled in the thirteenth century. Jean Doresse maintains that Abba Salama (1350 - 90), an Egyptian bishop of the Ethiopian Church, spurred the translation of these Codes from the Arabic, but the compilation of the Fetha Negast (law of the Kings), which concerns ecclesiastical and family laws, succession to property and public law in general, may have been completed as late as 1560. While it is difficult to trace the legal influences on the Egyptian model for the Fetha Negast, much of it seems to derive from Roman law, as applied in the Eastern Roman Empire. There are few apparent Syriac or Oriental influences, and Books One and Three of the Fetha Negast are translations of the Procheiron and Eclogia. There is no evidence that the Fetha Negast was ever officially promulgated and, although it stimulated a lively jurisprudence, it has often been subordinated to localised applications of customary laws and 'equity' - personal feelings of justice influenced by the desire to maintain order and social harmony.[96]

While it is true that, as the eighteenth century Scots explorer James Bruce noted, "kings of Abyssinia are above all laws and . . . every inhabitant of their kingdom is born their slave",[97] a public sense of injustice often served to limit royal arbitrariness. As under the Jewish halakhah, an emperor had to contend with independent nobles and priests - partners in power who offered constant reminders that he might be overthrown if he disobeyed sacred rules. Further, Imperial proclamations were only binding to the extent that an Emperor had the means to enforce them physically. Many decrees are believed to have been lost or disregarded - this clearly happened under Tewodros - and an official legislative journal, the Negarit Gazeta, was not instituted until 1942. As in pre-Revolutionary Russia, Haile Selassie inherited a jumble of fossilised traditional rules and contradictory decrees containing few overarching legal principles, and the impulse to codify national Ethiopian laws is said to date from 1942,

after the expulsion of the Italian invaders.[98] Prior to that time,
the only important legal consolidations during his reign were the
Constitution of 1931 and the harsh and vengeful Penal Code of 1930.
A Revised Constitution marked the Silver Jubilee in 1955 (see Chapter
Three) and a new Penal Code was introduced in 1957 (see Chapter Five).
In rapid succession, Civil, Commercial and Maritime Codes were pro-
mulgated in 1960 (see Chapter Seven), a Criminal Procedure Code in
1961 and a Civil Procedure Code in 1965, but legal rules relating to
administration and public enterprises were modified without consol-
idating or codifying them. The military Government – the Provisional
Military Administration Council or Derg, the Amharic word for committee –
has, in turn, introduced major changes in 'constitutional' and penal
law in order to consolidate military rule (see Chapter Five) and
has nationalised Western-style businesses and rural and urban lands
(see Chapters Six and Seven).

Article 28 of the Nationalisation of Rural Lands Proclamation of
1975[99] contains one example of the far-reaching changes intended.
It purports to annul existing land disputes in "ordinary courts" and
bars these courts from hearing future land cases or suits challenging
actions taken under the Proclamation. Litigation has been extremely
popular in most parts of Ethiopia and rights to land – the pivotal
point of most rural relations – accounted for about 50% of the disputes
in Government courts prior to the 1975 Proclamation. The ratio of
trial judges (excluding local judges) to the population is about
1:20,000, compared with 1:50,000 for doctors. Although judges
usually sit in benches of three, they commonly hear three cases
simultaneously, one judge concentrating on each case. Most disputes
never reach these courts, however, and are settled successfully under
localised customary rules by tribunals which are beyond the control
of the centre and its laws. This lack of control by the centre cannot
be explained on the basis of geographical isolation alone; for example,
Ross and Zemariam have noted that shamageilles (local elders)
arbitrate commercial disputes in the heart of Addis Ababa – the
Mercato – in such a way as to bar recourse to Government courts.
In most other areas however, customary conciliators or arbitrators must
maintain a delicate balance between the observance of customary rules
and the kind of decision a Government court might deliver, since a

disgruntled disputant can usually appeal to a Government court. In
general, therefore, effective everyday social control is maintained
under customary rules which are modified, occasionally and partially,
when a dispute reaches a local tribunal. Recourse to what the parties
call government law occurs only in extraordinary instances - criminal
cases, tax disputes, and situations in which customary processes
have failed. Dispute regulation processes in Ethiopia thus parallel
those that emerged under British systems of Indirect Rule. Even in a
Government court, the judge is often unaware of the existence of a
relevant state-sanctioned rule, misunderstands it or refuses to
apply it and, as in many other countries, a case represents a power
struggle which continues until one party exhausts his resources.
Government is often less interested in the preservation of an order
it has created than in the restoration of a localised status quo,
the nature of which is not even understood, much less manipulated,
by the centre. The absence of a rationalised, effective and exten-
sively centralised Government in Ethiopia hindered the emergence of a
national, centralised and efficient administration of justice which
is the hallmark of, for example, English legal history.[100]

These brief descriptions of Ethiopia's legal systems - to be
expanded upon throughout this study - show a dualistic image of her
laws to be excessively simplistic. Dualistic theories of develop-
ment, in which economic growth within enclaves is expected to promote
the absorption of rural areas into a national economy, have their
jural analogue in the belief that 'modern' national laws will
engulf custom. This kind of thinking, which led to the creation of
what Arthur Schiller terms an Ethiopian "fantasy law",[101] is typified
by Civil Code Art. 3347(1):

> Unless otherwise expressly provided, all rules whether written
> or customary previously in force concerning matters provided for
> in this Code shall be replaced by this Code and are hereby
> repealed.

Many centuries of legal history and social relations are not
transformed into a _tabula rasa_ by simply legislating custom out of
existence - or by nationalising all rural lands. Following Roberto
Unger, we argue that all of Ethiopia's legal systems are "species of
the genus of normative order", distinguished from other species such

as religion and art by a primary emphasis on externally observable behaviour and the use of secular sanctions.[102] A lawless society is a practical impossibility as even small groups need enforceable rules, although specialised legal institutions may be dispensed with. Ethiopian law has a marked impact on social relations but, as in pre-Revolutionary Russia, law creates fewer special and unique social relations, when compared to the role of law in the West.[103] Unger's legal "species" can thus be understood to be residual categories of social control, as sets

> of rules too practical to be backed up by religious sanctions, too burdensome to be left to mere goodwill, too personally vital to individuals to be enforced by any abstract agency. [104]

The spheres of influence of all laws are sporadic and interstitial, and other social controls (normative species), such as religion, custom, habit, and practical prudence, are left intact where the relevant political authorities perceive that intervention would be hazardous to the pursuit of power. Many differences in Ethiopian legal systems can thus be explained by the ways in which local politics are organised, by the extent to which centralised political institutions are willing and able to intervene in local affairs, by the differing ways in which rules are legitimated, and by the extent to which they can be changed rapidly.[105] These interpretations differ radically from those offered by most anthropologists, and we argue that the traditional anthropological perspective has little to say with regard to the problems posed in law and development studies. An elaboration of this assertion is presented in the footnote.[106]

The legal distance between litigants or, for example, between peasant and bureaucrat is not forever fixed within the bounds of a unitary set of either localised rules or national laws. Distances vary widely in different situations as a result of complex interactions of numerous factors: the ethnic affiliations of the individuals or groups concerned; their relative wealth, status, educational level and ability to influence particular decision-makers; the type of activity at issue - contracts disputes among foreign businessmen are not, for example, regulated by the customary laws applied in the vicinity of Addis Ababa; the political exigencies of the situation - whether, for example, the relevant authority wishes to create or restore social harmony or to implement radical social changes; and whether agents

of the centre are willing and able to intervene and the extent to which their discretion will be exercised on the basis of one of the layers of national law.

C. An Introduction to Ethiopian Law Reform

Ethiopian legal outcomes are therefore personalised excessively, like decisions under the laws of the estates in pre-Revolutionary France or Russia, and law does not promote the disengagement of economic activities from traditional social structures. Compared to the substantive rules found in the Ethiopian Civil Code (see Chapter Seven), customary rules place a greater emphasis on the past relationships and statuses of the parties, but judicial expedience, venality and, in some cases, incompetence tend to negate these differences. While personalised decision-making is valued in Ethiopia to the extent that it is perceived as an attempt to secure justice and equity, the equal protection of laws which classify individuals, groups or fact situations solely on the basis of broadly-accepted criteria is much neglected, as is the explicit formulation of concrete and development-oriented goals. A legal reform which strikes an appropriate balance among these partly-conflicting aims - justice, equal protection and goal formulation - and ensures that this balance is maintained by judges and bureaucrats would, of course, be an excellent means of fostering a social consensus and political integration. It is perhaps unfortunate that such a reform cannot be pursued by simply adopting laws designed to engulf customary rules. So long as ethnic fragmentation and the varying types of non-legal distances we described persist, and so long as traditional politicians and their Revolutionary successors will not brook the containment of their demands within a unitary system of fair judgement based on objective rules (see Chapters Three and Five), a bewildering variety of legal distances ('pluralism') will continue to flourish and to help one group, such as the military or the Shoan Amhara, to dominate others.[107] Given this state of affairs, law reform efforts must offer pragmatic justifications to overcome political opposition and then construct new and meaningful links between the legal systems of the peripheries and those of the centre, systems which exist on a continuum of Ethiopian laws and as a part of a larger genus of the normative order (see Part III).

Most law reforms face, to a greater or lesser extent, inappropriate norms and unpredictable or inflexible results within a chaotic legal system in which established rules are sometimes ignored. In Ethiopia and in much of the Third World there is, however, an additional problem: customary systems display a hardy resistance to reform. By definition, the customary laws of a given community cannot move ahead of customary - not necessarily contemporary - structures, values, and beliefs. The regularised amendment procedures necessary for the adaptation of law during periods of rapid change are lacking.

Further, the decentralised, vague and diverse nature of Ethiopian customary laws makes them inefficient tools for the implementation of development policies, and social pressures inducing compliance with customary laws are often too diffuse. Different ethnic, cultural, religious and land tenure groups have different rules, impairing the uniformity of rural development administration. Unwritten custom, as applied to a particular dispute, is vague, as it depends upon the knowledge and origin of particular judges or jurors. People cannot predict the consequences of their actions with the degree of certainty required for development. Transactions and relations between persons with differing customary laws are made more difficult by the diversity of rules.[108] A codification of customary rules such as was attempted in Kenya could only result in a lowest common denominator type of law that would mean little to particular ethnic groups and would bear little relation to attempts to promote development.

The difficulties inherent in attempting to harmonise diverse systems of law are analogous to many of the problems faced in international law because of a common lack of a legal consensus and weaknesses in integrative political institutions and centrally-organised sanctions; international law techniques could profitably be adapted for Ethiopia.[109] New rules must be devised which are as consistent as possible with the core of both development needs and traditional lifestyles. This process would require a high degree of political commitment, creative social science research and careful legal draftsmanship - conditions which are sorely lacking in Ethiopia. Determinations of the precise extent to which the demands of development and tradition actually conflict, and the intensity of these

conflicts, must be made; the costs and benefits of overcoming resistance in various ways must be calculated; the extent to which the ideal of national uniformity must be sacrificed to regional interests should be ascertained; and the kinds of questions Hutton and Cohen ask in relation to social change ought to be kept in mind.[110] New rules must be carefully communicated, propagandised, implemented and enforced, a process which will absorb large amounts of scarce resources (see Chapter Two). Once again, we argue that genuine changes in social structures will accelerate the acceptance of new norms as the customary ones progressively lose their relevance to changed circumstances, but this lengthy process presupposes a long-term political commitment, stability and the consistent application of sensible policies.[111] The means by which specific legal and non-legal distances may be decreased or bridged are discussed in subsequent Chapters.

V. Dependence

In order to make our topic more manageable, the study focuses on the purely domestic problems of Ethiopian underdevelopment and development prospects, and we therefore discuss briefly some aspects of Ethiopia's external relations in this Section. The admittedly important influence of the policies pursued by multinational corporations, private international finance and national and multinational aid and credit agencies, of international patterns and prices of imports and exports, and of currency exchange rates[112] are not discussed in detail as they are being dealt with adequately by others and are, in any event, largely beyond the control of Ethiopia's leaders and the scope of her legal systems. These international factors are receiving increased attention from the growing number of theorists who see development processes as fugues on the theme of an interdependence of developed and underdeveloped states. Writers such as Andre Gunder Frank, Keith Griffen and Clive Thomas go further, viewing underdevelopment as a process sustained by the vested interests of national and international institutions. The high degree of dependence observed in the Third World is, they argue, the logical outcome of asymetrical relations arising under international capitalism: industrialisation is retarded by the dependence on external capital that drains off the fruits of economic growth; and the close links

that have been created between domestic and international systems of social stratification foster an 'embourgeoisment' of the Third World, in which the desires of the wealthy to keep and increase their wealth augment their own dependence and aggressiveness.[113] Finding that the Third World has 70% of the world's population and 56% of the land area yet accounts for only 20% of world income, 17% of trade, 11% of industrial production and 5% of scientific capacity, Clive Thomas largely ascribes this state of affairs to the evolution of an external dependence, measured by the extent to which a Third World economy depends upon foreign trade, payments, capital, technology and decision-making to generate domestic economic processes.[114]

On the basis of these criteria, how externally dependent is Ethiopia? Most of the analyses of the theorists of dependence revolve around a European colonialism commuted to an international capitalism, factors which are not of great importance in Ethiopia although, as we have seen, internal conquest, slavery and the exacting of tribute must have retarded potential development processes substantially. While production in the Ethiopian enclaves is heavily dependent on foreign technology, foreign capital plays a much smaller role and the policies of a few multinational companies a smaller role still. These enclaves are fairly small and emerged relatively late - during the last twenty years, for the most part. We therefore estimate that the externally-dependent portion of the Ethiopian economy accounted for only 6-8% of GDP in 1974, and the subsequent nationalisation of landholdings and Western-style businesses by the Derg reduces this dependence markedly. Ethiopians in the upper social strata did become dependent on imported luxury and capital goods, but we have seen that processes of social stratification were largely immune to foreign manipulation. Amharisation better describes urban social changes than Westernisation, and lessons in rapacity from foreigners were not required. The penetration of foreign capitalism into Third World enclaves always produces some hybrid of capitalist and traditional systems but, in Ethiopia, the impact of foreign capitalism in terms of, for example, the amount of labour absorbed or taxes paid, was relatively small. Finally, inflation does have an important impact on life in urban Ethiopia and was a significant factor in Haile Selassie's downfall (see Chapter Four); as Cohen and Sileshi note, inflation in Ethiopia reflects the operation of a wide variety of external forces.[115]

To argue that Ethiopia is not externally-dependent to any great extent under criteria postulated by certain development economists is not to assert that high levels of other forms of dependence do not exist. The felt need for an oversized military, police and bureaucracy that characterised Haile Selassie's regime resulted in a high degree of dependence upon those governments willing to supply funds, training and weapons.[116] Revolts and invasions which began or intensified after the Revolution have increased this dependence markedly, seemingly justified a large military establishment, and encouraged arms suppliers to play musical chairs around the Horn of Africa. Further, it became increasingly difficult simply to ignore the protracted famine conditions that contributed to the collapse of Haile Selassie's Government (see Chapters Three and Four). As the magnitude of drought and famine relief efforts greatly exceeds domestic resources, Ethiopia is dependent upon a variety of humanitarian and developmental activities by foreign governments, charities and multilateral organisations. This is an appropriate juncture at which to detail briefly some of these types of dependence, since they fundamentally colour future development strategies and prospects, and chances for the survival of the Derg and even the dismemberment of the State itself.

While the military regime has experienced sharp internal conflicts and varying degrees of urbanised resistance, such as the militant opposition of the leftist and underground Ethiopian Peoples Revolutionary Party (see Chapter Four), it is the threats posed by rural revolts, separatist movements and invasions from Somalia and, perhaps, Sudan that have exacerbated a dependence on foreign military supplies.[117] Regional rebellions have been a constant feature of Ethiopian history, and Patrick Gilkes has analysed recent ones in detail: in Gojjam Province in 1942-4, 1950 and 1967-8, in opposition to Shoan rule, the virtual absence of local people from most levels of Provincial government, and changes in landholding and taxation arrangements; in Wollo in 1958 and 1970 and in Wollega in 1968 - attempts to improve the living conditions of peasants; and in Bale in 1968, in response to the policies of internal colonialism we described.[118]

Rebellions were virtually continuous in most provinces during 1975 and 1976, in reaction to a perceived power vacuum, rural land

reforms and the ways in which the Derg has treated the nobility and provincial elites (see Chapter Six). The Derg's public reactions to these revolts were not particularly informative and usually took the following form:

> bandits who took to the bush. . . after being confused by reactionaries whose interests have been adversely affected by the Revolution gave themselves up. . . .119

The Ethiopian National Democratic Union (succeeded by the EDU), was founded in London in 1975 by emigres hostile to the Revolution and notably by ex-Generals Iyassu Menegesha and Nega Tegegne and the former Governor of Tigre Province, Ras Menegesha Seyoum. Although the EDU claims to be organising and coordinating many rural-revolts, its actual influence is fairly narrow. At the peak of its popularity, the EDU attracted only about 3,000 lightly-armed supporters. A well-organised EDU force captured the town of Humera, on the Sudan border, in January 1977, but the EDU suffered a major defeat when Humera was recaptured in June. The Afar and Tigre Liberation Fronts are relatively well armed and organised forces with separatist inclinations, and often cooperate with each other and with the powerful ELF/PLF fighting in Eritrea Province (duscussed _infra_). The Tigre Liberation Front apparently shares its leadership with the EDU. The northern Afars, armed by the Saudis and led by Sultan Ali Mirah, who fears the confiscation of his rich cotton lands, scored a major victory after attacking eight garrison towns in the Danakil desert in June 1975. The Afars have continued to fight sporadically in eastern Eritrea and Wollo and to halt traffic periodically on the Assab road and the rail link with Djibouti. In general and with the prominent exception of the ELF/PLF, the forces participating in these regional revolts have only a limited capacity to score significant victories in a vast and forbidding terrain. Surprisingly, the Galla (Oromo) peoples, the largest ethnic grouping in Ethiopia and the peoples many Ethiopianists writing before the Revolution regarded as posing the most significant threat to national unity, have remained relatively quiet, although an Oromo Liberation Front made significant gains in Bale Province during the early months of 1977. Since Oromo revolts in 1963 and 1970 in Bale Province were linked with revolts by the Liberation Front for Western Somalia (discussed _infra_), future cooperation between these groups is likely.120

A. <u>Eritrea</u>

Eritrean separatist groups have been fighting for independence since 1961. They reject Ethiopian claims to Eritrea as a lost province, a natural part of the nation for ethnic, religious and historical reasons, and assert ethnic, religious and historical claims of their own. Either assertion can be supported by a careful selection of the facts, for Eritrea is evenly divided within itself between Orthodox Christians and Muslims. In 1890, the Italians consolidated inland portions of the Amhara-Tigre Empire with the Red Sea coastline that has been successively occupied by Turks, Egyptians and the Sudanese Mahdi. The Italian occupation was no more accidental or anomalous than most colonial incursions, and it was Italy's defeat in World War II which led eventually to a federation of Ethiopia and Eritrea under U.N. General Assembly Resolution 390 (V) of 1952. After years of patient Ethiopian encouragement of the predominantly Orthodox Christian Unionist Party of Eritrea, and subversion and alienation of a largely Muslim opposition, federalism was dismantled and Eritrea became part of a unitary state in 1962. The fortunes and degree of internal unity of the Eritrean separatists have fluctuated ever since, as has the diplomatic support and war materiel supplied at various times by Syria, Iraq, Libya, South Yemen, China, Sudan, Tunisia, Saudi Arabia, Cuba, the U.S.S.R. and, apparently, some Western states. Like many other Ethiopian revolts, this one combines the dissatisfactions of individuals, Muslim separatism, anti-Amhara feelings, peasant unrest and socialist theorising.[121]

Haile Selassie's response to separatist activities alternated between the relatively passive maintenance of garrison towns and brutal repressions, such as those which occurred after the declaration of a state of emergency and martial law in Eritrea in 1971. The Derg has continued to pursue the same kinds of policies, and the manner in which Eritrean aspirations have been dealt with is one of the more damaging disparities between the promise and reality of military rule.[122] Assuming, somewhat simplistically, that Eritrean grievances stem solely from the imperial nature of Haile Selassie's maladministered regime, the Derg initially attempted to negotiate a settlement. High hopes on both sides were dashed when the chief

Government negotiator, an Eritrean Protestant and the first Chairman
of the Derg, General Aman Michael Andom, was killed in November
1974, as a result of conflicts within the Derg (see Chapter Four).
His successor, Brig. General Teferi Benti, was a hardliner on Eritrea,
and attempts at a quick military solution which followed his appoint-
ment were unsuccessful. Bloody fighting led to a renewed declaration
of a state of emergency by the Derg in February 1975, martial law was
applied throughout the Province, and the broad new powers conferred
upon Special Courts-Martial (see Chapter Seven) were extended to
Eritrean prosecutors and courts-martial.[123]

Despite half-hearted attempts at negotiation, such as Govern-
ment's announcement in May 1975 of pardons and clemency for many
Eritrean prisoners and a nine-point Derg peace plan broached in May
1976, fighting and allegations of atrocities have escalated. The
Derg repeated its offer of an amnesty in June 1978, but it was also
announced that ominous-sounding "reception centres" were being pre-
pared. The most that the Derg is prepared to concede is the vague
degree of autonomy that is promised to Ethiopia's other provinces;
Eritreans demand nothing less than total independence and claim that
the Derg is trying to "kill the fish by drying up the sea." Although
changes in military positions are reported almost daily, the Derg
steadily lost ground up to April 1978, and one-third to one-half
of the regular Army is periodically tied down by the fighting. Asmara,
the Eritrean capital, has been the pawn in numerous battles, and has
been taken by Eritrean separatists on several occasions, only to be
retaken by the Derg. By August 1977 Eritreans were able to disrupt
road links and move around the City at night with some degree of
freedom. Separatists claimed in May 1976 that the number of military
bases under the Derg's control in Eritrea had shrunk from 60 to 17 and
several garrisons have fallen since then, but provincial towns are
continually under seige and changing hands, particularly Keren,
Nacfa, Agordat and Decamere. The available evidence suggests that
the Derg's troops will be able to keep an urban foothold in the Pro-
vince for the foreseeable future. A poorly armed and led People's
Militia, some 50,000-strong, was recruited from urban areas and
peasant associations in central and southern Ethiopia in May and June
1976, and collapsed after a battle with the Tigre Liberation Front on
on the Eritrean border.[124]

After the fighting between Ethiopia and Somalia tapered off
(see infra), there have been repeated reports of Ethiopian bombing
raids into Eritrea, attempts to end the separatists' siege of Asmara,
the launching of a full-scale Ethiopian counter-offensive, and even a
Soviet naval bombardment of the Eritrean port of Massawa. As of this
writing (July 1978), a massive offensive by the Derg has yet to mater-
ialise, apparently because the U.S.S.R. and Cuba (see infra), who
previously aided the Eritreans, oppose such a step. Voicing his latest
thoughts on the subject, Fidel Castro said that Cuba is "absolutely
opposed to the secession of Eritrea" and favours a "political sol-
ution with a unified Ethiopia based on Marxist-Leninist principles
. . . ."[125]

While Eritrean separatists have experienced only localised and
temporary shortages of weapons, ammunition and military training
facilities, shortages of medicines and food are chronic, and there is a
heavy reliance on supplies transported from Sudan, across the Red Sea
or captured from the Ethiopian forces. The rugged and arid Eritrean
terrain favours guerrilla warfare. Most separatist factions are grouped
within either the Eritrean Liberation Front (ELF - formed in 1961)
or the Popular Liberation Front (PLF) that broke away from its parent
in 1969. The ELF numbers some 15,000 fighters with parochial and
conservative attitudes and an air of puritanical Islam about them.
The PLF has more of a Marxist than a religious orientation, is
better-organised and reportedly recruits up to 1,000 soldiers a
month to augment a fighting force of 25,000. As in the Palestine
Liberation Organisation, these factions often work at cross-purposes
and fight among themselves (especially from 1972 to 1974), despite
the fact that unity was agreed in principle in September 1975,
reaffirmed in May 1977 and renegotiated, with Sudanese help, in
March 1978. Fears have been expressed among the separatists, in
February and August 1977, that the Derg will collapse before intense
factional disputes are resolved in Eritrea, paving the way for an
Angola-style civil war. In our opinion, religious, ethnic and ideo-
logical antagonisms will not be resolved in the foreseeable future in
Eritrea, which is, in any event, too small in all respects to be
economically viable, save as a satellite of the U.S., the U.S.S.R.
or an Arab oil state - the likely outcome of an Eritrean 'independ-
ence'. There are too many potential Eritreas in the Third World

and separatism ought in most cases to be resisted, but the Derg must
genuinely attempt to promote political and economic justice in this
breakaway Province.[126]

B. Somalia

Somali ambitions pose an even more serious threat to the Derg
and, once again, contemporary antagonisms are rooted deeply in the
past, dating back to the sixteenth century invasions of the Galla and
Ahmed Gran which swept across the Amhara-Tigre Empire from what is
now Somalia. Colonisation by the British, Italians, and, to a lesser
extent, the French divided ethnically-homogeneous but politically-frag-
mented Somali kin groups, and portions of the boundaries separating
these colonies from Ethiopia were never thoroughly demarcated. The
roughly one million Somalis who live in Ethiopia or regularly
cross the border support Mogadishu's call for an ethnically-deter-
mined Greater Somalia, which would include the Ethiopian Ogaden
desert (all of the territory to the east of the Awash River), Djibouti
and the Northern Frontier District of Kenya. With some justification,
the Derg has termed Greater Somalia a "fantasy" inspired by the
British, and by Aneurin Bevan in particular. Ethiopia rebuts
Somali allegations of "colonially-determined" boundaries by citing
the Organisation of African Unity's (OAU) policy of maintaining the
boundaries hammered out under colonialism, a policy which is adhered
to fairly consistently, in spite of the fact that it results in
ethnic fragmentation throughout Africa. Unlike the Somalis, Ethiopian
armies have hitherto been able to defend their boundaries, which were
roughly-drawn but accurately reflected the extent to which the European
colonists thought they could push their luck against the Ethiopians.[127]

A variety of border clashes have occurred since the independence
of Somalia, most prominently the crushing defeat of Somali armour
administered by General Aman Michael Andom deep in the Ogaden in
1964. Both sides have been braced for an all-out war since the Ethiopian
Revolution, and a gradual escalation of the usual Somali raids on
Ethiopian convoys and police and customs posts worried the Derg.
Although Somalia denies it, she began revamping the 3,000 to 4,000-
man Western Somalia Liberation Front early in 1977. The Front cut
Ethiopia's rail link with Djibouti on 1 June 1977, both sides began
a military buildup along the border, and some 6,000 troops invaded

Ethiopia in July 1977, before Ethiopia had time to assimilate the new weaponry supplied by the U.S.S.R. Few insights into the course of the war could be gleaned from an equally fierce radio propaganda battle. New Ethiopian army commanders were appointed in an attempt to improve a lacklustre performance, and some 70,000 members of a revitalised People's Militia were thrown into the fray and performed poorly. Although Somalia denied a direct involvement in the war until February 1978, it seems that her soldiers had been encouraged to take long leave and fight with the Front. The Derg has captured soldiers from Somalia - including the Commander of the 10th Tank Battalion, Somalia-registered lorries and Russian tanks - and has shot down MiGs bearing Somalia's insignia. Although the invading troops overran most of the Ogaden and a few fertile areas in Harar Province, Ethiopian troops managed to keep control of the major towns - Harar and Dire Dawa - although Gode and Jijiga were taken.[128]

The low point in the Derg's military fortunes was reached by September 1977: the Somalis had managed to exclude Ethiopian troops from about 90% of the Ogaden. An uneasy stalemate then prevailed until the Derg began a series of probing counter-offensives in January 1978. The decisive blow was struck early in March, when Ethiopian troops and 70 tanks were airlifted far behind the heavily-defended Somali lines and recaptured Jijiga. With their supply lines cut, Somali troops retreated rapidly and in disarray, in the face of a head-on assault and Ethiopia's overwhelming air superiority. The Derg stopped short of the border and did not invade Somalia as the Somalis predicted, however. The Somalis vowed to fall back on guerrilla tactics, and periodic skirmishes have taken place since March 1978 - as well as retaliatory strikes by the Ethiopian Air Force against Somali towns. Somalia has spurned Ethiopian suggestions of a peace treaty, which are based on Somalia abandoning her claim to the Ogaden. In April 1978, an unsuccessful coup attempt against Siad Barre was reported to be one result of having lost the War. The Derg made effective propaganda use of pictures of Somali troops using half-finished irrigation ditches as trenches; over U.S. $10 millions in development aid has been negated by the Ogaden War, and it is impossible even to estimate the loss of life and livestock. On balance, and judging from the London newspapers, Ethiopia's propaganda was less

effective than Somalia's, which manipulated Western unease over the intentions of the 3,000 to 16,000 Cubans (estimates varied wildly) and 1,000 to 1500 Soviets who helped the Derg. Some of the Cubans engaged actively in combat.[129]

The Soviet Union slowed down the delivery of weapons to its former client Somalia in July 1977 and halted arms shipments altogether in October. Somalia revoked its friendship treaty with the U.S.S.R. and expelled Cuban and some 6,000 Soviet advisors one month later. Desperately short of weapons, Somalia paid an estimated $2 millions per day to private arms dealers during February 1978, almost all of it donated by the Arab League, and by Saudi Arabia in particular. Iran, the Saudis and, to a lesser extent, Sudan shipped arms direct to Somalia - the tacit acquiescence of the U.S. has to be assumed - and the Shah threatened to commit his Army and Air Force to the War. Egypt also sent arms, and was only slightly embarrassed when an airliner carrying shells to Somalia violated Kenyan airspace and was forced to land in Nairobi. Despite tantalizing hints that they would do so, Western countries have refused to supply arms directly to Somalia, possibly because the Derg has threatened to break off diplomatic relations. Israel, in turn, was criticised in the West for supplying arms to Ethiopia, and Western diplomats repeatedly warned the Soviet Union that its activities in the Horn of Africa threatened detente.[130]

A side-issue in Ethio-Somali struggles is the tiny French entrepôt of Djibouti, which was given a nominal independence on 27 June 1977; its dependence on Ethiopian trade and on French subventions, administrators, businessmen and a French military presence is complete. The fluctuating population of about 200,000 is divided evenly between Somali-speaking Issas and the Afars, who dominated the Issas under their pro-French leader, Ali Aref, and who are divided from other Afar peoples by the border between Ethiopia and Djibouti. The political situation is confused, and Somalia backs the internal African People's League for Independence and the external Front for the Liberation of the Somali Coast, which clashed with French troops in February 1976 after kidnapping 30 French children in a school bus. Ethiopia nominally supports the new Government of President Hassan Gulled, and is reportedly training the pro-Afar Movement for the Liberation of Djibouti. At a ministerial council meeting of the OAU in June 1976,

Somalia refused Ethiopia's offer of a joint declaration renouncing claims to, and guaranteeing the sovereignty of, Djibouti, arguing that this would "limit the options" of Djibouti's people. President Giscard of France has promised to "guarantee the security" of the territory and Hassan Gulled cleverly gained admission to the Arab League, whose more conservative members may be able to keep Somalia in line and to maintain the enclave (where unemployment is reported to average 80%) in the manner to which it has grown accustomed.[131]

C. Dependence and Foreign Relations

The common thread running through the conflicts in or near Ethiopia (and in Black Africa generally) is that, with the exception of some of the localised rebellions led by traditional politicians, all of the participants are heavily dependent on external diplomatic support, military training, and supplies of weaponry, medicines and foodstuffs. Even Sudan displays a high degree of such dependence, and there is a constant threat that minor clashes and rival claims to a small triangle of land along the Sudanese-Ethiopian border will grow into a large-scale conflict. Sudan and Ethiopia have sheltered one another's refugees from famine and warfare and have given support to each other's separatist movements from time to time. In June 1977, President Numeri promised to "stand on the side of Somalia" in the event of an Ethio-Somali war, but he did little more than supply a modest amount of weapons. In October 1977, talks were held in Khartum in an attempt to heal the rift between Ethiopia and Sudan; a mediation committee of the OAU announced in December that the parties had agreed to settle their differences, but no formal agreement has been concluded.[132]

In the face of the numerous conflicts or threats of conflict that tie down their troops, the Derg, and Ethiopia as a territorial entity, have only managed to survive through a combination of military tenacity, high levels of disunity and/or incompetence among her opponents, and the vacillations of their patrons. Repeated assertions by journalists of a gross political and military incompetence and intransigence on the part of the Derg are misleading; faced with similar pressures, the governments of most other states would have crumbled long ago, and many of the Derg's repressive policies can be understood – but not necessarily condoned – as the typical and, often, effective reactions of a government committed to fighting against a national dismemberment.

The Revolution has resulted in a fundamental reorientation of
Ethiopian foreign policies and, indirectly, of international relations
throughout the Horn. Addis Ababa is an important centre of inter-
national and inter-African affairs, housing over 65 embassies and the
headquarters of the OAU and theUN Economic Commission for Africa.
Haile Selassie tried to secure a place in history as an advocate of
collective security and independence from (European) colonialism,
and as a Pan-African 'honest broker' unaffected by ideological
divisions. Until about 1970, his diplomatic activities also had the
effect of making him less vulnerable to the demands of both his
educated elites and the nobility, who saw in his international
prominence a confirmation of Ethiopian superiority. He realised,
early on, that the revenue gained through diplomacy need not be
extracted from land and labour or one's political supporters, and
he developed the acquisition of foreign aid into an art form. While
maintaining an overall orientation towards the United States, he
exploited religious and historical connections with the U.S.S.R., and
successfully courted many of the smaller states that are slighted by
many Third World regimes. Sweden, Norway, India, Israel, Yugoslavia
and Germany, for example, assumed important roles in training portions
of the military and the police.[133]

The Derg lacks Haile Selassie's diplomatic finesse, and trad-
itional sources of weaponry dried up after a time. Although a small
portion of Ethiopia's foreign aid receipts was disinterested charity,
the bulk of it was attracted by the political influence Haile Sel-
assie exerted in the Third World and Ethiopia's strategic position.[134]
From 1953 to 1974 American contributions to the "stabilising force"
and "bulwark against Soviet expansionism" on the Horn included
US $230 millions in economic aid and $170 millions in military aid,
plus large cash sales of arms and a Military Assistance Advisory
Group. After the Revolution, the U.S. initially stepped up arms
deliveries to the Derg, in an attempt to counter further Soviet-
financed buildups in Somalia and in reaction to the construction
of Soviet missile storage facilities near Berbera. The Derg soon
ran afoul of the U.S. Congress, unwelcome State Department advice to
scale down its activities in Eritrea and President Carter's human
rights campaign, however. American arms deliveries were stopped in

February 1977, and Ethiopia claims that U.S. $40 millions worth of
arms which were already paid for have never been delivered. Although
the House of Representatives attempted to ban any future military
aid to Ethiopia (and Uruguay) in October 1977, lorries, jeeps and
spares were delivered in February 1978, after a conciliatory delegation
visited Addis Ababa. Some Congressmen have subsequently criticised
American funding of the World Bank on the basis that it assists
countries like Ethiopia. American "advice" is almost always contrary
to the Derg's best interests and, when it is not followed, relations
become "strained" still further.[135]

The Ethiopian military was in deep trouble, for it was almost
solely dependent upon the U.S. for weaponry. Commentators were
astonished when, with almost indecent haste, the Soviet Union
offered in May 1977 to supply arms to Ethiopia, thereby endangering
relations with her client, Somalia, and reversing a recent policy of
keeping her distance from "unstable" African regimes. Fidel Castro
visited Addis Ababa in May 1977, Cuban "military technicians" began
arriving in May, and moderate quantities of small arms from Eastern
Europe followed soon after. The Soviet Union has since shipped arms
worth an estimated U.S. $1,000 millions to Ethiopia, and relations
between the two countries have grown closer: bilateral arms deals
in the Third World inevitably entail a political partnership, as
the recipient relies on the donor's supply lines, instructors and
mechanics. It does not seem too unreasonable to take the Russians
at their word; they saw an opportunity to acquire leverage in a
country somewhat similar to the Russia of 1917, and a chance to
mediate a war with Somalia, about which they must have had advance
knowledge. The importance to the Soviets of bases in Somalia has,
in our view, been exaggerated in the West; what is seldom mentioned
is that the U.S. Government fears domestic political pressure to
abandon its base on Diego Garcia if the Russians lose all access
to Red Sea ports.[136]

The diplomatic game became even more complex when Sudan expelled
several Russian diplomats in May 1977. The U.S. quickly offered to
increase military aid to Sudan and was joined by France and Britain
in July 1977 in offering arms to Somalia, although this offer was
later made conditional on the ending of the Ethio-Somali war. China,

which hitherto followed quiet and even-handed policies towards
Ethiopia and Somalia, offered arms to Somalia in August. The
mercurial Gaddafy, one of the major supporters of Eritrean separatists,
announced in May that Libya would hereafter support the Derg.
Except for Libya and South Yemen (Aden), Arab states are uniformly
anti-Derg and undoubtedly anti-Ethiopian. Some South Yemeni officials
have felt uncomfortable while assisting their Soviet patron: as
members of the Arab League, they are supporting a Christian state
against Muslim Somalia. Ethiopians see the manoeuvres of "reactionary"
Muslim states as an attempt to turn the Red Sea into an Arab Lake -
a prospect which must make the Americans uneasy, although their
withdrawal of military aid to Ethiopia has made its success more
likely. At the July 1975 OAU Summit meeting in Kampala, Ethiopia
succeeded in blocking the admission of the ELF as an observer and
led an abortive anti-Arab initiative. There appears to be fertile
ground for an enterprising Ethiopian foreign policy in this area,
as many African countries feel that the diplomatic and financial
promises made by Arab oil states in return for an anti-Israeli
stance have not been kept. Although Haile Selassie severed rather
emotional ties with Israel after the Yom Kippur War on the basis of
these promises, the Israelis are again supplying arms and training
soldiers under the Derg. Adversaries around the Horn have, from time
to time, appealed to the OAU for help, but little diplomatic headway
has been made towards the resolution of a series of political
stalemates. Nigeria and Tanzania have announced support for the
maintenance of Ethiopian territorial integrity (but not necessarily
for the Derg). Kenya, which sees itself as the next victim of pol-
icies of a Greater Somalia, has supported the Derg actively, and
President Carter's promise, in March 1978, of "adequate defense
capabilities" for Kenya must serve as a check on Somali aspirations.[137]

The moral for the Derg in all of this is clear: enemies can be
kept at bay through more effective military and political policies
and an adroit diplomacy which secures adequate supplies of arms. The
Derg's diplomacy has been fairly successful, at least from the stand-
point of obtaining the support of some strange bedfellows, including
East and West Germany, North and South Korea, Libya and Israel.
Nevertheless, high levels of conflict are likely to persist in the
Horn. Ethiopia's permanent allies are small and few in number, the

conservative Arab states are implacably opposed to the Derg, and
the Great Powers are able to shift their support rapidly and in ways
which offset any gains or losses made. This was recognised by, among
others, General Haig, the NATO Commander. Laws and development
policies must take account of these factors. Protracted famine also
looms large in future policy decisions, for Sudan and Somalia as well
as for Ethiopia. By the end of 1973, the combination of a protracted
drought and Ethiopian maladministration and callous indifference had
caused an estimated 200,000 deaths in Wollo Province. During the next
few years the effects of the drought spread into Eritrea, Tigre and
the Ogaden, resulting in acute food shortages when combined with the
effects of rural disorders and the disruptions in marketing and
administration caused by the Revolution. The Derg has refused to
allow international relief agencies to enter Eritrea, provoking
charges that food is being used as a military weapon.[138]

It has been estimated that in order to overcome the effects of
drought in Ethiopia, U.S. $1.2 million worth of plow oxen, $1.8
million worth of seed and 100 million trees (to combat erosion)
are needed. A 1974 Food and Agriculture Organisation report pre-
dicted an annual Ethiopian grain deficit of 150,000 metric tons by
1985, and a shortfall of 70,000 tons was later forecast for the
1977/78 growing season. Government's Relief and Rehabilitation
Commission concluded, in April 1976, that 240,000 tons of grain
(including buffer stocks), 57 five-ton lorries and $42 millions were
needed. These kinds of remedies are clearly beyond Ethiopia's dom-
estic and diplomatic capacities, and the U.S. promised $6.5
millions in famine relief aid in December 1977 and the UN added some
$9 millions in May 1978. International relief agencies have termed
Ethiopia's requests gross exaggerations. These agencies have fought
a running newspaper battle against allegations of their incompetence,
notably those made by Jonathan Dimbleby, the European 'discoverer'
of the 1973 Wollo famine. The performance of many agencies has
been far from laudable, even given the constraints under which they
operated; problems associated with the types of dependence we dis-
cussed do not simply disappear when external aid is administered by
charitable and multilateral donors. Similar projects continue to
be staffed by the same kinds of experts using the materials, techniques

and funds of the major donors of bilateral aid. International agencies
are often poorly organised and deal with famine on a country-by-
country basis rather than throughout the area affected. 'Diplomats'
from these agencies often go to extraordinary lengths to avoid jeo-
pardising friendly arrangements with the 'host' government and its
senior officials, including the undermining of relief efforts.
As of this writing, swarms of locusts are destroying crops in a wide
swath on the Horn, as a result of the suspension of locust control
efforts during the fighting in Eritrea and the Ogaden.[139] Problems
of maintaining an adequate food supply in Ethiopia are discussed
throughout this study.

On the Horn of Africa, someone is always willing to feed the
military dependence of someone else, but not necessarily to feed
those who have become dependent as a result of drought. While their
economic interdependence demands that Ethiopians, Eritreans and
Somalis live together peaceably, foreign interventions have destroyed
such meagre bases for cooperation as existed. Events since 1973
have made a mockery of the notion of the sovereign state of Ethiopia
(or Somalia or Djibouti), yet sovereign it is under international
law. The actions of separatist groups create a fragmentation within
the State that mirrors the fragmentation among nation-states and,
although international law falls outside the scope of this study, we
can note that it has never provided effective solutions to the problems
posed by dependence. Jean Bodin's rigid, sixteenth century insistence
on the proposition that a sovereign can never be subject to the
commands of others has given way to practical politics and to clever
evasions, such as Raz's suggestion that, as sovereignty can be
fragmented, every law can be treated as an independent unit
unaffected by other laws.[140] We are left with an image of Ethiopian
laws which resembles coercive military commands - presumably an
image congenial to the Derg. Consistency within complex legal systems
is seldom achieved, and individuals and groups must reconcile isol-
ated rules with other laws and non-legal forces as best they can.

*   *   *   *   *

While we do not claim a high degree of originality for our
analyses, the fragmentary nature of social science theories, inter-
pretations of Ethiopian affairs and descriptions of recent events have

made it necessary to shake the kaleidoscope in an attempt to arrive at coherent images of Ethiopian underdevelopment and development prospects. While some overlapping of analyses is inevitable, we have, in lawyerly fashion, presented and re-presented our arguments from various vantage points in an attempt to construct solid analyses from the numerous inconclusive aspects of Ethiopian underdevelopment and development prospects that are elaborated throughout this study. Like those of the common law, our conclusions emerge from an almost endless succession of reasons, rather than from the pure reason of a general theory, removed from the real world and the rough-and-tumble of politics.[141]

Consensus, conflict, distance and dependence are little more than different perspectives on the facts of contemporary Ethiopian life, as they emerge from historical processes of social stratification and ethnic fragmentation. Increasingly, Ethiopians are coming to deny the intrinsic goodness of these processes, and even to view them as the result of naked acts of power. This is an important precondition to modernisation, for a preventable evil is only viewed as a disgrace after people have learned how to manipulate public affairs, although these attitudes can also stimulate uncontrolled conflict. They also give rise to what Roberto Unger calls the puzzle of modernity: "How, then, can there be consensus without authority, stability without belief, order without justification?"[142] On the answers to these kinds of questions hangs much of the potential for development in Ethiopia.

Chapter 2 : Law and Development

In this Chapter, a brief review of some of the theories that underpin notions of law and development which are relevant to Ethiopia will be offered. Unfortunately, full justice cannot be done to the richness of these theories.

"Law" and "development", considered in isolation, have no generally agreed definition; it is therefore unlikely that their complex interrelation can ever be described briefly in an uncontroversial fashion.[1] This should not concern us: definitions are not absolutes but mere aids to analysis, and the nature of the interrelation of law and development in one country will emerge from the analyses found throughout this study. A legal perspective is the newest and most uncharted contribution to development studies. It is questioned and, more typically, ignored by conventional practitioners of the arcane development craft, and one aim of our study is to proselytise for the important role law can play in development processes.

I. Development

A search for new development perspectives continues, fuelled by the failures recorded during the past twenty years and attributed, in part at least, to the application of simplistic, largely economic theories of development; nostrums have provided no panaceas. The 1960s were designated as the United Nations Development Decade under General Assembly Resolution 1710 (xvi) and, by 1966, it had become apparent that the modest minimum target of a 5% annual growth rate would not be achieved. Per capita annual increases in the gross material product of the Third World had been a disappointing 2%, only 1.2% for Africa as a whole and a bit less for Ethiopia, compared to an average of 3.5% for capitalist and 6% for socialist (communist party-state) countries.[2] The folly of expecting serious results from a largely symbolic attempt to legislate development was not grasped by everyone and a Second Development Decade was duly decreed, with objectives scaled down to match declining expectations. At the same time, inflation, unemployment and a general slackening of economic growth in the West during the 1970s forced a thoroughgoing reassessment of traditional social science wisdom and international economic relations. These kinds of considerations led Dudley Seers

to observe:

> . Since development is far from being achieved at present,
> the need is not, as generally imagined, to accelerate
> economic growth - which could even be dangerous - but to
> change the nature of the development process. 3

This revolutionary reversal of the economist's customary priorities
is gaining support,but it will have an uphill fight against what
amounts to an established religion of development which has, in a
surprisingly short time, prejudged the world, castigated tradition
and the "backward masses", exalted Westernised elites, invoked the
magic of econometrics and revealed industrialisation as the source
of man's salvation. While many academics are currently rethinking
their approaches to development, the same cannot really be said about
practitioners in the field who were trained in the 1950s and 1960s.
Much of the apparently neutral development theory they apply is
grounded in a scientism which has been found wanting through empirical
studies; it is also anti-historical and detached from reality, based as
it is on a reasoning from first principles not grounded in fact. Most
of these principles are questionable generalisations - cliches,
stereotypes, ideal types - of Western experience and, in the positivist
tradition, crucial normative issues such as income distribution and
social justice are successfully evaded. One contribution a legal per-
spective can make to discourses on development is to effect a shift
of emphasis towards these kinds of normative considerations. Among
the Western cliches that tended to create a mythology of development
when transplanted to the Third World are: that modernisation both
benefits, and is desired by, a traditional populace; that material
motivations and desires for a Western standard of living will give
rise to mass-consumption Third World societies; that democracy is
the natural outcome of increased literacy and economic growth; that
clear distinctions between civilian and military authorities will
emerge, based on a public disdain for military culture; and, most
crucially, that a desirable social stability will be fostered by
something called modernisation and the growth of a middle class. [4]

A. Towards a Definition

    Discarding these myths (having noted that they are reflected
in the foreign policies of many Western states) what is development?

First, development involves real progress towards the attainment of speoifically national goals, and definitions must therefore be related to the political and social cultures of particular states. Given the low levels of political stability and participation in much of the Third World, however, governmental goals are typically those of elite groups who pass in and out of power and who may see themselves as the proxy representatives of an ignorant populace. The goals pursued by various Ethiopian elites are therefore discussed throughout this study and contemporary elite goals can be divided into the three broad categories discussed in the footnote[5] and in Chapter Five. We also emphasise that development is an integrated, self-conscious and goal-oriented social process - men in Ethiopian societies attempting to mould the conditions of their existence - a total process which can be divided into its economic, political, social, technological, legal, etc. parts for analytical convenience only.[6] The various parts must then be recombined meaningfully, in order to avoid the simplistic conclusions that flow from simple models.

The popular trend in academic treatments of Third World issues is to define development in terms of progress towards a complex of welfare goals, such as the amelioration of poverty, unemployment and socio-economic inequality. Although these definitions have been devised on behalf of the Third World, they are little more than restatements of goals that have been pursued in the West since World War II. A <u>selective</u> use of theories which analyse Western problems is therefore appropriate.[7] For example, Jurgen Habermas's critical study of the crises faced by "advanced capitalist" countries shows a simple dichotomy of developed/underdeveloped states to be too simplistic, that nations exist in a continuum of development based on criteria other than <u>per capita</u> income levels. Habermas has generalised four interrelated crises faced by Western states:

- the economic system does not produce the requisite quantity of consumable values, or;
- the administrative system does not produce the requisite quantity of rational decisions, or;
- the legitimation system does not provide the requisite quantity of generalized motivations, or;
- the socio-cultural system does not generate the requisite quantity of action-motivating meaning. 8

These are precisely the primary constraints on development that exist in

Ethiopia (and throughout the Third World) today, and the tendency
towards recurrent crises – but not the ability to deal effectively
with these crises – therefore exists independent of a country's level
of development. As we shall see, the concepts underlying these crises
are pregnant with implications for a law and development analysis.
Habermas works towards a regulation of these crises through what he
terms a three-dimensional evolution of social systems: the develop-
ment of productive forces, increases in systems autonomy (power)
and changes in normative structures. He views development as a learning
process which takes place through exchange: the political and
administrative system performs steering functions for the economic
system, in return for revenue, and confers welfare benefits upon
the socio-cultural system in order to obtain public loyalty.[9]
The relevance of this complex (and somewhat jargonistic) theory to
Ethiopian development will be discussed at various points in this
study, and at the end of this Chapter in particular.

To what extent is this kind of broadly based, interdisciplinary
approach to development problems adopted by economists? The most
popular set of readings – Gerald Meier's Leading Issues in Economic
Development – confesses that economic development is not the only
relevant variable and then proceeds grossly to underrepresent non-
economic factors. Meier approves of Gunnar Myrdal's definition of
an "upward movement of the entire social system" (which nevertheless
leaves unanswered the question of which direction is "upward" for
non-economic variables) and emphasises that development involves both growth
and change, that there are qualitative dimensions beyond a simple
widening of economic activity. In the end, however, Meier adopts
an economics definition, that of a process resulting in long-term
real per capita income increases, matched by a decline in the absolute
number (rather than percentage) of people below a minimum income
level.[10]

Although non-economists tend to offer broader definitions
of development, most of these are heavily influenced by the defin-
itions of economists. For example, Uphoff and Ilchman's broad "pol-
itical economy" approach to development is nevertheless tied to
raising the level of productivity; that is, the capacity or potential
for production or the "capability over time to satisfy human needs and

desires" where individuals value gains differently.[11] Does the
satisfaction of human needs and desires necessarily require that
something be produced? If, for example, freedom of speech is valued,
must such preconditions as political stability, participation and
tolerance be 'produced'? Is freedom of speech, which is valued
by some people in all societies although it cannot be measured
statistically or in per capita terms, to be forgotten or excluded
automatically from development theories? If not, what priority
ought to be accorded to this fairly vague concept? To cite another
example, many sociologists and anthropologists argue, inter alia,
that development requires the segregation of economic activity from
its traditional social setting.[12] What if, as is the case in Ethiopia,
most people prefer an integration of work, family and kinship re-
lations? Are tradition and development mutually exclusive, requiring
each individual to choose between them, or can and will government
and the economic system make this choice for each person?

B. A Critique of Leading Theories

All development theories display serious defects when particular
problems are considered. A brief examination of various theories
and of their relevance to Ethiopia will demonstrate that they all
contain useful elements and prescriptions, although none of them
comes to grips with development as a whole. Until a "general theory"
is devised, broader even than those of Keynes, Marx or Parsons, we
are left with an acute theoretical fragmentation; particular theories
can only be applied to particular problems. The easiest ideas to
dismiss are those involving "vicious cycles", which are really descrip-
tions of non-development rather than theoretical prescriptions for
development. Two representative examples are discussed in the
footnote.[13] These cycles can be reduced to the unastounding
proposition that the poor are poor because they are poor. They
provide a means of visualising some degree of interrelation among
aspects of underdevelopment, but the impressions they convey are
misleading: each element in these development equations is seen as
causing only its successor and being affected only by its predecessor.
A more accurate metaphor would be a molecular structure, with each
problem of underdevelopment affecting the others in diverse ways.
Also, the image of a vicious cycle can lead to two equally erroneous

conclusion: either the links between problems appear to be so strong that the cycle cannot be broken or, if it seems that the cycle can be broken at any juncture, it does not matter where this break occurs and development priorities need not be established carefully, in light of limited resources.

A group of "single-barrier" theories can also be dealt with briefly; although each contains a grain of truth, the notion that the absence of any one element constrains development is simplistic.. Perhaps the most important of these theories is a species of unsophisticated Marxism, in which the liquidation of imperialism or the reappropriation of labour's surplus value will, in and of itself, foster development. Studies of industrial capitalism by Marxists (or anyone else) cannot be applied without serious qualification in the Third World: Marx himself warned us not to "metamorphose my historical sketch of the genesis of capitalism in Western Europe into an historico-philosophic theory of the general path every people is fated to tread."[14] Western approaches to development typically share Marx's view that superstructures (including law) adjust rapidly to changes in the mode of production, thereby neglecting the work of Engels and Lenin. To state these criticisms is not to deny the tremendous impact Marx has had on social science, the relevance of a closely-argued Marxian analysis to Ethiopia's present circumstances and the appeal of development models based on the experiences of China, Yugoslavia and the USSR. It would, however, serve little purpose to expunge one religion of development only to replace it with another, equally uncritical theology. As Basil Davidson notes,

> Marx had written when next to nothing was known about Africa, Lenin's situation was not much better, and China, as we have since had ample reason to see, is also another continent. 15

Other common single-barrier theories envisage one of the following: raising the marginal propensity to save; identifying and assisting Western-style (or Schumpeterian) entrepreneurs; orienting investment towards more productive uses; rapidly augmenting social overhead capital; or radically expanding investments in human resources. Additional savings are being compulsorily mobilised from higher- and middle-income groups in Ethiopia since the Revolution, but the total effect is uncertain, as those who are starving would like to

consume more than they produce. In the past, expenditures on urban housing investments and conspicuous consumption by higher income groups resulted primarily from the absence of attractive investment incentives in small fragmented markets and the unwillingness and inability of Haile Selassie's government to acquire adequate investible surpluses through taxation and to plan sensibly for their allocation. The Revolution has resulted in large confiscations but, as yet, carefully-planned reallocations have not been implemented. Social overhead capital in Ethiopia has tended to be expensive, pays off only in the long run and has often amounted to excuses for gleaming, status-enhancing projects - what Galbraith terms the "edifice complex", the prime motivation for the enactment of many of Ethiopia's symbolic laws (see Chapter Three). Small, labour-intensive and piecemeal but carefully-planned infrastructure components are needed in the future. Prior to the Revolution, there was too much investment in the wrong kinds of human resources. Education, for example, largely ignored agricultural, vocational and technical needs while offering an upward mobility to the privileged few, most of whom became unproductive, urbanised bureaucrats.[16]

Theories of economic growth held sway in the West during the late 1950s and much of the early 1960s, and they are now criticised in the academic literature as particularly fragile and removed from reality. Many Western 'experts' and more than a few Ethiopian policy-makers were trained during the ascendancy of these theories and continued to attempt to apply their formulae through 1973, viewing all other aspects of development as prior conditions or subsequent results, as either given or exogenous. Growth theories assume that all growth is good growth; the question of what should grow and for whom is deemed irrelevant. A single goal which is relatively easy to measure, an increase in real aggregate production, is to be pursued. For example, W. Arthur Lewis once advocated a redistribution of income in favour of the "saving class" in order to promote growth, thus reviving the spectre of mercantilism in the Third World. There is now a broader acceptance of the notion that low incomes retard development processes by hampering consumption rather than by limiting savings; the margin between production and consumption (savings) can be increased more rapidly and less brutally by increasing production rather than restraining consumption. The key growth theory variables

are massive capital injections, usually in the form of a modern tech-
nology which is not adapted to Third World labour supplies. Capital
is allocated throughout the economy on the basis of a rough guess
termed the incremental capital/output ratio, and computers are often
called upon to compile endless input/output tables and solve an
infinite series of quantification problems. These problems are
created by the competing econometric models that will remain empir-
ically unproved, so long as the margin of error in Third World stat-
istics exceeds the benefits claimed for particular models and
extreme socio-economic fragmentation flies in the face of an assumed
general equilibrium. Anything which cannot be quantified conveniently,
such as political processes, an economic or military dependence, or
the impact of law, is ignored, and a 'neutral', facilitative framework
of private law is tacitly assumed.[17]

If these models are so fragile and unrealistic, it is indeed
fortunate that they do little more than entertain their devotees;
recommendations are seldom embodied fully in development plans and
are almost never effectively implemented against the wishes of power-
ful interest groups. As we shall see, a classic example of this
process was to be found in Haile Selassie's Ethiopia. The major
reason for the popularity of economic growth theories in pre-Revol-
utionary Ethiopia is that they purport to be value-free; they posed
little threat to the maintenance of a political power based on feudal
social structures, since they require no fundamental social or
political changes. This Ethiopian 'development strategy', based as
it was on existing institutions and markets, hindered productivity
increases and the resource reallocations necessary to improve
the living standards of the entire population, particularly since
many of the crucial investment decisions were not subjected to
meaningful centralised control. Attempts at import substitution
left the country with small-scale and inefficient producers who
added little value to the imported materials and components that
claimed a large portion of foreign exchange earnings. Ethiopia's
experiences thus bear out Dudley Seer's assertion that economic growth
may strengthen the dynamics of underdevelopment (supra) ; investments
prescribed by growth theories may make existing activities more
profitable and generate temporary income benefits, but these benefits

are soon absorbed without sustaining growth yet serve to freeze
existing social stratifications. Donald Levine argues that, in
Haile Selassie's Ethiopia, "new forms of wealth and power /provide7
. . . new bases for competition and conflict, processes which tend
to be structured along lines already laid out. . . ."[18]

Modernisation theories, devised by non-economists, have focused
on social and political changes, in reaction to the manifest short-
comings of growth theories. Some of them, for example, emphasise
genuine and radical health and education reforms, as a counterweight
to the preoccupation of many economists with "productive" investment -
an uncritical transplantation of Western experiences. Restating an
emphasis upon the segregation of economic activities from their
traditional setting, a commonly-expressed goal of Western sociolo-
gists

> is to explain how men build a type of industrial society when
> their objectives, their forms of social relationships, and
> their personal experiences are all fashioned by a pre-indust-
> rial society; how the past creates the future. 19

A socio-political formulation, based on Parson's ideas, sees
modernisation as "a process of progressive penetration of the values of
elites into the total society or, alternatively stated, a progressive
inclusion of the population in the institutional order."[20] This
definition ignores the possibility that elites may not possess
modernising values - both traditional and modernising elite groups
are found, in conflict with each other, in Ethiopia. Related criteria
of change are typically: from traditional to a scientific technol-
ogy; from subsistence towards commercialisation and specialisation
in agriculture; from human and animal power to machines manned by
wage-earners; and from farm and village to urban life. Other changes
include "simple" authority systems giving way to bureaucracies,
ideologies, political parties and free elections, the secularisation
of society and "the infusion of a rationalist and positivist spirit."[21]
That many (but by no means all) of these changes will occur eventually
in Ethiopia and elsewhere is certain; their relation to the overall
development process is never precisely delineated by modernisation
theorists, however, and they may be causes, effects or even
spuriously correlated with development.

Harold Brookfield argues that modernisation theories have developed within the comfortable world of a Dr. Pangloss: dynamic forces are necessarily external to traditional societies, modernising patterns will be imposed from above and stubborn resistance overcome, and achievement-oriented elites will then proceed to mobilise their society. We will argue that the application of these kinds of assumptions with regard to the future course of events in Ethiopia is excessively naive. Modernisation theories tend towards diachronic snapshots of traditional society and the desired end-product of change (a Charles Atlas theory of development) without a description of the often painful transition processes. The end-product turns out to be, somewhat suspiciously, a carbon copy of the Western urban, industrial and, usually, democratic society of the theorist, complete with its own Protestant Ethic. These criticisms can also be applied to theories of a legal modernisation, as we shall see. Rather than rely on exaggerated notions of an Ethiopian xenophobia, we will simply point out that, unlike many politicians in European-colonised Africa, Ethiopian elites possessed sufficient cultural self-confidence to give modernisation theories short shrift. To a limited extent, this is unfortunate: once Westernised teleological assumptions were found wanting, some theorists have recently taken a more relativisitic view of specific cultural constraints to development, focusing on the role of social and political change in expanding the range of choice of individuals, groups and the state, and in promoting new methods of resource allocation and distribution.[22]

An offshoot of modernisation theories is the concept of institution-building, the battle cry adopted by the U.S. Agency for International Development in Addis Ababa (while peasants were starving in Wollo Province). If institutions are defined as repetitive behaviour patterns circumscribed by norms, the relevance of law, particularly the definition and control of individual responsibilities through administrative law, to this development theory immediately becomes apparent. The main problem is that theoretical preoccupations with leadership, doctrine, programme, resources, internal structure and "linkage variables" result in a neglect of more important questions such as which institutions are actually needed and how and in which order they can best be created. It is probably true, in Ethiopia and

elsewhere in the Third World, that

> the inability of governments and non-governmental organisations
> to perform adequately the necessary functions in economic
> institutions represents the largest single proximate bottleneck
> to achieving rapid economic growth. 23

Which are the "necessary functions", however? The problems and
potential associated with an Ethiopian institution-building will
be discussed in Chapters Five through Seven.

Despite serious drawbacks, the development theories that are
most relevant in Ethiopia's present situation fall broadly under the
rubric of structural transformation (rather than simply building new
institutions) and include analyses of Latin American underdevelopment
by Celso Furtado, Demas, Keith Griffen and, to a lesser extent,
Andre Gunder Frank. For example, Furtado argues that (prior to the
recent repressions) in Brazil, "the liberty enjoyed by the minority
in our society is paid for by delay in general economic development,
hence is at the expense of the welfare of the great majority."[24]
So, one answer to the questions posed _supra_ is that freedom of speech
may be truncated or, more typically, never allowed to emerge in
the first place, as the price that must be paid for a rapid socialist
development. Once freedom of speech has been extended, however,
even in so symbolic a form as a Third World constitution, government
invites itself to bear the burden of proof - a favourite lawyer's
concept - of demonstrating both a real antithesis of this freedom and
development, and a record of substantial development gains. The
point Furtado is making is that Brazil has recorded impressive
economic _growth_ and achieved some of the goals set by elitist
governments concerned with enriching the consumption patterns of a
privileged minority. Brazilian governments are, however, unwilling
and unable to transform systems of production and distribution so
radically as to achieve the conditions necessary to the widescale
diffusion of new technologies and a meaningful import substitution.
The declining value of the real incomes of Brazil's lower strata
is ameliorated by the creation of a few more jobs and enforced
through the brutal suppression of opposition. The consumption
patterns of a Westernised minority and the instability of export
markets and international economic relations make the economy and
the state progressively more dependent, vulnerable and unstable.

Except for substantial economic growth, Furtado's abstract description also serves to characterise Haile Selassie's Ethiopia; temporary controls over chronic instability were exerted at the expense of structural changes.[25] As we shall see, Ethiopia's revolutionary regime is utilising many techniques, including legal ones, in an attempt to reverse the effects of these kinds of policies. It may be more fruitful to compare Ethiopia with some Latin American states than with other African states: they share quasi-feudal social structures, farming peasantries, vigorous traditional cultures and the absence of a direct twentieth century European colonisation.

"In the main", Myrdal argues, the obstacles to rapid economic expansion are "rooted in the inefficiency, rigidity and inequality of the established institutions and attitudes, and in the economic and social power relations embodied in this framework."[26] Some of the aims of structural transformation theories that are listed by Demas are relevant to Ethiopia: decreasing the degree of "dualism" and dependence (see Chapter One); eliminating "surplus" labour through high productivity employment; replacing subsistence production with national markets; increasing the shares of GDP accounted for by manufacturing and non-traditional services – in response to changes in the structure of demand; expanding inter-industry transactions within the economy; and decreasing the share of GDP that is imported, especially the proportion devoted to consumption goods. Three common concerns pervade these aims and transformation theories as a whole, which are also echoed in classical Marxism. First, Third World economies are seen as disjointed and poorly-articulated: disequilibria – resulting from low labour productivity and savings ratios, the rapid growth of the population and the use of capital-intensive technologies – create a situation in which such income as is generated fosters inflation and unemployment simultaneously; and projected increases in savings and investment are never realised. It is submitted that this is an accurate (albeit abstract) picture of Haile Selassie's economy. Many Third World governments exacerbate these tendencies by applying the extrapolations from Keynes that are offered by growth theorists. The inability of economic theory to deal simultaneously with inflation and unemployment does, of course, have its parallels in the West although it is even

more difficult to apply the concepts of inflation and deflation where both capital and labour are chronically underutilised. The Milton Friedmanites have not been any more successful, although the human costs of their policies, such as in Chile, are much greater. They ignore the interdependence of an orderly growth in the money supply and stability in the balance of payments on the one hand, and the structural transformations required by development on the other. Ethiopia's monetary policy was always extremely conservative under the Emperor, and the recent inflation can, to a large extent, be explained by such external factors as petrol price increases and the increased attractiveness of exporting grain to neighbouring Arab states. Secondly, transformation theories represent a rebellion against the conventional development theories that grew out of a neo-classical utilitarian economics. Like all utilitarian thought, these theories have evaded the problems inherent in comparing the values and needs of individuals and groups - as do most legal theories. Thirdly, it follows that the economy cannot be severed from its underlying political and social systems. Theories of a structural transformation attempt to operate upon the loci of power in all their interrelated dimensions, thereby linking development constraints and choices to the processes of social stratification (see Chapter One). The preoccupation of transformation theories with past processes and dependence encourages a cult of uniqueness which limits theoretical generality,[27] but then every country possesses a unique **combination** of constraints and choices, and theories must be modified accordingly.

C. Development Theories and Contemporary Ethiopia

One such modification concerns the Ethiopian events of 1974 that amount to a revolution, both in law and from other social science perspectives. These events determine, to a large extent, the range of future development constraints and choices, yet conventional development theories contain an anti-revolutionary bias:

> The developmental differs radically from the cataclysmic, with the latter's delusive appeals to violent action. Development is gradual but it is not a gradualness that lends itself as an excuse for inaction. It means growth, but it must be growth cultivated by unequivocal and constant witness to justice, liberty and compassion. 28

It is difficult to quarrel with so strong a statement, except to argue that "justice, liberty and compassion" have always been in short supply in Ethiopia, that Haile Selassie's "gradualness" bore a strong resemblance to inaction (even in the face of starvation) and that nonviolent action left traditional elites either unmoved or able to evolve new and better modes of exploitation.

Development must be regarded as a discontinuous process, in which "violent eruptions represent a different, but equally elementary, and under certain circumstances, inevitable, type of modernization. . . ."[29] Under certain circumstances, a revolution such as Ethiopia's can fuel a "big push" roughly analogous to the one espoused by many growth theorists. Keith Griffen argues that:

> The government administration cannot be improved unless the educational system is altered; educational reform is contingent upon increased tax revenues; tax reform is impossible unless the political power of the wealthy is reduced and this, in turn, requires a land reform. The outcome of such a series of reforms is little short of a revolution. [30]

This is another oversimplified vicious cycle, but one in which those who mount a socialist revolution can intervene decisively at every juncture, as they have both the means and the incentive to do so, provided problems of political instability can be overcome. The course of revolution never did run smooth, however, and we will therefore focus upon that which lies behind Ethiopian phenomena of epic proportions: the bright and the exciting followed by the hurtful, the displacement of hope and innocence by fear, despair and cynicism.[31] Needless to say, a revolution does not, of itself, alter modes of production, social strata or the manner in which the goals of elites are pursued (see Part II).

Under Haile Selassie, the pursuit of wealth and power was seen as a zero-sum game within a closed system, in which winners would profit only at the expense of the losers (see _infra_). This is the antithesis of development as we have described it; in the long run, the sum of political power can be expanded and the germ of truth in growth theories is that capital formation cannot be neglected. The importance of this process has been recognised since the time of Adam Smith, but it is understood only imperfectly. Under Haile Selassie's regime, capital formation was neglected and, after the Revolution, it has been ignored or deferred because of pressing needs

for political stability and economic maintenance, as well as for
ideological reasons. Confiscations, pricing policies and the pro-
jected mobilisation of investible surpluses (see Chapters Six and
Seven) mean that upper- and middle-income groups will bear most of
the costs of attempts at Ethiopian development. These policies have
not had too disastrous an effect on incentives: the wealthiest
Ethiopians were, for the most part, economically unproductive,
while their political productivity within traditional systems was
not conducive to development.[32]

After the Revolution, steps have been taken to transform the
structure of the Ethiopian economy, although much remains to be done.
An important threshold question concerns the relationship between
the efficiency of an evolving economic system and the degree of
control to be exercised by the State - through, for example,
Habermas's steering functions. In theory, the goal is to achieve
either a given output with a minimum of inputs or to maximise output
from given inputs. In pursuing these goals, a purely market economy
tends towards efficiency in a micro rather than a macro sense and a
command (thorough-planned) economy reverses these efficiencies.
The reality of Third World economies is often otherwise, however.
Traditional production systems retain considerable vitality, markets
are fragmented, commands often reflect poor policy choices, political
priorities frequently override economic ones and, while economic
activities are thrust upon (often reluctant) states by the paucity
of resources in the private sector, these states lack the adminis-
trative competence to collectivise large sectors of the economy
effectively. Of necessity, therefore, most countries have mixed or,
more realistically in the Third World, pluralistic economies. To say
this is not to argue for a theory of 'convergence' in development
policies; revolutionary regimes continue to opt for programmatic
goals which are largely socio-political, and Western-oriented
Third World governments emphasise economic growth. The former have,
however, encountered serious economic difficulties while the latter
experience socio-political upheaval.[33] In Ethiopia, the extent of a
centralised political control over the economy has been augmented under
powers asserted after the Revolution, although the traditional
economics of subsistence continues to hold sway in the rural areas

(see Chapter Six) and the private sector shows no signs of disappearing (see Chapter Seven). Difficult legal problems relating to planning, the management of economic institutions and the interrelation of private and public economic laws are described throughout this study.

The new regime proposes to follow a distinctly Ethiopian version of Marxism, and there is some evidence which suggests that the development experiences of other socialist countries have been consulted, although allegations by some journalists that either a strictly Maoist or Soviet line is being taken are clearly erroneous. A Chinese model of development does, in fact, have a great relevance in Ethiopia, although much in China's experience is unique and imperfectly understood - in the West as well as in Ethiopia. A Chinese model could be based on Mao's Ten Great Relations, which include: emphasising light industry and agriculture rather than heavy industry; a localised use of surplus labour; low profit margins on widely-available basic consumer goods; capital accumulation through taxation rather than price controls; capital mobilisation through creating an effective demand for it; exploring socialist alternatives to a bureaucratic direction of the economy and to circumvent the bureaucracy generally; and providing a few economic incentives through the market mechanism. As we shall see in Part III, most of these policy prescriptions are being applied by the Derg, albeit erratically. Although the new regime wisely emphasises the dignity of labour, for example, in an attempt to overcome traditional attitudes, few economic incentives are offered in the urban areas, and differences between Chinese and Ethiopian social attitudes and discipline make it unlikely that Ethiopians would willingly contribute the huge "labour investments" prevalent in China.[34]

For a time, rumours and media reports suggested that a Yugoslavian-type of industrial management by workers' committees would be adopted in the recently-nationalised industries of Ethiopia, but, in the end, the Derg opted for a tight central control like that used in the Soviet Union during the 1950s (see Chapter Seven). Despite similarities between pre-revolutionary Russia and Ethiopia which are mentioned throughout this study, the Soviet development model is of little relevance, owing to Ethiopia's smaller size, her slender supplies of resources which can be mobilised, and comparatively lower levels of political stability, power and compulsion. The high rates

of savings and investment presupposed by a Soviet model cannot be maintained in Ethiopia; and integrated and highly-specialised plants with high fixed costs are therefore impossible to construct without foreign aid. The most fundamental difference, however, is that a humane socialism requires, initially at least, the pursuit of basic economic maintenance in Ethiopia, rather than an unbalanced growth favouring heavy industry. The levels of food production necessary to feed urban dwellers and to maintain rural health and morale are still to be realised in Ethiopia, and the primacy of a broadly based agricultural development must be emphasised, lest production increases in the urban areas serve to freeze traditional agricultural production techniques.[35]

Agricultural development can release labour for industrialisation, is economical in the use of capital inputs, and requires relatively modest quantities of social overhead capital, Western-style entrepreneurship and foreign exchange. It can effect an expansion of exports while reducing the reliance on imported foodstuffs. The obstacles to an Ethiopian agricultural development are numerous and interrelated, however, and only a wide-ranging structural transformation, combined with an integrated approach to rural development (explored in Chapter Six) offers strong prospects for success. Food accounts for two-thirds or more of Ethiopian consumption, compared to well below two-fifths in the West, and many urgent demands for food go unmet. Expanding agricultural outputs and incomes depend upon: favourable conditions for production, such as good nutrition, health, training, roads, and irrigation; direct inputs such as fertilizers, seeds and extension advice; steady incomes, incentive goods and the 'correct' work attitudes; facilitative and secure land tenures; and accessible credit and marketing organisations. The crucial variables seized upon by knowledgeable students of contemporary Ethiopia concern the pricing and marketing of agricultural products in the urban areas. Current policies provide fairly high price incentives for farmers, but it remains to be seen whether the measure of urban solidarity with the peasants, established during the Revolution, will extend to an urban willingness to bear most of the costs of rural development (see Chapters Six and Seven). At the end of the day, the revolutionary slogan Ethiopia Tikdem (Ethiopia First or Forward - see Chapter Four) can only mean

Agriculture First or Forward - even though resource allocation
decisions are made in the urban areas by urban elites.[36]

II. Law

The impression that emerges irresistably from the last Section
is one of acute theoretical fragmentation; only part-solutions
can be derived from part-theories, which must necessarily be used in
an eclectic fashion.[37] This perception is the result of an inabil-
ity to generalise the cultural differences and the social stratifi-
cations observed throughout the Third World, as well as disagreements
concerning value judgements about the nature of the development
process. The desirability, in the context of development, of integrat-
ing localised societies in a meaningful fashion implies the desirabil-
ity of an integration of theoretical insights, and one of our purposes
is to assess the extent to which a legal perspective can be used to
promote a greater degree of integration, both in theory and among
Ethiopian societies.

Development concepts and legal theories are piecemeal and chaotic,
and any combination of them doubly so, since fundamentally different
analyses are applied to different problems or to the same problem
judged from radically different viewpoints. A great amount of
theoretical reformulation is therefore desirable, yet such an
endeavour is complicated by the fact that, like development theory,
"law likes to frame its rules, wherever possible, as if they were
homely truths; or even as statements of fact about the physical
world."[38] The ways in which law has been analysed and deployed under
Western and socialist (communist party-state)legal theories serves
unduly to limit its role in Third World development processes.
A brief restatement of these shortcomings in this Section is therefore
appropriate. As all descriptions and theoretical constructs nec-
essarily contain a plethora of value judgements which are seldom
made explicit,[39] the manner in which values are dealt with in law
and in other social sciences is surveyed in the next Section.

Theoretical speculations about the potential inherent in law,
the fields of jurisprudence, comparative law and sociology of law,
have resulted in the same dissensus concerning meanings, techniques
and goals that characterises other areas of philosophy. While embodying

progressive insights, legal philosophy is best defined as "a chaos of approaches, to a chaos of topics, chaotically delimited";[40] our purpose is to attempt to introduce a degree of order - in relation to specific development problems. One of the merits of a legal perspective is that it can be used to pose valuable philosophical questions concerning development processes and theories. As F.S.C. Northrup notes,

> whenever any facts arise in any subject which bring its traditional theory or methods into question, at that moment its problems become philosophical. [41]

Development is fundamentally a process through which beginnings that are undesirable to someone, usually a politician, are transformed into desired end-products. Extent theories and techniques have not furthered this process markedly, yet philosophical inquiries are neglected and, as we saw in the last Section, critical theories of development have not yet influenced events decisively in most countries. Criticisms of legal and developmental concepts presuppose better and worse notions of law and development, the choice among them being determined, in practice, by the relevant data, the theorist's purpose and the kinds of choices particular politicians are likely to make.[42] A jurisprudence specifically relevant to the Third World and the problems of development has yet to be formulated, although several important steps have been taken.[43] Such a jurisprudence would pay interesting dividends in the West as well: as discovery begins with the awareness of anomaly, legal theories which purport to be universal would have to be reconsidered in light of events in the Third World which violate the expectations created by traditional theories.[44]

Remembering that definitions are inevitably imperfect and an aid to, rather than a substitute for analysis, a useful introductory definition of law would be of those "acts and institutions the respect for which is enforced by socially recognized organs in order to safeguard social cohesion and to develop society".[45] The definition emphasises law in action in society, law's primary role in maintaining order and its developmental potential. It also circumvents some of the vexing questions concerning the status of customary laws, which are termed customs or mores by some ethnocentric theorists (see Chapter Seven), many of whom are anthropologists. The precise meaning of social cohesion and development are not explained, however, and the definition also ignores several important factors: an elite

can use law as a weapon against other elites and to oppress the powerless, as in Ethiopia; descriptions found in law are necessarily imperfect predictions of actual behaviour; and some judges and law teachers, in Ethiopia and elsewhere, analyse and apply law solely as a system of formal rules divorced from social reality.

The latter approach is largely irrelevant to our purposes, while an analysis of rules (norms) in their social context can be a profitable examination of the raw materials of social control, through which demands and pressures are crystallised and harvested and resource allocation and distribution schemes are implemented. The three major approaches used by various legal theorists - normative, institutional and structural - are different ways of looking at the same social phenomena and should be employed simultaneously to achieve the best result: "The concept of norms tends to exaggerate the consciousness of thought as the concept of structure exaggerates the regularity of action",[46] while the institutional approach tends to the purely descriptive. The injection of political power into legal analyses then leads to a view of law as "a halfway thing - part principle and part power",[47] with legal and other structures and institutions mediating.

A. Jurisprudence

While many social scientists take a highly relativistic view of values and ethnical principles and neglect normative approaches to social phenomena, legal positivists and natural law theorists regard such an approach as so important as to justify the abstraction of systems of rules from their social context. These theories merit study, for they condition (together with Marxism and sociology of law) the ways in which lawyers think about law in the West and in the Third World. A.M. Honoré visualises two warring camps engaged in protracted and inconclusive disputation: positivists, arguing that legal theory merely delineates the conditions needed to produce law and the formal characteristics of laws, and natural lawyers, advocating political or moral ideas within the framework of a legal theory.[48] In practical terms, however, this contest is an extremely uneven one: the positivists have carried the field in the Bar, on the Bench and especially within those agencies charged with the preparation, implementation and enforcement of rules of public (constitutional, administrative and penal) law. Positivism's success goes beyond the bounds of a mere theory, to give rise to what may be termed the ideology

of legalism (discussed in the next Section).

. Positivism analyses the laws actually found, _positum_, and aims, out of a love of order, to clarify rules and present them in an orderly fashion. John Austin presented an idealised construct of such a legal system in the nineteenth century,[49] and offered the now classic definition of law as the command of the sovereign, subsequently described as "orders backed by threats" or "the gunman situation writ large." This simple definition contains the germ of the operative legal theory utilised by politicians, administrators, judges and legal practitioners alike in all countries except, perhaps, China. Unless rights are both embodied in law and backed by political commitment, the individual is left with the scant comfort that those who enforce the laws will not in fact intervene in his course of action, that the relevant command is too imprecise to be applied, or that his violation of a command will remain undetected..

To a large extent, such a theory of law is inevitable: it operates to the convenience of those who wield power and meets the needs for regularity and certainty, which presuppose hierarchies of authority culminating in an 'ultimate' authority. Beyond this, positivism (like all general theories) offers an imperfect description of reality, although "orders backed by threats" is a strikingly accurate picture of the Ethiopian peasants' attitude towards the coercive character of central Government's rules. This is not to say that the peasant feels helpless, however. Since he does not subscribe to theoretical assumptions of the supreme power of the State and its virtually unlimited capacity to make law, he often feels free simply to ignore state-sanctioned law - and usually succeeds in doing so. If this fails, the fact that Ethiopian law is personalised, rather than the abstract command of a remote sovereign, can be turned to advantage: an official can be influenced, bribed or even assassinated, with armed rebellion as a last resort. Government's expectations of an overall obedience amount to little more than a pious hope in Ethiopia, where we see Gunnar Myrdal's "soft state" in action.

There are other defects in positivist theory as well. Basing an analysis of an entire legal system on what amounts to an idealised model of the criminal law has its drawbacks: many aspects of private law, such as contracts and the formation of corporations,

facilitate and only tangentially regulate relationships between individuals rather than commanding that these relationships be created (see Chapter Seven). Command is not the only attribute of law, which deals with many fact situations merely by qualifying them, providing a point of reference, or placing them in a chain of cause and effect. Formal legal sanctions are often not used or needed; if such non-legal factors as individual socialisation, peer group pressure and public opinion do not secure the everyday conformity to rules, the coercive resources employed through the legal order are soon dissipated.[50] Like much of development theory, Western positivism contains an anti-revolutionary bias. The limp snapshots of a legal system before and after a revolution that are offered by, for example, Hans Kelsen, correlate poorly with political realities (see Chapter Five).

Analytical jurisprudence, an outgrowth of positivism, makes theoretical assumptions which are wholly unrealistic if applied in Ethiopia. A fully coherent system in which each part relates consistently to all other parts simply does not exist; there are at least four levels of Ethiopian law, and they possess little internal coherence (see Chapter One). The equilibrium posited by analytical jurists is no more realistic than the one assumed by economic growth theorists or others who posit a societal consensus. The notion that new legal situations can only be met through deductions from old premises is an unhappy viewpoint for an analysis of development and an inaccurate picture of a revolutionary regime in the process of changing the old premises.[51]

If Ethiopian legal integration, certainty and predictability could some day be secured along the lines presupposed by analytical jurisprudence, the resulting law would be "no more human than a molecular structure", with "no nationality, no mind and no ends proper to its nature."[52] Law, like development, concerns people, and the sterility of positivism and analytical jurisprudence (analytical positivism) stems from the attempt to erect barriers between law and policy, a refusal to deal with unanalytic "pseudo-concepts" such as values and ethics - with what the law ought to be as well as what the law is. The theoretical orientation of analytical positivism is based on and continues to draw strength from Hume's brilliant demonstration of the fallacy of deriving an 'ought' (a normative statement)

from the 'is' (a purely factual one), which has been bolstered by
Wittgenstein's distinctions between the normative and factual usage
of language.[53] Hume's fallacy has been debated over the centuries
(and is discussed in the next Section), and we should seek to circum-
vent its effect. As development is not, by definition, a present
fact in the Third World, it can only be an 'ought'; the 'is' of
underdevelopment certainly exists as a series of empirical facts,
and the process termed development involves the progressive deri-
vation of an 'ought' from this 'is.' Arguably, then, positivist social
science theories of development are a contradiction in terms (see
infra).

A final word on the seductive nature of legal positivism ought to
be recorded before moving on to theories of natural law. Consider
the view of Thurmond Arnold, who was hardly a positivist: "law is
. . . a great reservoir of emotionally important social symbols."[54]
It is perhaps an attractive idea, that Ethiopian and other societies
can be studied through concrete data found in their legal systems,
but one which implies an unquestioning faith in law and a high degree
of social consensus - the legacies of nineteenth century positivism.
To whom are these legal symbols supposedly important? A tiny elite,
competing with other tiny elites and largely ignoring or even exploit-
ing the rest of the population, as in Ethiopia? While jurisprudence
generally considers whose interests are embodied in law, an inquiry
into whose demands are not so represented is even more important
where underdevelopment coexists with a high degree of social strat-
ification and a low level of political participation.

Echoing the Deontological Jurisprudence of Jeremy Bentham,
William Harvey provides us with another enticing prospect:

> The most pressing task which confronts jurisprudence today is
> the development of a viable basis for criticising, evaluating,
> guiding, using, accepting, or ultimately rejecting the positive
> law. 55

Can the 'ought' of development be employed as a critique of the 'is'
of Ethiopian law? How could this be done? We read on:

> law is a tool, a technique. It can be deemed good or bad by
> this amoral test of utility, or appropriateness to whatever end
> may be postulated, to which the law is merely a means. 56

Law is thus pure and neutral, a series of empty vessels waiting for
the right policy to come along. Harvey's second statement might find
wide acceptance among Western jurists, but his positivist critique

of positive law leaves unresolved the issue raised in his first statement - the manner in which a critical theory of law could be created. While law operates at the point at which the means and ends blend into one another , Harvey purports to distinguish them clearly, assuming that the ends are none of his business. There can, for example, be no such thing as an unjust law in Harvey's analysis; the problem of justice is a moral inquiry barred by his amoral criteria, which have been variously termed efficiency, efficacy, simplicity and convenience. Like other utilitarians, Harvey ignores the difficulties inherent in deriving a general utility from incompatible desires, in making the inter-personal comparisons of desires and needs that are necessary preconditions to the achievement of socio-economic justice - at least in the eyes of the structural transformationists. Harvey's approach thus dovetails nicely with those of the economic growth theorists: it says something important, but only after those ends which are related to development have been decided upon - ultimately through ruthless competitions for power among persons and groups with a multiplicity of goals.[57]

How, then, ought law to be used in order to promote Ethiopian development? It is, unfortunately, the abundance of answers to this question which can be derived from natural law theories rather than their paucity that limits the relevance of the natural lawyer's ideas to our enquiries. Diverse speculations coexist under this generic label; natural law has been used as a justification for revolution and, more often, as a bulwark of the status quo, particularly in defense of existing property distributions. The unifying thread is that all theorists attempt to discover the ultimate measure of right and wrong, the pattern of the good life and the permanent underpinnings of law and its relation to justice. In De Legibus, Cicero echoed Aristotle by arguing that legal rules were but one aspect of a universal justice founded on the natural reason possessed by all. Aquinas also emphasised that the sense of justice is shared by all men; Grotius saw natural reason as the origin of rules accepted by all legal systems; Locke and Rousseau found the basis of natural rights in hypothetical social contracts.[58]

Admittedly, natural law continues to influence positive laws through the Roman Law, the medieval incorporations reflected in, for example, canon law and the growth of international law from the

eighteenth century onwards. Nevertheless, by the middle of the
nineteenth century, an ongoing process of inquiry into legal values
was swamped by positivism, although a modest revival has occurred
in this century as a result of the kinds of motives that led to the
adoption of, for example, the Universal Declaration of Human Rights,
declining socio-economic stability, the expansion of governmental
activity and a growing awareness of the limitations inherent in the
empirical tradition of the social sciences. Most modern theories,
such as H.L.A. Hart's "minimum content" of natural law and Lon
Fuller's "internal morality" of the legal system, are really attempts
to patch up analytical jurisprudence rather than to create the type of
critical legal theory required for a study of social problems such as
development. Many sociological theories of law, and especially
Roscoe Pound's, are grounded in pre-established canons of values in
the natural law tradition,[59] but the emphasis upon a high degree of
societal consensus concerning ethnocentric values makes the broad
application of these theories difficult, particularly in the Third
World.

It would be much easier to ascertain the potential role of law
in development if those values associated with development - describ-
ed in the last Section and infra - could simply be incorporated into
a definition of the good life or the enduring purpose of law and
justice, thereby effecting an automatic transformation of the Ethiopian
legal system. For a variety of reasons, this kind of approach is not
feasible. There is no agreement concerning the values of development,
either among Ethiopians or social scientists, just as no comprehen-
sive moral code has ever gained wide acceptance among natural lawyers,
politicians or judges. Even if such a set of values could somehow be
established, they might be so vague and subject to qualification
as to be useless, from the standpoint of policy specification.

Natural law analyses produce an uneasy combination of absolutisms
and theological fiat with fuzzy and even mystical ideas - precisely
what is found in many development theories. The historical record
has been all but indifferent to the efforts both of natural lawyers
and development theorists. This is largely because even the
most sensible of policy recommendations are not applied and enforced
unless it is in the citizen's, administrator's and politician's
perceived interest to do so. For example, Sir Frederick Pollock

argues that the "capricious orders of a crazy despot may be laws according to Austin's definition until they are revoked, but if so, it is the worse for the definition."[60] Perhaps, but what practical effect does Pollock's confident assertion have; why _ought_ the despot to mend his ways (as a criterion of legal validity), so long as he gets what he wants? Furthermore and with such partial exceptions as Amin and Bokassa, despots are not consistently crazy in Pollock's sense: they necessarily permit broad areas of individual freedom and cloak their capriciousness in regularised forms of law and adminis- tration. We might wish to agree with Aquinas that law is "an ordnance of reason for the common good, made and promulgated by him who has care of the community",[61] but the ruler envisaged by Aquinas is not of this world but of the next.

Unrealistic as the theories of natural law may be, there is a manifest need to lessen the grip of analytical positivism on social science thinking, to complement formalistic legal criteria with broader approaches which take account of development choices and constraints. Positivism sacrifices the 'ought' to the 'is' and natural law the 'is' to the 'ought'; a central problem of legal (and political) philosophy is to discover the means whereby both 'is' and 'ought' can find practical expression.[62]

Perhaps Marxism can provide solutions to this problem. Marx has been claimed and castigated by positivists and natural lawyers alike; despite a long creative lifespan and a keen interest in legal questions, however, Marx's approach to law was ambiguous in the extreme. This ambiguity is reflected by the deep tensions in social- ist doctrine - and, arguably, within the revolutionary Ethiopian regime - concerning the appropriate function of law. If law and politics form part of a superstructure dependent upon an economic substructure, claims of an independent and impartial law and a state existing above and apart from the law are illusory. State and law are wholly congruent with bourgeois class interests in capitalist society, where rights and duties are nothing other than factual relations of political and economic power. After the triumph of communism, one criterion of socio-economic development becomes the progressive replacement of bourgeois law by an "admin- istration of things", which apparently does not involve the formal use of law.[63] Thus far, we have a theory which correlates with a

simplistic Marxian single-barrier theory of development, in which law is irrelevant. Socialist jurisprudence is much more complex than this, however. In addition to nourishing what became known as the doctrine of the "withering away" of law and state, Engels - Marx's intellectual inferior - warned that, as the economic base was only the ultimate determinant of historical struggles, the legal superstructure could have a significant influence on the content of that base. After the Russian Revolution, Lenin saw the need for administrative continuity and the active use of an elaborate system of alternate rules which fostered social change and a political legitimacy and stability. The polar extremes found in socialist jurisprudence can be illustrated by the ideas of Pashukanis and Stalin, although contemporary theories do not take such extreme views. Adopting a narrow definition of law, Pashukanis argued a Marxist orthodoxy: morality, law and state are necessarily bourgeois forms, which are incapable of renewal under socialism because all juridical relations are devoted solely to the acquisition of wealth in a capitalist society. Stalin, on the other hand, argued that he was merely extending Lenin's activist use of law to "smash the bourgeois machine" and to strengthen the state, as an inescapable precondition to its withering away and as a means of minimising the impact of capitalist encirclement and destroying capitalist economic activity, lifestyle and consciousness in the Soviet Union.[64]

These theories are obviously irreconcilable; Pashukanis fell victim to one of the Stalinist purges of the 1930s, and his ideas died with him. While relatively little formal law is utilised in China, where unique institutions perform the social control functions usually associated with law, other socialist countries now pursue what is basically a Leninist policy with regard to the use of law. This approach is exemplified by a definition offered by Ioffe and Shargorodskii:

> law is the state will of the politically dominant class
> expressed in the totality of norms protected by the state
> as the class regulator of social relationships. [65]

There is a paradox here: although Western economists and lawyers seemingly adopt Marx's assumption that economic advances have a strong and immediate impact on attitudes and institutions located in the superstructure, their socialist counterparts have not relied

upon this optimistic hypothesis and have used law and the state actively, to reshape society and the mode of production.[66]

A theory of the role of law in development, based on the models offered by communist party-states (excluding China) could be constructed in the following manner. After a communist party comes to power, draconian measures must be adopted to safeguard the crucial directive rule of the party; formal law competes with party pronouncements and with the provisos of development plans. Material rights will be progressively granted to those who work for a living, and these rights are guaranteed by the higher productivity of a planned economy and by the socialisation of property and production. Legal rules will be periodically reformulated to take account of the progress made. All of law is considered to be public law, a reflection of the interest of the state in all social and economic activities. Administrative law and the (public) law of contracts are the crucial controls used to ensure the fulfilment of planning targets. The educative function of law is emphasised and, compared to Western legal systems, there is a greater tolerance towards legal contradiction and change. Criminal laws and informal tribunals are used actively to aim beyond ensuring a mere conformity to law, to create the "new socialist man". This model thus postulates a conscious and purposeful involvement of law with politics, economics and social organisation in a manner far removed from the positivist traditions applied in social democracies or welfare states.[67]
Thus,

> the present is justified as both a means to the achievement of the future and as a process of liberation whose characteristics already foreshadow those of the coming order. 68

The schema we outline presupposes a committed socialist regime, and would have been inconceivable in Ethiopia prior to the Revolution. As some of the stated goals of communist party-states are broadly consistent with the values of development we have discussed, a socialist model of law and development, when fully elaborated, offers some guidance as to what the law ought to be. If we also incorporate the ideas of Karl Renner, Marxist jurisprudence offers a thoroughgoing critique of the role of law in capitalist society; critical theories concerning the part law plays in socialism as it is actually practiced are much less well-developed, however. Other

serious issues remain to be considered. Are the 'oughts' posed by this model the appropriate ones in the context of Ethiopian development? Can a military regime introduce the political presuppositions of the model? Could the necessary laws ever be promulgated, communicated, propagandised, implemented and enforced? Could the whole mechanism of a socialist development model ever be made to work in Ethiopia?

B. Comparative Law

The last two questions bring us into the realm of comparative law, which concerns itself with some of the difficulties inherent in transplanting legal models, rules and values from one society to another. Comparative law is a method of study rather than a theory. Whenever we analyse legal systems which are not our own, we necessarily pursue them comparatively; the unknown can only be assimilated through comparisons with the known. Ethiopians are necessarily comparativists, since much of the legal system is not theirs - in the sense that it has been recently imported from abroad or embodies values of Ethiopian cultural groups to which the observer does not belong. Thus, the dream of some comparativists, the unification of law among states, has yet to be achieved within the Ethiopian state: diverse customary laws, traditional state-sanctioned laws, Western imports and recent, socialist-influenced proclamations continue to coexist (see Chapter One).

Comparative law can be defined as "a composite of social knowledge of positive law", occupying an intermediate position between the knowledge of particular laws and institutions and the universal knowledge that jurisprudence and sociology of law claim to provide. The comparative approach is therefore a potentially useful aid in the elaboration of the middle-range theories we are seeking. In practice, comparativists are not attempting to devise a new natural law or jus gentium, but a jus inter gentes, a common language and meeting ground among jurists and an improved but necessarily imperfect understanding of the common good.[69]

This is not to suggest that much arid conceptualism cannot be found in comparative law writings, and the defects found in much of development theory - a questionable scientism and unwarranted generalisations from Western experience - are also present. Many

comparative lawyers are seemingly unaware of the fact that rules and institutions with the same names often perform different social, as distinct from legal functions, and those with different names can perform identical functions. Some comparativists have concluded that: "Like must be compared with like; the concepts, rules or institutions under comparison must relate to the same stage of legal, political and economic development."[70] Adopting this approach, we would be forced to admit that it is impossible to analyse, in a comparative fashion, the impact of Western or socialist laws on Third World development processes.

The tools employed and conclusions reached by comparative lawyers are often outdated, however, and they serve to conceal rather than illuminate similarities and differences relevant to development theorists and other social scientists. Since Montesquieu wrote of the difficulty of making comparisons, industrialisation, urbanisation and improved communications have resulted in the partial harmonisation of socio-economic lifestyles in the West that has, however, been accompanied by processes of political differentiation. While the capitalisms of various Western states seem to function equally well under rules and institutions which differ considerably from a juridical point of view, such widely differing countries as France and Haiti are deemed to be closely related within a 'family' of law, derived from comparativist taxonomies resembling those used to study plants or languages. Elaborations of legal families make the questionable assumption that lawyer's law is easily adaptable to different cultures and levels of development, just as language adapts itself to discourse on any topic.[71]

Much of the law in the Third World has been recently transplanted, voluntarily by tiny elites in Ethiopia (and in such countries as Turkey, Thailand and Japan), and as a result of European colonialism in many other countries. Apart from the promptings of colonial rule, these transplantations were motivated by a desire for elegant status symbols or by an irrational hope that a country will become Westernised or socialist by adopting a new set of laws; there is little meaningful modification of rules to take account of local conditions, since a "national" culture - and language and legal culture in particular - is expected to adapt itself to 'fit' the imported product. That such adaptations are resisted 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 Third
World. It is only by chance that a legal rule (or political philosophy)
will perform the same function in two different societies. For example,
Bertrand Russell argues that the warm reception of Locke's ideas when
they were transplanted to France shows that

> a philosophy developed in a politically and economically advanced
> country, which is, in its birthplace, little more than a clarifi-
> cation and systematization of prevalent opinion, may become elsewhere
> a source of revolutionary ardour. . . . In the advanced countries,
> practice inspires theory; in the others, theory inspires practice.[72]

The emerging challenge for comparativists is to analyse the anomalies
that occur when Third World governments attempt to implement socialist
and non-Western policies through adaptations of inherited legal systems,
which are Western and positivist. Many avowedly socialist states, including
Egypt, Somalia and Nkrumah's Ghana, have largely ignored communist party-
state theories of law, planning and policy formulation. One reason for
this is that many socialist analyses are properly deemed irrelevant,
devoted as they are to pragmatic and a posteriori justifications of
political struggles and economic decisions in the U.S.S.R. After a few
initial mistakes, it became clear to most Third World leaders that they
could not hope to aim for a simple replication of typical capitalist
or socialist paths to development.[73] This awareness had led to the emer-
gence of a legal syncretism, a process which will test Western and socialist
legal theories alike. We therefore argue that comparisons between the
fruit borne by transplantations into alien environments and the produce
of the parent stock are extremely valuable for the light they shed on the
nature of First and Second World legal systems, as well as those of the
Third World.

A major problem which besets any comparativist willing to undertake
such a study is that he can only understand a legal system by comparing
it with the ones he already knows, yet he must avoid transplanting his own
legal and social values into the system he studies. An American who
attempted to study Soviet attitudes towards Chinese Law, Harold
Berman, warns that we lack an intuitive knowledge of Oliver Wendell
Holmes's "inarticulate major premises" in a foreign legal system, and
that this failing is too often compounded by substituting personal,
legal and social assumptions. Western comparativists tend to take
nineteenth century assumptions for granted, viewing law as national,
rational, and individualist - a positivist view

of laws, which exist to enable individuals to calculate the consequences of their conduct. These are obviously not the inarticulate major premises of the Chinese (or Ethiopian) legal system, and Berman may have become aware of this trap only after falling into it some years earlier, when he argued for a union of basic principles in Soviet and Western law and reduced the differences between systems to questions of technique.[74] What constitutes a "basic principle" is, of course, open to argument, but our analyses suggest that there are few similarities among Soviet and Western legal systems, beyond a practical acceptance of the gross generalisation of law as the command of the sovereign. The same kinds of problems plague other social scientists, too:

> When we economists, working within our tenacious but flexible tradition of preconceptions that admittedly are not too badly fitted to our own conditions, suddenly turn to countries with radically different conditions, the risk of fundamental error is exceedingly great. 75

It is clear that differences among inarticulate major premises constitute a major constraint on the promotion of development through the transplantation of laws or social science theories.

To expand on the last point, consider Willard Hurst's characterisation of the American legal system:

> Because we confided to law the measure of the legitimacy of secular power of all sorts and were ready to use law to muster and dispose of large resources for fashioning the frame of economic and social behaviour, the law held out great prizes for men's strivings. 76

Paradoxically, and in support of Berman's assertion, this active use of law finds numerous parallels in the Soviet Union while in Britain, for example, the glittering prizes are not primarily allocated through the legal system or conferred upon those who manipulate law. In contrast to these three countries, Ethiopia is not a law-ridden society; state-sanctioned law has not yet cannibalised other social institutions. A significant dialectic of traditional socio-economic structures, customs and customary laws on the one hand and state-sanctioned laws and centralised political power on the other continues. As in Brazil, for example, a slow organic growth of state-sanctioned laws remains impossible in Ethiopia, so long as the institutional transformations and procedural and methodological changes required to extend this law into the vast 'outback' are not forthcoming.

Further, the urgency of demands for development does not permit legal systems to evolve in a leisurely fashion, as they did in the West. Development is not taking place under existing Ethiopian laws and institutions, and they must therefore be transformed and new ones created a priori.[77]

C. Sociology of Law

The last paragraph has brought us to a consideration of the contribution sociology of law and the concept of social engineering can make to an analysis of development processes. Predictably, the brief answer is that traditional theories make only a modest contribution, despite the fact that they represent attempts to bridge the ideal and the positive elements of law - the 'ought' and the 'is'. We shall therefore pause only to extract those few elements which are relevant to a study of law and development in Ethiopia, relegating a more general discussion of sociology of law to the footnote.[78] Dias has termed sociology of law the worst kind of mental training, consisting as it does of much loose talk leading to platitudinous generalisations. All grand social theories of law are circular: social forces are used to establish the existence of particular forms of law which, in turn, are the primary evidence of what the social forces must have been. Developed in America to explain American socio-legal problems and utilising a methodology borrowed from such fields as criminology and penology, conventional theories are culture-bound, imprisoned in the concepts they create and have little to say to the Third World. Here is but one example, from an otherwise careful theorist: "At the most general level, the function of the legal system is to distribute and maintain an allocation of values that society feels to be right." This function is then re-defined as the pursuit of an ethically-determined justice, the least obnoxious distribution of deserts to the deserving.[79] Only a positivist might quarrel with the assertion that law helps to maintain and distribute values, but there is no necessary requirement that this distribution be considered just by society as a whole, absent such inarticulate major premises as high levels of social consensus and political participation. There are many societies, such as Ethiopia's, in which underdevelopment coexists with an extreme inequality in the distribution of wealth and power. Setting

aside the thorny problems posed by Marxian "false consciousness",
such a situation exists because, <u>inter alia,</u> small and wealthy or
otherwise powerful elites are able to formulate laws in their own
interests without having to secure a general consent.

Much of sociology of law concerns social control, although the
purpose of this activity is usually not stated or deemed to be the
achievement of a general social equilibrium, which is not evaluated
critically. Social control receives a fuller treatment in the footnote,[80]
and typically concerns the application of rewards and punishments -
sanctions - in order to influence the behaviour of individuals and
groups. If, as we have argued, the manner in which people behave in
highly-stratified societies is a fundamental cause of underdevelopment,
behaviour must obviously change in certain patterned ways if develop-
ment is to take place. The use of sanctions to influence behaviour
is thus a prime concern of a law and development study, yet sociology
of law gives us little practical and detailed advice as to how such a
process could be made to work. A great deal of socio-legal research is
therefore needed, and an agenda for research in the Ethiopian context
is explored in the concluding chapter. At present, there is little
interpenetration of central Government's laws and other social
systems, and meaningful social control through law is largely impos-
sible.[81]

Admitting all these defects, the perspective adopted by some
theorists is nevertheless valuable: "social action is the prime
datum, . . . the necessary point of validation of the relevant know-
ledge" about law.[82] Conscious social forces create rules which are
made more concrete by socio-legal institutions, but not on a word-for-
word basis and subject to the intervention of choice, chance and
structural variations in societies and organisations. It is therefore
essential to study the interrelation of law with such other aspects
of social life as socialisation, control and compulsion, stratification,
the division of labour, forms of social integration and disinte-
gration, and the reinterpretation and transformation of norms that
results from changes in the allocations of power and prestige and in
the value hierarchies reflected by the legal system.[83] As we shall
see, reliable and detailed information concerning these and other
social variables are often lacking, in Ethiopia in particular and in
the Third World generally.

The concept of social engineering, first concretely formulated
by Roscoe Pound, represents a fusion of the techniques of jurispru-
dence and sociology of law. Pound's jurisprudence focuses on the
interests of individuals, society and the state, ignoring intermed-
iate groups such as companies and trade unions. His social engin-
eering seeks to satisfy as many of these interests as possible through
law, consistent with the least sacrifice of other interests. Con-
flicts of interest are resolved under "commonly accepted" value premises
termed jural postulates, and "justice" is achieved by determining the
order in which de facto interests - discovered by a 'Ministry of
Justice' utilising social science research techniques - are to be
recognised. Pound forgets that conflicts of interest receive favour-
able treatment only if they occur among groups who either fall within
the regime's "ideological bias" or are essential to its political
stability; in the absence of a broad social consensus and political
participation, these groups are usually extremely small. The most
that can be said for Pound's jurisprudence of interests is that it
would work in certain historical periods and in particular areas of
life - when and where certain values are shared widely, and certainly not
in Ethiopia. Social engineering also has a control function, which
is clearly evidenced in, for example, Britain's Welfare State. As
Karl Llewellyn notes:

> The energy available for social regulation at any given time and
> place is limited. The community must eat, sleep and reproduce;
> it cannot use up all its energies on government. Because of
> this fact, control by law takes on the aspect of engineering.
> We require to study the behaviour of the subject-matter of
> control, men in groups, and to invent such machinery as, with
> least waste, least cost, and least unwanted by-product, will
> give most nearly the result desired. 84

This is, of course, fairly close to the position taken by William
Harvey, supra, and it correlates well with the model of economic
efficiency discussed in the last Section.

Pound has not wanted for critics. Although Harold Laski, for
example, admitted that the business of law was to make the postulates
of society work, he viewed the jural postulates devised by Pound as
the ethnocentric thoughts of a Nebraska farm boy made good. Most
critics find that social engineering is used as a technology rather
than as a social science or a conceptualisation of rights and duties;

all complex social issues are reduced to questions of efficiency
and the pursuit of justice obtains little practical recognition.
Many would-be social engineers do not seem to realise that their craft
differs from mechanical engineering, for example, in that the object
is not given, but is precisely what must be discussed. Practical
applications of the theory have met with a decidedly mixed reception
in the West:

> The history of scientific and institutional approaches to con-
> trolling behaviour gives us little comfort about the future of
> scientific behaviour control. In many ways we have been better
> served by happenstance than social design. One need only look
> at the state of our designed institutions today - our prisons, our
> mental institutions and our schools - to question the wisdom of
> social science in social engineering. [85]

This argument is similar to those of F.A. Hayek, who contends that
social engineering, among other factors, gradually converts a self-
generating or spontaneous order - kosmos, Adam Smith's Great Society,
Popper's Open Society, the "ideal of organised liberty" - into a tot-
alitarian system in the service of some coalition of organised
interests which manipulates rather than expresses a general
consent.[86] There is a great deal of force to this argument, even
if we doubt the existence or merits of particular spontaneous orders:
men have become little more than curable or manipulable objects to
the social engineer and, if law is regarded as a purely instrumental
means to consensual social ends (Harvey's approach), there is little
reason not to use it. Society then loses the (admittedly slender)
protections against the naked play of interests found in the trad-
itional legitimation theories of natural lawyers and political
philosophers; law abdicates in favour of administration because the
complexity of government's welfare responsibilities is deemed to require
vague and open-ended standards. In this way, political expedience
and Harvey's utilitarianism replace the idea of right. Many econom-
ists favour this approach, viewing social problems as indicators of
the need for a bit of social engineering here and there - as mere
appendages to the more important processes of economic growth. The
paucity of genuinely interdisciplinary approaches to development is
therefore matched by a conceptualisation of social engineers as
"moral cretins" making "autonomous" technical decisions in an isolated
and subsidiary social science,[87] relevant to little more than the design
of prisons and schools.

We have nearly come full circle, for all of the criticisms of
social engineering presented in the last paragraph can be applied, with
only minor modifications, to the socialist model of law and develop-
ment and to the views of William Harvey. Some theorists have gone so
far as to argue that, given the partial displacement of positivism
by social engineering in welfare or social democratic states, the
manner in which law is used in these states and in socialist states
is virtually identical. Both socialist jurisprudence and social
engineering do attempt to change economic substructures through the
use of legal institutions backed by state power, yet there are
important differences between the theories. Social engineers assume
a high level of societal consensus and utilise tools designed to
introduce incremental changes only, in order largely to maintain a
status quo equilibrium.[88] Socialist theorists, on the other hand,
assume the ubiquity of conflict and direct their efforts towards
stimulating change in order to advance programatically the aims of a
state, which represents the proletariat or an alliance of workers and
peasants and suppresses the interests of the bourgeoisie. As we
saw in the previous Chapter, however, consensus and conflict coexist
in Ethiopia (and elsewhere); it is the political predilections of
the revolutionary military regime that make a Marxist model more
relevant to Ethiopia, although contributions from Western theorists
cannot be ignored. Hayek's criticism remains relevant despite the
fact that the "ideal of organized liberty" was never embraced by
an Ethiopian government and that starving peasants, remote from
central power, are unlikely to attach much importance to such an
ideal.

The humanistic values associated with socialist development, and
found in the writings of such leaders as Nyerere and Kaunda, stress
that men are the ends and not the means of development,[89] and
that development involves what you do, rather than what is done for
you. A legal perspective can be used to spell out the tenets of
a humanistic socialism, by focusing on the inherent contradiction
between the achievement of individual political rights and the prog-
ramatic pursuit of individual and group material rights through the
development process - a contradiction ignored by most development

theorists. Since politicians often claim to be pursuing both sets
of rights simultaneously, another advantage of a law-in-action approach
is that it focuses on what politicians actually do, rather than on
what they say or what social scientists say politicians do.

D. Theories of Legal Modernisation

Both socialist theorists and social engineers assume highly-
centralised and effective political and bureaucratic systems, advanced
technology and communications, and the conscious control of social
arrangements through a legal system which is differentiated from
other forms of social control. That these conditions do not obtain
in Ethiopia makes the application of these theories extremely
impractical, and many observers have concluded that the fault must
lie in legal systems like Ethiopia's rather than in the theories.
Ethiopia does not have a 'modern' legal system they reason, and a
legal modernisation must occur so that law can play its proper role
in development. As we shall see, criticisms levied against the
theories of modernisation in the development process, discussed in
the previous Section, can also be applied to notions of legal modern-
isation. Imbued with the ideology of legalism discussed in the next
Section, lawyers assume the type of legal system found in Western,
urban, industrialised and democratic societies to be the necessary
endpoint of Third World modernisation processes. In Chapter Seven
we argue that the tacit assumptions made by many modernisation theorists
cannot be applied to Ethiopian law: traditional laws still serve to
negate many state-sanctioned laws, and 'modern' private law
transplants have not been imposed from above successfully and they did
not stimulate the business activities they were designed to facilitate.
There is little firm evidence to support the assumption that a
'highly developed' law, in the Western lawyerly sense, has anything
to do with development.[90] Capitalist legal systems differ widely
among themselves and economically developed socialist systems are
deemed primitive under many of the criteria of legal modernisation
that we will discuss. Karl Renner's interesting but largely unsuc-
cessful attempt to prove the irrelevance of lawyer's law to socio-
economic change is discussed in the footnote.[91]

The easiest theories to dismiss are those which see law as
evolving from one state to another; they amount to oversimplified

ideological constructs analogous to W.W. Rostow's "stages of economic growth". In 1861, Sir Henry Maine held that, in "progressive" societies, legal modernisation has hitherto involved a movement from status to contract, from individual capacities and incapacities ascribed by law to a free bargaining over legal relations. A few anthropologists have expanded Maine's assertion into a Third World modernisation criterion, forgetting that the rights and duties of, for example, wives, shareholders and supplementary benefit recipients are determined by their ascribed statuses within Western legal systems, and that much of Western law reaches beyond facilitating the bargains of individuals to aim at societal welfare and state intervention in the economy. Another anthropological perspective, now discredited, sees the movement from a "primitive communism" to private property as the stimulus for the creation of Westernised legal rules. Mixtures of public and private property exist in all societies, and differences in the mix do not correlate with levels of development, however. Also, what constitutes "property" is also far from clear (see <u>infra</u> and Chapter Seven); Margaret Mead, for example, argues that all societies recognise a private property in the rights to your own name and to privacy. Emile Durkheim's version of a legal evolution is from a primitive "mechanical solidarity" to a complex "organic solidarity" with a division of labour and the replacement of repressive sanctions with restitutive ones. In reality, restitution and repression coexist in all societies, independent of the level of economic development, although it is possible to argue, under some theories, that the extensive use of repression is inconsistent with high levels of political development (see Part II). One of the more popular evolutionary theories is that of Max Weber, for whom the development of a formal legal rationality is the basis of the modern state and a precondition of capitalism.[92] Weber's ideas and the implications they bear for Ethiopian administrative law are discussed in Chapter Five.

The general defect in all of these evolutionary theories is that, even if a rough correlation between development and a few overly abstract features of legal change can be found, development may be the cause or the effect of legal change, or the correlation may even be spurious. The only useful, culture-neutral generalisation concerning modernisation is that it encompasses a recognition by

society and government that law can be made intentionally rather
than merely found; imperative rules can be uncoupled from the dogmat-
ism of tradition and consciously formulated to serve social ends.
Once tradition no longer serves to legitimate laws, they must be
produced and justified in accordance with generally-accepted prin-
ciples before they are regarded as legitimate. This change cannot
be completed in Ethiopia while customary laws continue to hold sway in
the rural areas and Government's ability to influence rural behaviour
through law is constrained substantially.

Long lists of legal modernisation criteria have been proposed
by various Western lawyers, who stress changes in legal institutions
or concepts, or both. Geoffrey Sawer's criteria, for example, envisage
the establishment of regular and specialised institutions having wide
authority to make and amend legal rules (legislatures), deciding
disputes by reference to rules (and courts), ensuring the observance
of law and the enforcement of court decisions (police and court
officials), and offering legal advice and conducting cases (a legal
profession).[93] Division of labour tends to be positively correlated
with development, and we could naively conclude that Ethiopia has a
"modern" legal system, as all of these specialised roles are to be
found, least in the urban areas. Sawer fails to mention other
relevant roles, such as those executives and administrators who are
not directly involved in enforcement. His notion of institutional
specialisation and differentiation also resembles a Western separation
of powers, which is viewed as hindering the rapid and effective
implementation of policy in socialist countries.

Marc Galanter expressly mentions a separation of powers in his
more extensive list of modernisation criteria. Agreeing the
importance of a legislature and a legal profession, Galanter includes
some modernising concepts among his criteria: uniform and unvarying,
rather than personalised results which are based on the transactions
rather than the status of the participants (shades of Maine);
an orientation towards the universal rather than intuition and the
unique; consciously purposeful legal rules that can be learned without
mystical gifts; a monopoly of law within the political system; and,
a final institutional factor, hierarchical and impersonal legal bureau-
cracies possessing written rules and records which permit reviews of

decisions. Ethiopia's legal system is obviously not very 'modern'
if judged under these criteria, but are they the appropriate ones,
from the standpoint of development? Robert Seidman is only half
joking when he says:

> Suppose that he /‾Galanter‾7 had discovered that England, France,
> Germany, the United States and the Soviet Union used a decimal
> system in numbering the sections of their Codes. Would that
> have resulted in his listing /‾another‾7 . . . characteristic
> of a modern legal system? 94

Like some development theorists, Galanter constructs a mythology
of modernisation which ignores criteria that fall outside his speciality,
and he transplants conceptual and institutional stereotypes which
represent a reduction of 'modern' legal systems to their lowest
common denominator. The relevance of this kind of reductionism to
development studies is doubtful at best:

> The proliferation of societies that share a commitment to
> industrialism, but differ in all other respects, makes one
> wonder whether the idea of modernity has any real substance at
> all. For it suggests that there never was any necessary link
> among the elements of post-Renaissance European civilisation. 95

We can restate the sound elements found in Sawer's and Galanter's
theories by arguing that the minimal _juridical_ requirements for a
progressively _modernising_ legal system are predictability and flex-
ibility, formal or informal - requirements which are not impossible to
fulfil in Ethiopia in the medium term, at least in the urban areas.
A coherent legal system requires that rules be created, enforced and
amended in accordance with widely-followed rules or conventions.
Such a process has the effect of de-personalising the legal system
by increasing its rigidity. Isolated individuals can then do
little to alter the effect of personally-unfavourable rules or
decisions, and Myrdal's "soft state" would begin to disappear. Rules
must become specific in content yet applicable generally, in order
to guide behaviour, limit discretion and demarcate areas of individual
and group security and freedom. Both abstract and concrete rules are
needed, and they must be structured in a meaningful way through some
logical system of hierarchical concepts or else legal systems like
Ethiopia's are swamped by a mass of diffuse and contradictory
information. It is in pursuit of this goal of systemalisation that
the techniques of those jurists who are preoccupied with the analysis
of concepts - and whose services cannot be dispensed with even in
socialist states - must be utilised. In order to prevent a return
to an Ethiopian legal analysis which amounted to little more than

"technical exercises within a normative tradition" (see Chapter Seven),
emphasis ought to be placed upon achieving a balance and sense of
proportion among the new regime's enumerated goals, a step which would
also improve the predictability of decision making.[96]

From this starting point, it would then be possible to cut
through the thick undergrowth that is Ethiopian statutory law and to
begin to transform the institutions that apply and enforce this law
along specifically Ethiopian lines, remembering the difficulties that
attend any process of legal transplantation. As the present Ethiopian
legal system is often ignored and produces few predictable results,
changes in rules and institutions would not result in a sudden growth
of instability or unpredictability. In the Ethiopia of 1967,
Robert Sedler remarked that "the fundamental questions of what the
law will be and what institutions administer it remain to be deter-
mined."[97] This statement is, if anything, more true today: the
Revolution has cast a long shadow over the laws created and applied
under Haile Selassie.

III. Bridging the Gap

We have seen that many of the criticisms that are posed in
relation to development theories can also be applied to theoretical
speculations about law, although there are few points of contact –
among theories about development or law, or between the two groups
of theories. Different issues are deemed relevant and different
approaches utilised, and no theorist has much to say that is of inter-
est to the others. To a great extent, this state of affairs is the
legacy of the manner in which disciplines have 'developed' in univer-
sities since the eighteenth century; colleagues from different
departments and even within the same department are today unable to
converse except on a superficial and sociable level. This is silly:
the boundaries of problems rather than disciplines ought to determine
the universe of academic discourse.

A. Interdisciplinary Studies

Our brief review of theories of development and law shows that
a plea for interdisciplinary studies of development problems is
no simple restatement of the obvious: political scientists still
write about political development, geographers about the spatial
diffusion of innovations, lawyers – if they care at all – tend to

examine strictly legal criteria, and so forth. The barriers to
genuinely interdisciplinary study are formidable:

> Either you penetrate deeply enough . . . into each subject to
> prove reasonable familiarity and competence, or over part of
> the field you simply assert conclusions and apply them to the
> other parts. The former course will be condemned as pedantic
> and prolix, the second as exhibiting ignorance or contempt for
> the alternatives rejected. So the divorce among the experts
> continues, and the ordinary man who wants to integrate his ideas
> is left to fend for himself. Here perhaps is the opportunity, as
> well as the excuse, for an amateur with no professional repu-
> tation at stake. 98

The last sentence touches the crux of the matter: reputations - a
cardinal academic concern - can rarely be established through inter-
disciplinary studies, as knowledge which does not fall into estab-
lished categories can only be the concern of amateurs. Lip-service
is paid to all social sciences as "repositories of truth as it is
given to man to know it", Lone of them are regularly consigned to
Bertrand Russell's ash heap of "enterprises of methodical guessing",[99]
yet mine is better than yours.

Clearly, all of human knowledge is imperfect, and each discipline
thus contains its characteristic truths as well as the imperfections
inherent in its purposes and methodologies. Once these strengths
and weaknesses are understood, the strengths of one discipline can
be used to criticise and to remedy the weaknesses of other disciplines.
Knowledge about law and development - in isolation or considered
together - is currently so dispersed as to seem smaller than it
actually is. It can only be recombined meaningfully through a critical
interdisciplinary approach,[100] such as the one we are outlining. There
is no need for an Idealist weltanschauung of development, merely a
social science inter gentes which parallels the goals of many com-
parative lawyers.

Despite the existence of a few studies indicating that a legal
perspective has a valuable contribution to make to the solution of
development problems, most social scientists treat law as a given or
an exogenous factor - ceteris incognitis rather than ceteris paribus -
or dismiss it as a development constraint with an irredeemably un-
savoury impact. There are too many lawyers in developing states,
one such argument runs and, as a consequence, a formalistic legal
thinking which is antithetical to political and economic development

tends to dominate both government and the private sector. Many social scientists believe that this formalistic reasoning is grounded in an intuition which generates sentimentality, dilettantism and cynicism - the kinds of tendencies an 'objective' social science has been trying to expunge since the nineteenth century.[101] Orthodox Marxists tend to ignore law, viewing it as a class ideology - the world outlook of bourgeois societies which replaced the equally despised religious outlook of feudal societies (a change which has not yet taken place in Ethiopia). Other, less radical theorists, while according law some creative role in the maintenance of order, view law as a bulwark of the status quo, a restraint upon those attitudes of effervescence or innovation associated with a "development orientation". This preoccupation with law's static functions is excusable if it reflects a reading of the timeless body of abstract principles postulated by most Western legal textbooks, but it ignores the possibility that social control and dispute regulation can be made to serve dynamic ends, that law can be used actively to promote behaviour changes related to development. Social scientists tend to be rule-sceptics, but then so do many lawyers, and this scepticism is particularly justified by analyses of Third World legal systems.

Collaboration between lawyers and economists is limited, even in the West:

> Social sin in the economic sciences consists of imposing rules to sort out complicated situations. Social sin in the legal sciences consists in failing to work out logically a complicated set of rules. 102

One result of this lack of collaboration is that the economist often abjures action while the lawyer attempts to 'make do' with institutions which are antiquated from the economist's viewpoint. Legal institutions penetrate the very foundations of economics, providing the means by which prices and wages are agreed, business organisations formed and the economy directed and controlled. Law also provides the core of political data, lending precision to such amorphous concepts as power, influence and decision making. Nevertheless, law is held in contempt by many philosophers and political scientists, the latter believing that law fulfils very few of the objectives claimed for it, and the former seeing law as a humble, worldly obstacle to ascertaining a higher truth.[103] These views can be

maintained only at the price of having little effect upon the real world, a situation which would spell anathema for lawyers, impotence for development theorists, but a quite congenial state of affairs for some social scientists. We have discussed many potential meeting points between law and philosophy in the previous Section and will consider vital interrelations of law and politics in Part II.

It is the sociologists who most often pause to criticise law and legal theory. This is surprising, since most sociologists (and anthropologists) have enthusiastically adopted distinctions and techniques like those found in analytical jurisprudence - the ones some lawyers have been trying to circumvent for the last hundred years, in order to analyse law within its social context. In Western and socialist countries, statutes and codes are brilliant, but formal and idealised analyses of human relationships; they are thus as illuminating as the best of sociology. The fact that Third World statutes are at best imperfect predictors of behaviour ought to make them even more interesting to sociologists: the growth of law-in-action is inextricably linked with the rationalisation of man's understanding of social life that is at the core of development. [104]

Prior to the Ethiopian Revolution, analyses of stratified and fragmented legal systems could have told us much more about Ethiopian societies than those social scientists who served as Court historians, described an Ethiopian "ethnic museum", or stressed the "orality" (as opposed to an anal fixation) of the Amhara as a major determinant of social action. [105] Significant but fairly narrow legal changes occurring after the Revolution exemplify a transitional period in which some, but by no means all, of the traditional elites have been neutralised (or liquidated) and new directions are being tried, while stratification and fragmentation persist. Once again, the law-in-action is a record of what groups of people are actually doing, which is far more accurate than any amount of journalistic hand-wringing. [106]

B. Legalism and its Remedies

Sociologists make some lawyers restive when they stereotype legal aims and methods, client-oriented behaviour and lawyers' values. Like all stereotypes, these have gained credence because they are founded on facts (and common perceptions of 'fact' among sociologists)

concerning what may be termed the ideology of legalism. (The inter-relation of law and ideology is discussed in the footnote)[107]
Legalism has been transplanted, together with legal rules and as a part of legal education, to the Third World. Like other transplants, this one has been, fortunately, assimilated imperfectly: legalism is forced to compete with other indigenous and imported ideologies in the Third World to a much greater extent than in the West. There, legal positivism and analytical jurisprudence (discussed _supra_) place lawyers in a technocratic role and achieve those legal certainties required by a nineteenth century capitalism, in pursuit of Weber's formal and logical rationality. Augmenting the influence of analytical positivism, legalism has supplied the dominant (but by no means exclusive) attitudes and beliefs associated with the practice of law in the West. Under it, social relations are seen largely to consist of rights and duties determined by the rules and standards of legal institutions. Many lawyers regard these institutions as differentiated from the rest of the social order: rules, standards and ideals are constructed and elaborated in a semi-autonomous fashion, through "technical exercises within a normative tradition" as well as in reaction to social pressures.[108]

Law does not, of course, exist independent of the real world of financial and political support and control; the point is that it is a subculture perceived by insiders as possessing its own rules, values, ' science', history, constraints and politics. Most judges and lawyers proclaim loudly that their actions are non-political, yet the characterisation and attempted resolution of an issue as a legal rather than a political or social problem is an intensely political act. They equate the absence of law with a Hobbesian anarchy: law is regarded as rational and inherently desirable, without enquiring too deeply into the socio-economic interests embedded in its rules. Like other cults of professionalism, legalism reduces all of life to technical problems or administrative exercises which can be dealt with on a case-by-case basis. The dislike of vague generalities and the analysis of human relations in terms of rights generating claims and counterclaims lead to an intense distrust of such notions as political expedience, the public interest and the social good as cloaks for arbitrary action and incompetence. To be fair, the acts of governments, groups and

individuals provide abundant justification for these suspicions.
This cult of professionalism leads ultimately to a view of law as
fragmented, complex, changing, detailed and factual, and these
perceptions have, in turn, been cited as examples of C. Wright Mills's
"safe, colorless, multiple factor view of causation".[109]   While we
agree that these attitudes hinder legal change and social action
through law, it should be made clear that they are also a recognition
of reality: an accurate reflection of the ways in which actors in
legal systems fulfil their roles and an example of the ways in which
any social system resists the theoretical reduction necessary to fit
it into a tidy model. Legal systems are pushing in many directions
at once, a fact which must be dealt with if the interrelations of
law and development are to be analysed.

To a great extent, attitudes associated with legal profession-
alism are grounded in the courts' domination of the legal system, as
it is viewed by the analytical positivists. Learning law from
decided cases and judicial principles is like a Linnaeus studying
botany by examining cut flowers only. Law is seen as litigation
rather than as a programme for living together, and fact-finding,
administration, the exercise of discretion and the role of custom are
neglected. Judges, and thus lawyers, are compelled by the rules of
the game to prove that an essentially irrational legal world displays
successively better approximations of an ideal rationality. Naked
judicial expedience has no legitimacy and is therefore replaced by
the image of an administration of a unified legal system, in which
judicial interpretations link each decision to the others through
the fictions of the historical continuity of the common law, the
unlimited pliability of civil law concepts, or the ability to derive
concrete legal rules from the writings of Marx, Mao or Muhammed.
So long as good new law is seen to be derived from existing principles
in a closed system, law, like language, must be essentially conser-
vative, assimilating what happens with that which has already happened.
This tendency is reinforced by the fact that many lawyers sell their
services to the highest bidder, thereby serving those with the
greatest interest in preserving the status quo. Legal systems are
never entirely closed, however: legislation and administration are

not only allowed into court, but often deferred to. If a genuine
political _force majeure_ occurs, such as a revolution, lawyers are
often among the first to adapt; new statutes are important parts of
the law _positum_ and the rest of the legal system is transformed as
effectively as it had hitherto been preserved.[110]

This is precisely what is happening in Ethiopia, where practit-
ioners or legal academics have taken leading military or civilian
roles in the Revolution. Imported and freshly-created socialist
orientations are more relevant determinants of their actions than the
legalism we have described, which is but shallowly rooted in their
legal culture and in Ethiopian cultures generally. We are therefore
reluctant to reject a legal perspective on Ethiopian problems merely
because Western social scientists, including lawyers, are preoccupied
with the ideology of legalism. Certainly the "instant explanations
for all occasions", produced and purveyed by many social scientists,[111]
are no better than those of the legal profession; a rejection of all
of law because of legalism is like a rejection of economics as an
uncritical celebration of private enterprise, of sociology as a tool
for the oppression of the poor, or of political science as conducive
towards the maintenance in power of corrupt elites. Indeed, law
and other social sciences have often played these roles in the past
in Ethiopia, reflecting little credit on anyone.

Having said this, we ought immediately to acknowledge some of
the many ways in which legal studies can benefit from the application
of knowledge derived through the social sciences. Law cannot do
without general views of social structures and particular groups:

> constitutional law depends on some theory of the relations
> between government and governed, family law on some theory of
> domestic relations; even so abstract a legal concept as property
> derives much of its content at a particular time from
> /¯some of_7 the social values of that time. 112

While the validity of this proposition can be established on the
basis of our analyses of Ethiopia's legal systems (see Chapters
Three and Five through Seven), it emerges even more clearly at a
historical distance: from examinations of Babylonian, Jewish and
classical Roman legal systems, for example.[113]

A major defect in much of sociology of law is that it works out-
wards, from legal problems towards social science analyses rather

than placing the two on an even footing. As a result, the substantial limitations on the use of law are not properly understood and alternatives to law are insufficiently explored. Theories which emphasise social stratification and the ubiquity of conflict and change are useful antidotes to these conventional theories. Once the image of a wholly consensual society is rejected, the pursuit of individual self-interest through law is not necessarily in the interests of society as a whole, and the 'public interest' becomes an elusive creature. The successful settlement of isolated disputes becomes a hopeful attempt to regulate ongoing conflict processes. In such a society, few legal solutions are permanent and the legal system is changing all the time, by the addition and subtraction of rules. The analytical jurist's image of a legal system as a set of valid rules of interdependent normative meanings is replaced by a sequence of sets, like those concerned with other social norms and roles. Sociolinguistics demonstrates the fallacy of the "ambiguous middle" that bedevils jurisprudence and social thought generally. The use of the same symbol word in two different senses leads to the false identification of, for example, moral 'right' with legal 'right', or social 'justice' with legal 'justice'. Useful analogies between law and language can be developed, provided they are not pushed too far. For example,

> one can say an indefinite number of things in one language precisely because its rules are definite and its fund of sounds, words, and syntax is limited. Indeed, the normative order of society represents in a very real sense the language of its social relations. 114

Both Western and Marxist jurisprudence fail to deal effectively with practical politics (especially violent politics), the inter-relation of law, politics and development, and the definitions of and conflicts between human rights. Comparative politics can be combined usefully with comparative law in an attempt to supply these omissions. Progress is not guaranteed by merely choosing the 'correct' development theories for Ethiopia; it also depends on particular decisions and actions taken by real people, and critical development theories are thus necessarily rooted in the history and social contexts of particular states.

Because legal norms and organisational structures cross-cut virtually all other social institutions, they provide fruitful bases

for holistic studies of development. Law is a reasoning process,
as are all other social sciences, but it also embraces social mech-
anisms concerned with making decisions which have an immediate pract-
ical effect and with regulating concrete, non-postponable disputes
arising out of everyday life. Other social scientists could create
effective decision-making institutions but have never done so, and there
is no reason why they cannot use law's, provided all of the parties
understand and sympathise with each other's methods and purposes.
The lawyer's qualifications for interdisciplinary decision-making
are excellent: he has been trained to function as a generalist, to
peep over the partitions of specialists. For example, Peter Self
argues that economists ought to play a leading role in the appraisal
of administrative performance, as their training promotes sensitivity
towards the interrelatedness of things and counteracts the administrator's
feeling for the separateness of bureaucratic structures. This training
can also be a handicap, Self admits, for if the economist converts
all bureaucratic outcomes into the common denominators of loss and
gain, his assessments are too crude and arbitrary to provide
meaningful public policy guidance. An administrator who receives
policy advice from an economist must disentangle the economist's
predictions, which are subject to wide margins of error, from the
values implicitly assigned to possible outcomes. An individual's
theoretical predilections are likely to affect the balance of his
judgment concerning tradeoffs, such as the one that allegedly
exists between unemployment and inflation.[115] Although Self praises
economists, we are also left with some pretty strong arguments for
narrowing their policy-making role. We argue that lawyers can
perform many of these tasks as well or better, based on their extensive
experience with the interrelatedness of things, the flexible appli-
cation of standards and, above all, with value judgements.

C. Value Judgements and Development

Given the explicitly value-laden orientation of normative
approaches to problems, such as law's, those social scientists who
believe their work to be value-neutral or even value-free criticise
or, more typically, ignore normative contributions. Their analyses
presuppose the rigid separation of fact and value, the easy and
reassuring formula of our intellectual youth that arises from the need

to be taught that what we like may not be the same as what we have
-- and that what we have is not always worse than what we think we
want. True, David Hume and a subsequent empiricist tradition raised
the cleavage of fact and value to a first principle, but this approach
is incompatible with critical theories of society and development
and cannot withstand careful scrutiny <u>from a social science perspective.</u>
Whether true or false, Hume's scepticism arguably represents the
bankruptcy of eighteenth century "reasonableness"; in any event,
he cheerfully ignored it while writing about social problems like
any other enlightened moralist of his time. At the very-least,
values such as honesty, integrity, judiciousness, caution and con-
scientiousness are a necessary part of any worthwhile scientific
or social science inquiry. Rigid distinctions cannot be maintained,
even in the natural sciences, where values determine what is studied,
how scientific resources are allocated and the kinds of ideas that
attract the commitment of the scientific community. The fallacy of
the "ambiguous middle", discussed <u>supra</u>, encouraged empiricists to
identify social 'science' with natural 'science'. Clearly, however,
social life is too complex and too vulnerable to human and environ-
mental forces for analyses to be as precise as those of the natural
sciences;

> to eliminate value judgments from the subject-matter of social
> science is to eliminate the subject itself, for since it concerns
> human behaviour it must be concerned with the value judgments
> people made. 116

Black people know that racism is cruel and unjust and the unemployed
realise that the economic system is harsh and arbitrary; this knowledge
affects their actions and the thoughts and actions of others. Ideas
and ideals move people, and there is thus no way to avoid incorpor-
ating knowledge of them into social science analyses. The only
danger is that this knowledge will substitute for rather than comple-
ment careful observations of what actually happens.[117] Utilitarian
analyses such as Harvey's can tell us if a particular result is
economically efficient but not if it is good or just. To determine
this, albeit in an imprecise, 'unscientific' fashion, we need to
operate a normative system like law, which takes account of an accept-
ance of the ideals to be approximated (racial tolerance and full

employment, in our examples), at least by the politically-significant sections of the community. In this way, law can be used to destroy the 'ought' and 'is' dichotomy "because the value and the factuality of law coalesce in the specified ongoing condition as it moves toward its goal." Whether society stops short of or deflects from a goal depends upon the strength of the pull of the 'ought' against the inertia of the fact - the 'is',[118] as well as on the outcomes of conflicts between the 'ought' under consideration and the other facts and 'oughts'.

The idea of development is very much the pull of an 'ought' against the inertia of the facts of underdevelopment. Once we recognise that the growth of real per capita GNP is a simplistic criterion upon which to judge complex development processes,[119] we need to find other criteria. These criteria are necessarily value-laden, as they postulate oughts - varieties of social, economic and political justice - which are deemed more desirable than both the 'is' of underdevelopment and other possible 'oughts'. Conventional social scientists disguise the values they associate with development as facts, as rationalisations, as beliefs about reality or even as the choice of subject-matter for research, yet most Third World politicians have no difficulty in penetrating these disguises. They treat social scientists as though the latter are saying "I prefer" rather than "I know".[120] If they are to have any impact, these preferences must be justified persuasively - to politicians, businessmen and peasants, rather than to academics or foreign 'experts'.

A spirited advocacy of that which one feels to be right is, unfortunately, rare in most social scientists, whose dispassionate approaches are frequently mistaken for, and occasionally used to conceal, a lack of interest in the practical implications of their scholarship. Law approaches the subject-matter dealt with by other social sciences from a different direction. Despite the nonsense that has been written about a legal science, law does not purport to be scientific; its techniques are the deductive ones of a Euclid rather than the experimental empiricism of a Galileo that is only of limited usefulness to the social sciences. Law is more flexible than science and must therefore be used with care: a lawyer can choose the material to be considered and from among competing

analogies, while scientists are expected to account for all relevant
materials and are prohibited from using analogies; changes in science
are the result of changes in perceived facts, while law also changes
in response to moral and policy considerations; and legal principles
are induced to decide 'cases', while scientific cases are part of
the material out of which the principle is drawn or tested. Thomas
Cowan has analysed other differences between law and science:

> I believe that law contains an immense mass of feeling judgments
> and I invite the social scientist to study them empirically.
> I think that when feeling conflicts with fact the former pre-
> vails in the law. The law is thus one of the great counterparts
> of science, since in science the conflict is supposed to be
> resolved the other way. . . . Law is a system for organizing
> and systematizing feeling judgments. . . . It has a whole host
> of techniques for settling disputes on moral bases. It is a
> low-level morality. . . . 121

While philosophers are debating values and manipulating them to
arrive at value/feeling judgments which are often thin and jejeune,
the legal system implements systems and values and uses them to deal
with the often mundane or messy conflicts of everyday life, rather
than dealing in the scientific and pseudo-scientific generalities
pronounced by other social sciences. Like all of us,lawyers
sometimes use archaic or contradictory techniques, treat circular
statements as though they reveal important truths, and jump to
conclusions which others would not accept, but they also try to
determine the 'better or worse' in a social situation and to justify
their value judgements rationally, in an attempt to legitimate them.
Viewed in this light, the methods employed by natural lawyers are an
intimate part of all legal systems - the search for bridges between
fact and value or, more specifically, between _certum_ (authority) and
verum (reason). There are strong arguments for complementing
social science approaches to development with analyses drawn from
law, a flourishing concern with a long history of the more or less
successful and purposeful regulation of behaviour, and an extensive
experience in analysing the precision of concepts, the internal
consistency of models and policies, and the likely consequences of
policy implementation.122

Having stressed the importance of values in social science
analyses and having detailed some of the means by which they can be
incorporated expressly, we will conclude this section by setting out at

some length those values which ought to constitute the basis of any
study of Ethiopian development. Our conclusion is that few improve-
ments can be made on the excellent value analyses found in Gunnar
Myrdal's Asian Drama, and parallels will be drawn between the problems
of Ethiopian and South Asian underdevelopment throughout this study.
We shall describe what is essentially an Ethiopian Drama, the mounting
of economic, social and political tensions and a sense of individual,
group and governmental actions speeding towards a climax which can,
however, be perceived but dimly. Those values which Myrdal terms
"modernization ideals" amount to an ideology of development, which
he variously describes as "almost a national religion", a powerful
strand of the new nationalism, and the declared goal of development
planning. Economic development can therefore be redefined as the
progressive supplanting of traditional values, which are independent
of or contradict the demands of development, by valuations which are
instrumental in achieving the end-products of development.[123] This
definition poses the problem, once again, of the inherent conflict
between Western individual political rights and economic develop-
ment. Adopting Myrdal's terminology, these political rights are
partly independent and partly instrumental and, even if direct
political repression is avoided, it is inevitable that a growing
sphere of instrumental values will impinge upon these political
rights in a manner roughly analogous to what is happening in
social democratic or welfare states.

Eleven of Myrdal's modernisation ideals will be reformulated
slightly in order to increase their relevance to Ethiopia.

1. Rationality must become the cardinal assumption of policy formu-
lation, implementation and enforcement.
2. Flowing from the first ideal are perceptions of the need for an
effective and overarching development planning.
3. Modernisers expect development planning to secure long-term
increases in per capita productivity - the prime concern of con-
ventional economists.
4. Levels of living must rise from their present appallingly low
levels, such as the Ethiopian ones described in the previous Chapter.
Although many economists believe that this goal must be postponed in
order to realise the levels of capital accumulation necessary to
increase productivity, improved living standards are preconditions to
higher levels of labour efficiency and availability, and to changes in
skills and attitudes - all of which promote productivity increases.
5. Greater equality in status, opportunities, wealth, incomes and
living levels must be secured by altering existing patterns of
stratification. Some economists argue that such an equalisation would

hinder productivity increases, but the opposite can be argued more convincingly, especially in Ethiopia (see Chapter One).

6. Certain institutions and attitudes must be changed in order to raise productivity and labour efficiency and mobility, to stimulate entrepreneurial abilities and equality of opportunity, and to promote development generally.

7. A genuine national consolidation must take place. This is an especially important goal in Ethiopia, given the numerous fissiparous tendencies that were discussed in the previous Chapter.

8. The achievement of a meaningful national independence is the goal emphasised by most Third World governments. In the previous Chapter, we analysed the high degree of Ethiopian military dependence that makes a mockery of legal notions of sovereignty. On the basis of analyses presented supra, we argue that the fourth through eighth of Myrdal's modernisation ideals - congruent with the primary goals of the structural transformationists - are, if anything, more important to an Ethiopian development than they are in South Asia.

9. Myrdal offers (a presumably Western-style, political democracy as his next modernisation ideal. While this ambition was declared in the constitutions and electoral process of both the South Asian states and Ethiopia, it has never taken root in Ethiopia (see Chapter Three) and those members of the modernising elite who advocated it have been circumvented, isolated or forced into rebellion. There is, in fact, little evidence of the zealous pursuit of Western democratic values in the Third World, except in a few countries located largely in South Asia. Likewise, another of Myrdal's ideals, grassroots democracy, must be altered to be made relevant to Ethiopia. We therefore formulate a ninth development value as the pursuit of an administrative decentralisation, combined with the essential (but fairly minimal) degree of local public participation that is necessitated by policies aimed at promoting a "development from below". These kinds of policies would augment the meagre resources available for development activities.

10. Following a socialist model, it is necessary to raise the level of social discipline in order to hasten the disappearance of the "soft state" and to stimulate economic activity.

11. Finally, Myrdal mentions value premises derived from his other ideals, including a preference for non-discretionary economic controls over discretionary ones. We will follow Myrdal's practice and analyse these value premises as they emerge from discussions of more specific problems.[124]

Existing outside of these ideals is a multitude of valuations which put them into perspective: some support development and others are neutral or ambiguous; some inhibit governmental action and others are obstacles to development when translated into the behaviour of non-participants in the development process.[125] While it is significant that he mentions these values when so many others have neglected them, Myrdal's analysis underestimates the strength of the desire for political power among certain individuals and groups. Those who have power work to keep it and those without

power pursue it avidly, and where short-run political desires and long-term development policies conflict, the former almost always prevail. To that extent, political activity is a development constraint, but the picture is not so simple. A minimum of political stability is a vital precondition to development, and improved levels of living are often (but by no means always) conducive to the maintenance of an elite's political power. Political development is instrumental to other forms of development and can only occur as a result of repetitive political activity. Further discussion of these complex issues is postponed to Part Two.

Do Myrdal's value analyses represent a substantial advance over the ideas of the modernisation theorists, discussed _supra_? We would argue that they do. He was one of the first social scientists to express personal viewpoints as values rather than as facts. They are presented in sufficient detail to enable the reader to accept or reject them intelligently, having considered persuasive justifications. Uncontrolled biases or the "fortuitous and narrow political or strategic interests of one country or one bloc" have been rejected in favour of what Myrdal accurately terms "the universal and timeless values that are our legacy from the Englightenment." He recognises that, in choosing these values, "we are, in a sense, taking these nations at their word", and that we are examining what are, for the most part, the values of the educated and politically articulate portion of the population.[126] We could, in fact, derive these same ideals by distilling many of the voluminous pronouncements made by the Ethiopian military regime under the banner of Ethiopia Tikdem (see Chapter Four), although the first and second ideals - rationality and planning - are given less recognition than they perhaps deserve. The importance of such an ideology of development lies in the fact that knowledge of the cruel and unjust conditions of underdevelopment moves people. The extent to which this knowledge is diffused through ideological or other means determines, to a greater extent than is often realised, the nature and degree of commitment to - and hence the chances for success of - development programmes. Knowledge and values belong to individuals rather than to institutions[127] but, once individual choices which promote development are made, institutional resources can be used to bolster

these choices. Myrdal's modernisation values come to life when
applied in policy formulation and implementation and when the public
begins to demand that government adhere to its professed ideology.

IV. A Tentative Formulation

Having outlined the interdisciplinary approach utilised in this
study, we will proceed to assemble some of the relevant elements of
a law and development analysis. As economics is the progenitor of
development studies, our starting point is a quotation from Paul
Samuelson's popular economics textbook:

> Economics is the study of how men and society choose, with or
> without the use of money, to employ scarce productive resources
> to produce various commodities over time and distribute them
> for consumption, now and in the future, among various people and
> groups in societies. 128

Samuelson emphasises the key variables of what is needed – an
"integrated social science of public choice"[129] – for, as Fredrick
Barth notes, the

> most simple and general model (of man in society) is one of
> an aggregate of people exercising choice while influenced by
> certain constraints and incentives . . . . Our central problem
> becomes what are the constraints and incentives that canalize
> choice. 130

In the context of development, the incentives are the expectations
of personal, group and governmental benefits arising from a multi-
tude of development processes, and the constraints consist largely of
resource scarcities. The concept of scarcity utilised by economists
has received inadequate attention from other social scientists. Law,
for example, rests on the "stubborn facts enforcing scarcity of
life satisfactions"; a scarcity of resources means that the important
issues concerning social relations revolve around those institutions
which allocate them: markets, governmental, social and religious
organisations, and the family.[131] By definition, various social,
political and economic resources are scarce in relation to the
material and non-material wants existing within all societies, and
it is only through a study of relative scarcities that we can draw
distinctions among underdeveloped and more developed states. In a
country like Ethiopia, resources are extremely scarce, both in
relation to those of the more developed states and to the magnitude
of the problems Ethiopia faces.

A. Development Resources

Barth's general formulation enables us to visualise various types of resources - which are better viewed as flows rather than stocks - as interchangeable to a much greater extent than most economists, political scientists and sociologists would have us believe. A government can impose wage settlements favourable to politically powerful trade unions, upon wealthy but less powerful industrialists, and politically discontented young elites can be bought off with relatively well-paid bureaucratic posts. This list could be multiplied endlessly, but the point is that levels of political, economic or social development vary widely among particular social groups, as these levels depend upon the amounts of particular resources available and the efficiency with which they are used. Deficiencies in one area can be compensated for by transferring resources from another, in accordance with perceived (usually political) priorities; an economic crisis can be transferred to a political arena and vice versa.

These and other transfers are made in the expectation of gain from exchanges in what may be defined as broad 'markets'. Traditionally, production is seen to be governed by economic markets while political markets are preoccupied with matters of distribution. This distinction has broken down, however, and the two markets are separable for analytical purposes only, lying as they both do at the nexus of structure and power. If we define economic resources (factors of production) as land, labour, capital, technology and entrepreneurship, it is obvious that the state could supply any or all of these resources, as in the Adola goldfields which were mined by Haile Selassie's convict labour. The predominantly political resources are coercion, administrative capacities, legitimacy, communication, ideology and penetration.[132] As these resources may be less familiar than the economic ones, they are discussed in greater detail infra. Most individuals and groups in society take part in both production and distribution, having incomes and the capacity to grant or withhold political participation and loyalty at their disposal.

Thus far, we have done little more than flesh out Habermas's schema, discussed supra: ideally, political steering functions are

exchanged for revenue from the economic system, while social welfare and related political and material rights, including the right to be left alone in some circumstances, are granted by elites in return for revenue and public loyalty.[133] Wealth and power – the capacity to achieve desired results – stem from the conttol over predominantly economic or predominantly political resources respectively; both confer a measure of control over the behaviour of others and can be defined in law as 'property' (see infra). In the short run, the pursuit of wealth and power seems to be a zero-sum game, in which winners can profit only at the expense of losers (see infra). In outline, we argue that, if development – a raising of the game stakes – is to take place, a structural transformation of subsistence and small-scale markets is required. Much of the essence of such a process is encompassed by what some theorists have termed politicisation: the altering of exchange relations in economic and social markets, and the penetration of rural political and economic markets by national institutions established or transformed under law. It would include: social mobilisation; the growth of literacy, urbanisation and occupational mobility; the channelling of demands through national political institutions; expanding productivity through a government-sponsored equalising of imbalances in the distribution of factors of production; and the monetisation of the economy through a national network of markets. Development is the outcome of more numerous and mutually-profitably exchanges in broadened markets, which generate a cumulative expansion. in the volume of resources. For example, the process of capital absorption becomes more fruitful, in terms of promoting development, if it takes place within a larger network of interlinked communities, with differing levels of natural resources and rates of capital accumulation .[134] If this happens, the commercial profitability of investments can be aligned more firmly with their social profitability, and capital can be mobilised in rural areas and channelled away from the types of urban investments that confer few social benefits.

The pursuit of wealth and power in the long run is therefore far from a zero-sum game, and those who already control resources can, ceteris paribus, expect to acquire new ones.[135] We cannot, however, assume that these positive-sum possibilities are apparent to all of the players, who are not necessarily resource maximisers. A radical

growth in resources also means more controllers, and the relative
positions of the wealthy and the powerful are eroded. If they are
satisfied with their present positions, they may use their resources
to staunch the growth of the resources of others or to ensure that
such growth as takes place will remain firmly under their control.
The effect of these market restrictions on development is obvious
and, in a highly-stratified society, the poor and powerless can do
little to alter the manner in which resources are allocated. If
the wealthy and powerful are willing and able to prevent a progressive
reallocation of resources, others - often frustrated middle-level
elites - will attempt to destroy the ceteris paribus conditions of
production and distribution. Highly-stratified societies are thus
antithetical to development, if elites can forestall the necessary
reallocations of resources and the structural transformations of
small-scale markets. Such transformations and reallocations would, of
course, reduce the degree of stratification.

B. Law as a Resource

What does law have to do with all of this? The short answer is
that it is a device used by the players for resource allocation and
for communication, education, implementation, legitimation and social
integration. Just as market mechanisms allocate resources within an
idealised capitalist economy, so law allocates social, political and
economic resources in mixed and thorough-planned economies, but in a
far less mechanical way. This interrelatedness of law and economics
has been approached from a different perspective by F.A. Hayek:

> the rules of just conduct which the lawyer studies serve a kind
> of order the character of which the lawyer is largely ignorant;
> and . . . this order is studied chiefly by the economist who in
> turn is similarly ignorant of the character of the rules of
> conduct on which the order that he studies rests. 136

The key feature of resource allocation within economic markets
and through law is that resource use can be severed from resource
control. In law, use is governed by 'contract' and control by
'property', concepts we define broadly in order to encompass
relevant rules of public, as well as private law. Economic systems
differ largely in the legal institutions through which they operate,
and in the relationships established among varying mixtures of
private, group and public property.[137] Particular mixtures are

basically the result of political choices, canalized by ideologies
and social values, between the private or public coercion that stems
from control over resources - with an intermediate category of
organised interest groups which control resources and thus influence
governmental action. All governments have, with varying degrees of
enthusiasm, taken up economic activities, and political functionaries
have been recognised as controllers of entrepreneurial energies and
capital. 'Political' events thus have wide-ranging socio-economic
effects, and law is increasingly used to fortify the regime in
power, whose claim upon public obedience is strengthened by the
growth of political control over resources. Whether this is conducive
to development depends, of course, on the way in which the resources
are used; under Haile Selassie, there was no desire to use this firm
political control over many significant resources to develop the
economy broadly (see Chapter Three).

Discarding the excesses embodied in the ideology of legalism
(see supra), development requires that individual, group and state
actions be both predictable and flexible. Predictability, in a
dynamic modernising situation, requires that power (property - control
over resources) be exercised pursuant to a communicated and compre-
hended rule - legality - so that politically-defined policies move
towards predetermined but programmatic goals (see Chapter Five). This
process, in turn, presupposes logical sets of rational rules which
reflect a balance and sense of proportion among political goals
(see supra). Once legality is established in relation to these
goals, other limitations on governmental power may prove unnecessary
and even serve as stumbling-blocks to development and to rapid
policy formulation - with narrow and complex exceptions in the areas
of human rights and the control of bureaucratic venality and incom-
petence (see Chapters Five and Eight). Since policies and priorities
are going to be politically determined anyway, development cannot
proceed in the absence of the large reserves of political power
needed to implement these policies. Political power is thus a
necessary but not a sufficient condition for an overall development,
as we shall see in Chapters Six and Seven.

Despite the absence of meaningful legal limitations on the
exercise of political power in Ethiopia, power was merely conserved

in a zero-sum game rather than allowed to grow. The fullest exercise of centralised and organised political power in the interests of development would have infringed the ability of powerful individuals to control resources and people, and existing political systems could not have managed the conflicts that would have resulted (see Chapter Three). There was thus no felt need for a flexible, predictable and logically structured legal system among traditional politicians.

We have argued that the control over resources by the wealthy and powerful in a highly-stratified society is antithetical to development. Much of the Western lip-service towards, and constitutional protection of, private control over resources must therefore be dispensed with in the interests of development in the many Third World states that display a high degree of social stratification. A combination of predictability, flexibility and legality (as we define it) could, in any event, provide a measure of individual and group protection which is roughly analogous to that found in contemporary Britain under an unwritten Constitution. But what of more expansive guarantees of political rights and of socialist-inspired material rights? In all countries where strong limitations on governmental power are absent, including Ethiopia, these rights are transgressed or never allowed to emerge in the first place. Inherent conflicts among these rights and their relationship to political development and development generally are the most difficult issues dealt with in this study, and a fuller consideration of them is therefore postponed to subsequent chapters. For the present, we argue that the content of public and private laws and the manner in which they are applied (or ignored) accurately reflect the relationships among individuals, groups and the component parts of government. These relationships tend to be unequal, as demands which are contrary to the political goals of small elites are seldom accorded an effective recognition. Law and politics are not severable in reality, and politicians have the power to curb the autonomy of the legal system politically, financially and through recruitment and socialisation policies, ideology and plain terror. The costs of such actions, in terms of the loss of governmental legitimacy, are smaller than most lawyers would like to admit. It therefore makes

little sense to analyse law as an autonomous system, save as a
sounding board for an assertion of individual and group demands.

Although long-run solutions to development problems require the
progressive accumulation of the resources we have mentioned,
individuals, groups and governments must in the short run apply an
optimum allocation of available resources to competing development
policies. As existing allocations can always be improved upon, the
pursuit of wealth and power is never a zero-sum game, even in the
short run. In Ethiopia and elsewhere in the Third World, efficient
allocations have not been achieved by a wholesale importation of
foreign laws and a careless use of public law institutions. If
law is used to promote development in an ineffective manner, both
law and development policies may become suspect, thereby eroding
governmental legitimacy. Resource allocation through law must ensure
that all available resources are mobilised and concentrated within
those narrowly-determined areas which most constrain development.
Much of the balance of this study constitutes an elaboration of this
argument. Unless social scientists can ascertain development
constraints and policy alternatives precisely, politicians cannot
make informed choices and lawyers are unable to design effective
laws.[138] The lawyer's role is not a purely technocratic one
however, as many middle-level policy decisions fall to them by
default. The role of law in relation to the social sciences is to
translate macro-policy proposals into detailed working rules. The
lawyer's concern with individuals and their rights is a useful
antidote to macro-level social science aggregations of behaviour, in
which the interests of individuals and groups tend to be submerged
in a mass of data. Useful definitions of the public interest in
particular areas can be assembled after striking a balance between
social science and legal approaches, and these definitions can then
be persuasively justified to the relevant politicians.

C. Policy Formulation and Implementation

Despite the frailities and fictions we have described, law is
unmatched by other social institutions in its ability to force men to
define ends and means clearly.[139] The contrast between the explicit

analysis of values and the technical requirements of law and legal
drafting on the one hand, and the informal, wishful, fuzzy and some-
times deliberately misleading thinking of businessmen , politicians
and, alas, many development theorists on the other, suggests that
law ought to be the focal point for public policy studies and decis-
ion-making. The process of preparing legislation or regulations
exposes ruthlessly the express and inherent conflicts among competing
policies and their supporters, and provides an opportunity for
determining what need not be done, as well as what must be done and
what can be done. Under conditions of acute resource scarcity,
it is somewhat comforting to know that, since priorities in the
elimination of many obstacles, especially attitudes and personality
characteristics deemed inconsistent with development processes, can
be postponed.[140] Ideally,by forcing all policies to compete for
resources within one coherent legal process, the essential can be
separated from the merely desirable. Meaningful cost-benefit
analyses can only be undertaken if all factors are considered,
including the consistency of new policies with choices already made
and embodied in rules. Difficulties in developing and administering
particular laws often reflect careless policy choices or unresolved
value conflicts. If an otherwise sensible policy is not or cannot
be embodied in law, it runs the risk of being ignored and should be
reformulated.

It is at the stage of policy implementation where law most
obviously parts company from the other social sciences for, as Portia
noted: "if to do were as easy as to know what were good to do,
chapels had been churches and poor men's cottages prince's pal-
aces".[141] Law focuses on doing as well as knowing and, while law .
cannot impose an entire social order, it can confirm or support, for
good or ill, both the status quo or a projected new social order.[142]
Law's role in allocation and implementation is conventionally termed
social control (see supra), a concept which immediately raises the
questions: control of whom? for whom? by whom? For example,
legal definitions of private, public and group property help to
answer the question of who gets what in society. These questions are
also answered by the development planning process that is based
upon the state's (often theoretical) command over all of property.

Social control through planning involves both the allocation of resources and the distribution of rewards flowing from resource use -- a grand attempt at a social contract. By focusing on the problems of implementation, law forces government to concentrate on reality at the plan preparation stage by insisting upon a full specification of plan targets and necessary resources. Private economic activity can also be made a firm part of the planning process through legal controls and the design of a facilitative framework of private laws which serve to implement long-term development goals. Careful choices must be made between less controllable development strategies working from the bottom up, including the regulations and incentives embodied in private law, and those operating from the top down through public law and administration. The former strategy asks much of the unorganised and underendowed, but it also tends to confer legitimacy on the regime and its policies and to decrease the amount of coercion needed to maintain political stability.[143] Some mixture of these strategies is inevitable as neither, taken alone, can obtain the fullest benefit from development processes. (The mixture chosen by Ethiopia's military regime is evaluated in Part III). Inherent conflicts between the ways in which public and private laws are used (discussed in Chapters Five and Seven) amount to significant development constraints, in Ethiopia and elsewhere. The situation is complicated further when, as in Ethiopia, customary laws which are largely beyond governmental control continue to have a substantial impact -- in the area of family law, for example.

It is at the implementation stage that most development plans fail. The "economics of development are not very complicated; the secret of successful planning lies more in sensible politics and good administration."[144] A major reason for implementation failures is the existence of Myrdal's "soft state":

> policies decided on are often not enforced, if they are enacted at all and. . . the authorities, even when framing policies, are reluctant to place obligations on people . . . . /The/ success of planning for development requires a readiness to place obligations on people in all social strata /and/ rigorous enforcement of obligations in which compulsion plays a strategic role. 145

We can add that as resources of compulsion are extremely limited,

the strategy for their use must be devised with particular care, and
that law has a major role to play in the elimination of the "soft
state".

Ethiopia's experiences with planning mirror the views of
Myrdal. Although experts can debate the fine points of the various
Five Year Plans, the Plans were basically sensible, given the fact
that structural transformation was impossible under Haile Selassie's
regime. Many problems relating to Plan preparation could have been
dealt with effectively through law, although this was never done.[146]
The major problem was, however, that Plans were virtually forgotten
by the bureaucracy as soon as they were published. If a bureaucracy
is to participate meaningfully in development, its activities must
be structured around sensible targets and projects specified by
thorough development plans. This, in turn, entails a major admin-
istrative law reform, and the low levels of bureaucratic commitment,
honesty and competence found in much of the Third World must be dealt
with creatively. These issues will be analysed in Chapters Five
through Seven.

D. Law and Other Political Resources

It is difficult concretely to describe the role of law in promoting
integration, as social science thinking in this area is particularly
fuzzy. Integration connotes an important extension of the capacity
of social systems which results from the broadening of subsistence and
small-scale political and economic markets - the building of links
between the centres and the peripheries and among rural areas (see
Part III). Media of exchange guaranteed by law - monetisation in
rural economies, credit, channels of communication, political part-
icipation, access to education and jobs on the basis of merit, trade,
simple and enforceable contracts, voluntary, cooperative and business
associations - are needed to encourage the smooth flow of resources
necessary for development. Unfortunately, in Ethiopia and in many
other Third World states, a high degree of ethnic, religious and
linguistic heterogeneity and gross inequalities in the distribution
of control over resources constrain governmental attempts to promote
social integration and narrowly restricts the availability of other,
development-related policy choices. Strong disintegrative forces
exist in most societies, but Ethiopia is non-integrated even in

comparison with most other Third World states; internal armed combat
has been a constant feature in recent years (see Chapter One). Trad-
itional integrative devices such as conquest, the charismatic auth-
ority of an Emperor, and the progressive Amharisation of an Ethiopian
national culture and legal system were not designed to promote
development and failed to secure a high degree of national unity --
the ultimate prize of social integration. When compared to schools,
economic systems and so forth, law is a particularly useful integrative
device: uniformity, a socio-economic equalisation, education, per-
suasion, sanctions, protections and legitimation can be built into
the same legal rule. A large-scale society necessarily requires
wide-scale (or uniform) law, yet the stratification and ethnic
fragmentation of Ethiopian societies find expression in a plurality
of customary laws and in disparate applications of national laws.
While, for the most part, a homogenous society constitutes law, it is
possible for law to constitute a new society where 'pluralism' is
endemic - where the state exists prior to a national society which
may or may not emerge.[147] A strong state could actively promote
laws which cut across community differences and offer incentives which
advance the cause of integration. A national culture and legal system
could evolve simultaneously, so as to reinforce each other.

Contrary to the assumptions of some analytical positivists, the
mere existence of a legal system does not necessarily lead to public
acceptance of it or of the regime that promulgates it. If lawmakers
lack authority in the eyes of the people, as in many colonial
states, in the China of 1900 to 1930 and in many parts of Ethiopia today,
the mere existence of law generates instability as well as stability,
or it is simply ignored. Authority can be defined as legitimated
power: the ability to make people think that a claim to obedience is
self-evident, which is possessed by businessmen,priests, army
officers, etc., as well as politicians. Legitimacy amounts to a
faith or trust in organisations and procedures, and is thus a
resource in its own right: fewer resources of other kinds are needed
to secure compliance with directives regarded as legitimate. The Latin
origin of the term connotes legality or a conformity with law.
Coercion and legitimacy are often used together or as substitutes
for each other; might makes right and right makes might. This

dialectic of effectiveness and validity has been a central concern of modern Western political philosophy,[148] and we have described these inquiries as one of the links between an 'is' of power and an 'ought' of right (see _supra_).

A major distinguishing characteristic of underdeveloped countries and a fundamental cause of political instability is the relative scarcity both of coercion and legitimacy. Third World politicians have relatively little long-term bargaining power, for they have little to exchange for mass loyalty. Legitimacy tends to be the property of individuals rather than more permanent institutions, and it is frequently dissipated by policies which stimulate public feelings of governmental injustice and incompetence, or by the periodic advent of new regimes with radically different formulae of political rule. Many revolutionary regimes, like Ethiopia's, squander initial funds of goodwill by failing to implement sensible policies quickly. These recurrent legitimation crises are manifestations of the worldwide collapse of traditional legitimation devices, such as colonialism and the divine right of kings that is still accepted in some parts of Ethiopia today. Once it becomes a rebuttable presumption, legitimacy can only be fostered and conserved through pragmatic politics and discursive justifications[149] — government by consent and/or manipulation.

To what extent does the legitimacy of political processes rest upon the legitimacy of legal systems? Consider the position taken by many analytical positivists, exemplified by Hans Kelsen:

> even from a sociological point of view, only a domination considered to be 'legitimate' can be conceived of as a 'State' . . . . The domination is legitimate only if it takes place in accordance with a legal order whose validity is presupposed by the acting individuals. [150]

Kelsen's assertions contrast sharply with political realities: there are many extra-legal sources of legitimacy, such as revolution, ideology, coercion, the politics of charisma or mobilisation, and the wise exercise of an administrative discretion unfettered by law. In the real world, portions of a legal order can serve to legitimate government's actions while other parts stimulate opposition, and extra-legal institutions may both be regarded as legitimate and make the predictable and flexible decisions necessary for development. Kelsen's arguments only become relevant after all of a country's laws have become "positivised":

> when the legitimacy of pure legality is recognised, that is,
> when law is respected because it is made by responsible decision
> in accordance with definite rules. 151

These conditions do not obtain in the Third World or even in many
sectors of 'modern' legal systems, but the advantages , in terms of
fostering governmental legitimacy, are obvious.

It is easier to deify a legal system than a flesh-and-blood ruler.
A fully elaborated and widely accepted code of laws encourages the
public to think that their affairs are being handled in a mechanical,
precise and objective fashion, and to present their demands within
frameworks established by law. The mere existence of a law then
shifts the balance of power considerably against those whose behaviour
is regulated or prohibited. Individuals and groups may grumble about
particular outcomes, but they will take care to avoid endangering an
institutional stability seen to be, on balance, serving their interests.
A positivised legal system - the progeny of legal positivists -
therefore postulates the replacement of rule by the few with the
general will, mediated through the rule of law rather than a Rous-
seauian utopia - and positive law acquires the character of a natural
law. Such a system combines positivism with heavy doses of legalism
and other Western ideologies (see Chapter Five); it can be main-
tained in a highly-stratified society only if considerable deception
and self-deception are practised. The positivist's focus on the
entire legal order is misplaced: although an institution which is
not acting in the perceived best interests of politically-significant
segments of the public loses its legitimacy quickly, there is little
evidence to suggest that this loss has much of an adverse effect on
other institutions. Individuals and groups tend to balance
rationally the (sometimes irrationally perceived) advantages and
disadvantages of each institution.[152] In the context of develop-
ment, particular institutions and demands can be legitimated through
the careful use of law in resource allocation and policy implemen-
tation (discussed _supra_) . A legitimating legal system could thus be
constructed brick by brick, on an a _priori_ basis, if sufficient
attention is devoted to the overall structure which will result.

We have already mentioned the partial interchangeability of
legitimacy and coercion, which involves the use of violence sanctioned

by the control over other resources (including legitimacy) defined in law as property. Although the state may have a monopoly of legitimate force, it does not monopolise the other forms of effective coercion and inducement that by and large dictate the ways in which legitimate force must be used and the effectiveness of its applications. The level of effectiveness of governmental coercion is lower than most theorists assume, given the relatively small share of total productivity that even the most repressive of regimes can harness. Coercion is not necessarily productive since the losses of all the parties may be greater than their gains, especially if long-term political costs are taken into account. Coercion does not create law, but it may establish an order out of which law emerges - as in Ethiopia (see Chapter Five). Coercion is expensive to organise, chokes the energies of those who use it and stems the supply of the information necessary to decision making. There is, of course, an inverse relation between the application of coercion and the voluntariness of exchanges which promote development,[153] yet there is a strong case for using coercion strategically and in small doses to overcome major development bottlenecks and to raise the levels of social discipline. The idea of using coercion to promote development shocks many Western theorists, but a reluctance to use it when necessary contributes to the perpetuation of Myrdal's soft state. Public law is notoriously weak when it comes to limiting and allocating coercive resources and regulating relations between the 'haves' and the 'have nots' (see Chapter Five).

In present-day Ethiopia, it cannot be assumed that the military Government possesses a monopoly of legitimate force. Localised rebellions and separatist movements often possess a localised legitimacy which Government lacks. Armed opposition to the continuance of military rule by elements in the modernising elite has at least the passive support of most middle-income groups, including organised labour (see Chapters One and Four). An inflationary spiral of violence and coercion can be the only result of struggles among desperate men who possess weapons and the determination to use them, in the absence of negotiated settlements.[154] Governments are interested primarily in their own survival, and few coercive resources will

remain to meet the demands of Ethiopian development once the demands of
internal order and of defence against Somalia and Sudan are met. The
continued use of force must inevitably postpone further effective
reforms, as the 'profits' derived from exploiting a position of power
are consumed by the 'costs' of higher levels of coercion. Successive
Ethiopian governments have relied heavily on selective doses of coercion,
primarily because central government policies have failed to penetrate
the rural areas effectively. The daily lives of the eight out of ten
Ethiopians who live at least one full day's walk from the nearest road
have remained unaffected by governmental policies,[155] and the effects of
coercion have almost always been temporary.

Penetration may be defined as the ability of a government (or other
organisation such as a multinational company) to extend its authority
evenly throughout its domain. Politicians seek to accomplish this task,
in order to make the accomplishment of their goals easier, by employing
devices such as tax collection, transportation and communication networks,
state-sanctioned dispute regulation and punishment of criminals, the
maintenance of order and the general enforcement of laws. The reach of
government's claims to obedience determines the extent to which a central-
ised legal system can be said to exist and, ultimately, the state's
territorial boundaries. In underdeveloped countries, the high levels of
coercion and political and administrative capacity needed to achieve
that minimum of penetration deemed sufficient to ensure the survival of
the government greatly limit the range of feasible policy choices
related to development. Few resources remain which can be used to
implement rural development programmes and to mobilise people. For
example, the almost irresistable inducements and penalties which have
been used so effectively in China are simply not available to an Ethiopian
regime in the foreseeable future.[156]

The long-run solution to the problems resulting from low levels of
penetration involves the accumulation of additional political, adminis-
trative and coercive resources - an ongoing process in which constitution-
al and administrative law can play a major role. The probability that
bureaucrats will carry out government policies in the rural areas can be
increased radically through more sensible rules of administrative law and
political controls over the bureaucracy. Effective resource allocation

and policy implementation through law will increase the degree of penetration of government policies, both in the short and long run.

Ethiopian governments have made little attempt to communicate state-sanctioned norms of private law to peasants and, as a result, the Codes promulgated during the 1960s have had virtually no effect in rural areas. Even if they had been communicated and comprehended, they would not have been used widely. These laws were designed to be facilitative rather than mandatory for the most part, and they are not utilised because they fail to respond to the needs and desires of Ethiopians - see Chapter Seven.

In contrast to this manifest lack of interest in private laws, Ethiopia is, like many Third World states, devoting many resources to an attempt to extend the geographical influence of public law. The payoff has been very small, however, for at least two reasons. It is difficult to implement effectively the chaotic and unconnected body of laws that results from a rough-and-ready formulation of rules conferring broad and uncontrolled grants of discretion (see Chapters Three and Five). These laws permit bureaucratic inaction or corruption to be substituted for vague governmental policies. Existing bureaucratic resources are thus used ineffectively, both at the centre and in the rural areas. It is much easier for a government to communicate with its bureaucrats than with the public, however, and this is one of the main reasons that "development from above" policies are preferred by governments with low levels of penetration. So far as the public is concerned, government is a two-way street: penetration is fostered by participation. If effective channels of communication - of decision making, political socialisation and reasoned propaganda - and participation in the decision-making process do not exist or are ineffective, participation takes the form of ignoring or subverting legal policies and programmes:[157] "Governments propose but the masses dispose".[158]

It is not our purpose to suggest that a non-democratic Ethiopia cannot develop satisfactorily. In any event, politicians display a marked ability to vitiate the democratic aspects of the most carefully-designed systems of elections, parties and political rights where a commitment to maintaining these institutions is lacking - as in Ethiopia. The military regime's stated aim of decreasing the degree of social stratification makes meaningful participation at the national level possible for the first time, yet the manner in which Ethiopian politics are conducted

remains virtually unchanged (see Part II). What is needed are formal or informal 'feedback' channels, through which broad ranges of demands can be pressed and government can ascertain the success or failure of its policies. The problem is that meaningful participation requires the ability to exercise control over a modicum of resources, while such control is difficult for most to obtain in the absence of meaningful participation. Participation can at least broaden the access to information - one of the bases of power - while an informed public approval legitimates both policy decisions and the participation process itself, although frustrations and delays are inevitable. A continuum of participation might include: citizen control - delegated power or partnership with government; degrees of tokenism - public opinion surveys, placation, consultation, or merely informing the public of actions taken; degrees of non-participation - therapy or manipulation; and public protest - apathy, grumbling, petitions, demonstrations, strikes, subversion and armed revolts.[159] Almost all of the steps taken by successive Ethiopian regimes fall towards the bottom of this scale.

Although most politicians in Ethiopia and elsewhere feel themselves unable to tolerate dissent from chosen values and policies, it is in their long-term best interest to guarantee, legally and politically, the highest level of participation they can possibly bear.[160] Penetration will not advance far without effective channels of communication which run both ways between government and the governed, in the absence of unattainably high levels of coercion and legitimacy - which would soon be dissipated by attempts to counteract apathy and revolts anyway. The goal ought to be one of matching the demands for governmental action with supplies of sensible programmes which also serve to implement the ruling elites' political goals. If participation is combined with an administrative decentralisation and accountability, and with public mobilisation and education, a broader consensus ought to emerge to make meaningful contributions to development and political stability, thereby decreasing the need for Government to rely on coercion.

* * * * * *

Mouzelis suggests that:

The study of any social phenomena requires a choice of those of its concrete aspects which are most relevant to the problem under consideration. This choice, which in a way isolates a part of social reality in order to reduce its complexities of observation, determines

> the analytical or conceptual frame of theory: that is, . . .
> it discriminates between relevant and irrelevant properties
> 161

We have shown that many development, jurisprudence, comparative law,
sociology of law and legal modernisation theories offer inadequate
explanations of Ethiopian underdevelopment processes and inadequate
guidance in the selection of approaches to development problems. We
selected structural transformation theories, portions of growth and
modernisation theories, and the valuations applied to South Asian problems
by Myrdal, as offering valuable insights into potential Ethiopian develop-
ment processes. Like law, development has been described as self-conscious,
goal-oriented and dependent for its precise content on the constraints
found, and choices made in particular countries. An examination of
particular historical processes (as in Chapters One and Three) forms
the basis for critical theories of law and development: national
differences constitute a major constraint on the transplantation of
theories and laws.

Development is also described as a broadening of subsistence and
small-scale markets, effecting a cumulative growth in resources.
The concept of property has been defined more broadly than is usual in
order to analyse the manner in which law attempts to facilitate and to
regulate control over resources and people, and to stress the large measure
of interchangeability among resources. Fairly concrete interrelations
of law, resource allocation and policy implementation are posited, and
more speculative - but also potentially more interesting - relationships
among law, integration, legitimation, coercion, penetration and parti-
cipation are traced. As law is properly identified with power and cupid-
ity rather than with right reason, its usefulness in the development
process is limited by the extent to which particular policies can be
justified pragmatically to the powerful. Our analyses do not add up to
a general theory, but serve as middle-range hypotheses which tie together
the rest of this study. The potential effect of law on Ethiopian human
rights issues, social tensions, conflict and change, and a viable devel-
opment administration will be discussed in future chapters, in order to
construct alternatives to Government's present reliance on control and
coercion. This Section is designed to contrast with the preoccupations
of most developmental economists, social engineers, socialist jurists and,

in particular, analytical positivists. In sum, it stresses the relevance of law within an interdisciplinary approach to development.

Finally, development is a process of choice – largely of political choice – within existing constraints. An important function of law is to help to delineate these constraints, and to "articulate the criteria for choice, and to expose them to reasoning, deliberation and, ultimately, the test of use".[162]

Part II: Law, Politics and Administration

Kwame Nkrumah, the Black Star of a resurgent Africa, advised his fellows in the struggle for independence to "seek ye first the political kingdom . . ." This aphorism was adopted eagerly, summarising as it does the practical philosophy of most politicians. The search for one's political kingdom precedes the developmental one worldwide: while power can be put to numerous uses, elites most often use it in political competitions - for fomenting or suppressing instability rather than alleviating poverty and social injustice.[1] The effects of exercising this preference are made all the more painfully obvious in the Third World by the particularly harsh material conditions that are so often blatantly ignored by politicians. To the extent that generalisation is possible, Third World leaders may be more cynical, more forthright in pursuing personal ambitions, or less skilled in justifying self-serving interpretations of the public interest than their Western counterparts. Haile Selassie was certainly cynical and ambitious, but he was also pre-eminently skilled in political manipulation.

Nkrumah's dictum could have served as a motto for Haile Selassie, but the Emperor came into his political kingdom while Nkrumah was still a schoolboy in the Gold Coast.[2] The Emperor acted as though he perceived few of the political benefits arising from a broadly-based development that are stressed by many development theorists.[3] While Ethiopia's military government (the Derg) claims to be seeking the political kingdom last, if at all, and is attempting to implement many development-oriented policies, political processes have not yet changed fundamentally. The context of political struggles has changed, but primacy is still accorded to the political kingdom: many groups have now seemingly adopted Mao's injunction to "fight first the political fight". Radical policy changes advocated by non-traditional (but equally small) elites are opposed by new alignments of increasingly militant groups. The style of politics in Ethiopia - the ways in which competing political kingdoms are sought - has not changed greatly, however, grounded as it is in the preconceptions of competing elites, traditional social structures and ethnic antagonisms, the prevalence of patron-client relations, the growth of enclaves and a dependence on external supplies of weaponry. Like many other military regimes and Haile Selassie before it, the Derg is trying to practice a politics which excludes Western-style politicians

and political institutions.[4] Harsh and often transitory political acts provoke violent reactions; political power has not been institutionalised in Ethiopia and there is thus little incentive for individuals and groups to balance up the gains and losses arising out of political processes.

The political benefits that some theorists associate with development often do not materialise, and politicians often fail to perceive such benefits as accrue or to regard them as important. Rulers are overthrown for reasons other than a failure to promote public welfare, and a political career can terminate in spite of, or even as a result of successful development policies. We have seen that development is a many-faceted and medium- to long-term process, in sharp contrast to the often narrow, personal and short-term goals of those who are preoccupied with day-to-day politics - and with maintaining an often tenuous hold on the levers of power. Development goals are by no means fully congruent with the political interests of various elites; governments will, therefore, actively promote development only to the extent that, and in those areas where, it coincides with the interests of ruling elites. This truism is often ignored by development theorists, yet it is crucial to an understanding of Ethiopian development prospects: as we saw in Chapters One and Two, an Ethiopian development can only be realised through the firm implementation of rational and interrelated policies by an activist government. Economic policies are needed which convey politics sensibly to the economy and which relax traditional strictures on economic activity. In the absence of an Ethiopian consensus, these policy decisions can only be taken and implemented after rather ruthless competitions for power.[5]

Political interests are therefore both the major engine of and constraint upon Ethiopian development processes and, before other topics can be discussed meaningfully, the interrelation of political development and development in general must be explored. In Chapter Three, the political and public law setting of underdevelopment during Haile Selassie's reign is examined; as Ethiopian law and politics retain much of their pre-Revolutionary flavour, this Chapter is of more than historical interest. The background to the Revolution, the ways in which it unfolded and the policies and strategies of Ethiopian elites are detailed in Chapter Four. Then, in Chapter Five, we examine the impact of the Revolution on legal processes and the prospects for political development.[6]

As in many other countries, politics in Haile Selassie's Ethiopia revolved around the creation and manipulation of a minimal consensus within a group strong enough to ensure personal political survival.[7] John Bruce has identified Haile Selassie's "core constituency" as consisting of landlords in the southern "freehold" areas of Ethiopia (see Chapter Six), but other elites who displayed at least temporary and partial loyalties to the political formula of a Solomonic rule by Shoan Amhara were co-opted wherever possible.[8] It was virtually certain that even the most modest of reforms would have offended this reactionary core constituency. Few genuine reforms were therefore attempted, and even fewer succeeded to any observable extent. Ethiopia was, and to a large extent still is, an extremely small and subsistence political society in which locally self-sufficient elites bargained on a personal basis behind a smokescreen of rumour. Nevertheless, Ethiopian societies are intensely political, in the sense that elites attempt to wield a specifically political power in all social relations and organisations.[9]

While destroying the power of Haile Selassie's constituency, the Derg is attempting to mobilise a broader power base among peasants and the urban poor and has, in principle at least, recognised some of their demands. For the first time, something other than a minimal State interested solely in its own survival and in the wealth and power of a narrow social spectrum has become possible in Ethiopia. It is by no means certain, however, that political and economic development will be secured or that the threat of national dismemberment will even permit the pursuit of these 'luxuries'. One thing is clear, however: dominant Western social science perspectives on politics are largely irrelevant to what is going on in Ethiopia today. Instead of merely symbolising a "political breakdown", military regimes are the 'normal' mode of government in many states, and they may even provide the most effective responses to the challenges posed by underdevelopment. Governments need not gravitate towards the poles of liberal democracy or communist party-state; new political configurations may emerge, in Ethiopia and elsewhere, which are analogous to Harold Lasswell's "garrison state".[10] In particular, political parties need not be the sine qua non of participation, mobilisation, control and/or repression, and bureaucracies are not always the apolitical tools of politicians that can be made more efficient through purely technical reforms (see Chapter Five).

It is, however, an anti-authoritarian thread which runs through Western social science that most hinders an understanding of political processes in countries like Ethiopia. For elites in power in the Third World, development and change are at best subsidiary goals: theirs is a politics pre-eminently in search of order under conditions of strife, turmoil and political instability. Nation-building under colonialism is an obvious contradiction in terms, whether that colonialism is of the European, the neo-colonial or the internal and feudal Ethiopian variety. The Derg faces - simultaneously and for the first time - most of the nation-building problems associated with independence elsewhere in the Third World. J.K. Galbraith's characterisation of India as a "functioning anarchy"[11] applies with an even greater force to Ethiopia. It is easy to see why order and stability are not immediately forthcoming, particularly in light of the collapse of many traditional forms of authority and the inexperience of new politicians; the mystery is, rather, how Ethiopian societies can continue to function at all. The primary goal of political development - in the eyes of politicians in Ethiopia and elsewhere - is not to nurture democracy or to liberate the innovativeness of people, but to create the preconditions to the effective exercise of authority by particular elites.

To some extent, the interests of those in power and the requisites of development coincide, since a reasonably stable environment of law and politics is essential to development planning and to rational economic decisions in the private sector.[12] The consistent application of almost any set of development policies produces better results than the disruption caused by rapid-fire changes in ruling elites who are venal and/or more interested in dismantling the policies of their predecessors than in implementing new ones. For rulers whose sole interest is a personal political survival - Haile Selassie, for example - political development begins and ends with acquiring the means of maintaining a modicum of order, political stability and bureaucratic control. Their goals are not too different from those pursued by politicians in more 'developed' states who adopt the policies of a "law-and-order socialism" or a "conservativism with a social conscience": minimising the rate of political change for example, rather than maximising production and the utilisation of resources.[13] At best, these governments do little to hinder economic growth in the private sector, and they may make modest attempts to further selected aspects of development - as in Kenya or Singapore, for example.

The Derg, on the other hand, wishes to sponsor broad socio-economic changes and to build a long-term power base, in addition to ensuring a short-term political survival. If the Derg hopes to overcome opposition to many of its policy choices - particularly those concerning defense and internal security, rural and urban land reforms, the nationalisation of businesses and a more purposive control over labour relations and education - it will have to construct a stronger state. New institutions and values will have to be created and old ones adapted or destroyed, rather than the mere continuation of centralising tendencies and bureau-cratic control along the traditional lines that motivated Haile Selassie's policies. A successful transfer of political power from traditional elites, ethnic groups, separatists, urban activists and the Church to the nation-state must be effected and a monopoly of force (which is recognised as legitimate by a substantial majority) will have to be acquired.[14] Even while order and political stability continue to elude the Derg, it seeks much more: order and stability are regarded as necessary but not sufficient conditions of political development and development in general by all modernising Ethiopian elites. Unfortunately, there is little agreement as to how these aims should be pursued.

Which, if any, of the multitude of political development goals devised by Western academics are relevant to Ethiopia's present circumstance? While a few theorists deny the existence of a strictly political under-development[15] or refuse to enumerate the variables of a political development,[16] other political scientists postulate the gradual evolution of an individualistic and democratic consensus state, which would then apply social engineering techniques to the gradual amelioration of poverty and injustice.[17] To adopt such a view in this study would only foster misunderstandings of Ethiopian political processes. These notions about political modernisation are variations on themes elaborated within Western theories of social change and thus suffer from many of the defects we described in previous Chapters. New Ethiopian political institutions must, for example, be capable of much more than passively absorbing changes which accrue during a "natural" transition from traditional to "modern" social processes. Institutions must also have the capacity actively to manage and generate the kinds of changes intended by the Derg, to forestall a counter-revolution, and even to maintain an ideo-logical purity and consistency. Such a revolutionary transformation of

most forms of social organisation under the aegis of a stable polity –
the restructuring and institutionalising of conflicts in politically-
acceptable ways through radical redistributions of wealth and power – is
difficult to achieve under even the most favourable of conditions.[18]
Nevertheless, this difficult path towards political development is also
the most likely one for Ethiopia, emerging as it does from a series of
policy choices made by the Derg since 1974. Politically, the problem is
where to make tradeoffs between political survival in the short run and
in the long run – between, on the one hand, placating powerful enemies
or eliminating them by fair means or foul and, on the other, by creating
a new political base to counter the power of dissidents and winning
general support for good government. A politically-acceptable balance
between these policies of stability and change might be conducive to
economic development in Ethiopia, depending on who gains and loses what,
and how.

Another significant dimension of an Ethiopian political development
is, in the words of David Apter, "the improvement of the conditions of
choice and the selection of the most satisfactory mechanisms of choice".[19]
That group of institutions burdened with promoting change, stability and
control must follow rational procedures to take a wide variety of rational
decisions at the right time, and then mobilise the resources (including
public support and participation) needed for effective implementation.
While both are important, substantive   rationality is to be preferred
over a procedural rationality because it is instrumental to a broad
range of development goals and because an appropriate decision can be
persuasively justified to bureaucrats, political opponents or the public
irrespective of who made it and how. A fair amount of institutional
specialisation is required to bring order to complex processes of decision
and implementation and, in view of the 'irrationality' displayed by
Haile Selassie's bureaucracy, new political and administrative institutions
must be created and the old ones radically modified or destroyed. This
theme will be discussed in Chapters Five through Seven but, to give one
general example, institutions performing economic functions ought to be
structured around the six governmental roles of planner, regulator,
entrepreneur, change initiator, provider and umpire. These economic
functions would inevitably be deployed in ways which further a variety of
political interests, and planners in particular could communicate these
interests efficiently if they come to acquire the power to dominate .

and coordinate the activities of others. Low levels of social discipline and political and administrative efficiency and integrity must be improved along the lines suggested by Myrdal,[20] in order to achieve both political and developmental goals. Other aspects of political development which were sketched at the end of Chapter Two receive additional discussion throughout this study.

The potential usefulness of law in the clarification of policy choices, the marshalling and allocation of political and economic resources and the implementation of policies was also touched upon in Chapter Two. What other kinds of links between law and Ethiopian political processes can be postulated? In the broadest sense, all of law and adjudication represents a series of political choices, including choices in favour of the status quo where the authorities have the power to intervene but fail to do so. It is only because of legalism and the nature of public opinion in the West that there is any doubt in the matter. Law cannot be viewed realistically as "perched over a void" if it is a basic tool of power exercised in public, concerned with maintaining control over individuals and groups and regulating their relations. The best means of distinguishing a purely parental, religious, military or commercial authority from political authority is the impact of the latter on the general public and the fact that political authority could (not must) be expressed through legal forms: legislation, administrative regulations or judicial decisions.[21]

If a businessman or army officer orders a subordinate to do something, noncompliance may call forth sanctions and it may even have remote political implications. But such an order does not, of itself, affect power relations within society and cannot therefore assume a legal form. If, on the other hand, the Derg orders merchants in Addis Ababa to reduce the selling price of the grain teff, relations between buyers and sellers are altered and the order acquires the force of law, even though it lacks the formalities Western jurists might expect. As some type of law is involved in all Ethiopian social relations concerned with the distribution of wealth and power however (see Chapter One), specifically political institutions can only be distinguished on the basis of their powers broadly to tax, to spend or to regulate disputes in society. Despite its being the most compulsory, comprehensive and formidable association in Ethiopia, central Government does not monopolise the sources of power

and authority (legitimated power) that constitute the basis for exercising these functions. It merely provides a framework for many – but by no means all – of the significant competitions for power. This absence of a monopoly constitutes a distinct limitation on the Derg's political capabilities and on its use of law to further political interests and development goals (and on the applicability of Western legal theories). An equally serious limitation on law's usefulness in Ethiopia is the fact that power is often exercised in private. Power is still the personal 'fief' of its holder and subject to his direct control, rather than, in many instances, an indirect control through laws made by the powerful (species of public 'property' and 'contract' law – see Chapter Two). As public law purports to govern access to privileges, and as access to privilege through Government is the chief bone of contention in contemporary Ethiopia, rapid and radical changes in many public laws are to be expected.[22]

An able analysis of the complex interrelation of law and politics in the U.K. as a whole concludes that law is both complementary to and a limitation upon political action,[23] in roughly equal measures. While a study of law in contemporary Northern Ireland inevitably places greater emphasis on law as an instrument of political, economic and military domination during periods of disruption, it also encourages the reader to identify other areas of social life in which the power structure remains in the background and law serves to implement broadly-shared values.[24] Similarly, there is little overtly political intervention by central Government in many aspects of Ethiopian social life because politicians lack the power and/or the interest. Where political intervention does occur, the role of Ethiopian law both before and after the Revolution has typically been complementary to, rather than a limitation upon politics. In a few, narrowly-defined areas the exercise of power at the centre has become subject to fixed rules but, as we shall see, the freedom to harm others is subject to few restraints under the Derg, provided it is exercised in pursuit of an ill-defined "revolutionary justice".[25]

The largely complementary relationship of law to politics in Ethiopia illustrates what S.E. Finer terms "the ubiquity of political behaviour and the paradoxical omnipotence and frailty of the effort to channel and domesticate it".[26] Like the Emperor's political formula or the Derg's new ideology (see Chapter Four), law is a means of political regulation: it is theoretically omnipotent, but bound to bend or break under the weight of divergent political demands and to change in accordance with shifts in the political balance of power. In all societies, legal control

and regulation can only be achieved with a fair degree of success in
politically-stable areas of social life, but this does not mean that law
does not serve as a weapon in the battle for stability in a conflict-
prone society. Law can be used to create, for the first time in modern
Ethiopia, what J.M. Lee terms the basis of order: "the presence of
institutions and procedures in which the political community expresses
sufficient faith, so that there are recognised means of reducing tension".[27]

In theory, the public law institutions that form the basis of the
Ethiopian legal order can be viewed as parts of a continuous process of
inputs, decision making, outputs and feedbacks; constitutional laws
serve as blueprints for goal-oriented and self-legitimating structures of
government while administrative laws fill in the details. Although
constitutional and administrative laws can be pointed to in Ethiopia
before and after the Revolution, they often do not correspond to the
realities of the exercise of power,[28] and there are a number of gaps and
weak points (see Chapter Five). These lacunae are both a cause and
effect of a paucity of governmental resources and low levels of
political and administrative purposefulness, rationality and efficiency.
With regard to decision making, for example, a fair amount of institutional
specialisation exists on paper, but many Ethiopians view the delegation of
authority as entailing a loss of power and prestige. Even fairly minor
decisions were taken by the Emperor and are now made by the Derg. The
few devices that permitted the articulation and aggregation of interests
prior to 1974 - such as Parliament - were monuments to formalism and had
little actual influence (see Chapter Three). The Derg is taking steps to
create institutions which could perform these functions (such as peasant
and urban associations - see Chapters Six and Seven), but their effect-
iveness remains to be demonstrated. Although there is a traditional
right to petition for the redress of grievances in Ethiopia, there is no
enforceable right to a remedy, which depends upon politically-coloured
views of the 'equities' of the situation. The kinds of demands that will
be recognised, priorities among those demands, the conditions under which
groups can organise and the ways in which they can press their demands are
not clearly specified in law (contrary to the assumptions made by Roscoe
Pound - see Chapter Two). Haile Selassie strongly discouraged group
expressions of anything other than adulation and, while an official

ideology is evolving and acts of terrorism sanctioned by the Derg are
widespread, only a foolhardy group would expect legal protection.
There is no meaningful public participation in government at the national
level and channels of communication from the bottom upwards are non-
existent or ineffective. Invaluable feedbacks, which tell government
how its policies are being received, are therefore lacking - apart from
private intelligence networks and armed revolts. The reader may have noted
that our brief discussion parallels some of the political development
criteria described by Gabriel Almond[29] and the input-output analyses of
legal systems adopted by Robert Seidman;[30] more extensive analyses are
presented at the end of Chapter Five.

Although descriptions of the formal structures of Ethiopian governments
provide a backdrop for discussions of politics and development, our inquiry
cannot stop there. These structures dissolve before our eyes - both before
and after the Revolution. We shall therefore emphasise overall political
processes and particular roles performed within and without formal
institutions, in addition to examinations of a major nexus of ends and
means in Ethiopia - the point at which politics is transformed into law.[31]
It is virtually impossible to make the conventional Western distinctions
between policy making (politics) and implementation (administration) in
Ethiopia. The relevant question in each instance is who commands which
resources and for what purposes. Of particular importance in this regard is
the changing nature of power relations between traditional and modernising
elites and among modernising elites. These questions are explored in
Chapter Four.

Finally, the ways in which law is actually used represent what politicians
do, rather than what they say or what social scientists say politicians
do. In many Western countries, the political values expressed through
law (and ideology) can be grouped under the headings of order, justice,
liberty and a large subsidiary category of instrumental or utilitarian
values. These kinds of values are also reflected in Ethiopian laws, albeit
in different proportions and with different cultural referents. The
maintenance of order through the positivist's "orders backed by threats"
is the primary value associated with law, in Ethiopia and elsewhere;
differences arise when questions of order for whom and by whom are
considered.[32]

Crude formulations of the concept of law and order are little more
than a bulwark for the privileged - including those with small privileges
under Haile Selassie. It is, on the other hand, all too easy for the
Derg to continue to rationalise repression and tyranny as the only means
by which order can be maintained in a rapidly-changing society, especially
if the Derg is careless of its long-term legitimacy. The balance between
order and change is struck, not by social scientists but by Ethiopians.
This balance has changed radically and rapidly during the last few years;
it is likely that, in the future, it will be based on what people will
put up with. Given the cultural diversities we surveyed, Ethiopians
share a sense of injustice rather than a sense of justice. Injustice,
the recurrence of painful experiences without justification - or a sense
of the means being grossly disproportionate to the ends achieved - is
the motivating force behind dissent and rebellion, the ultimate restraints
on tyranny. Arguments about justice and injustice decisively mould the
face of politics, even in the absence of rival parties or ideologies.
As Barrington Moore, Jr. argues: "The experience of living in society
produces in human beings a distinction between legitimate and illegit-
imate authority".[33] John Farrar adds that it "is easier to condemn
particular practices as unjust than to produce an articulate and
convincing conception of the just".[34] We shall bravely attempt the latter -
in an Ethiopian context - in Chapters Five and Eight. The relatively
short-term values associated with order compete for attention in Ethiopia
with the longer-term ideals of justice and liberty that are themselves
difficult to reconcile. Throughout this study, discussions of the legal
means that confer the maximum benefit at the minimum cost will be offered,
but they are subordinated to wider examination of order, justice and
human rights, and the relation they bear to other aspects of Ethiopian
development.[35]

Chapter 3: Haile Selassie's Regime

The long reign of Haile Selassie has been documented and analysed
thoroughly by Richard Greenfield, Christopher Clapham, John Markakis,
and Patrick Gilkes[1], and there is no need to replicate many of their
analyses here. These and other political studies

> concentrated on the effects of autocracy and patron-client relation-
> ships, the rise of the centralised bureaucracy, the gradual elimin-
> ation of powerful regional lords, the emergence of central elites
> supportive of Haile Selassie's imperial government, problems of
> local administration and their relation to development issues, and
> the development of Ethiopia's rather superficially imposed
> modern legal system. [2]

We touched on these matters at various points in Chapter One; prior to
the Revolution, academic analyses were often used to assemble portraits
of a traditional political system successfully perpetuating and adapting
itself. Most Ethiopianists neglected the accumulation of political
liabilities that is inherent in an attempt by a feudal monarchy - fused
to stratified and fragmented societies and a traditional Church - to
maintain a grip on political processes late in the twentieth century.

While an appealing analogy can be drawn between Haile Selassie and
Peter the Great,[3] they obviously ruled in different historical contexts.
Unlike the Tsar, Haile Selassie took the trouble to create a democratic
facade: a genuine constitutional monarchy could never have come into being
under the monarchical Constitutions of 1931 and 1955. Democratic instit-
utions, procedures and safeguards were formally guaranteed by law in the
1955 Constitution, but they were so manipulated and violated in practice
that a traditional oligarchy was able to maintain its power, with the
support of an increasingly well-educated bureaucracy. The very real
limitations on the exercise of a despotic power in Ethiopia were therefore
almost entirely unrelated to the innovations introduced by these
Constitutions. In 1960, Syoum noted that "government organs are not al-
ways what they are intended or supposed to be. . ."; "essences differ
from form, and in no uniform way".[4]

Although a passion for centralisation comes naturally to a monarch
who aspires to absolutism, a virile provincialism has survived in Ethiopia
to this day, as have the low levels of penetration and legitimacy that
were discussed in Chapter Two. Haile Selassie's power stemmed from a
firm personal control over those valuables which lay within the gift of

the State: land grants, offices, honours and titles, and commercial
concessions. While he fell heir to historical patterns of social
stratification among the Amhara-Tigre, the Emperor managed to fill many
of the niches in the upper strata with favoured appointees by allo-
cating State resources in accordance with his personal priorities.
Rivals to Imperial power were then managed by encouraging the powerful to
control each other, through extensive surveillance and intelligence
networks and policies of divide et imperia and shum-shir - the rapid-
fire and unpredictable appointments, demotions, transfers and placing
of enemies in adjacent positions that hindered the formation of cliques.

The politics of manipulation also have their disadvantages.
In particular cases, powerful nobles could outbid Haile Selassie to secure
the loyalties of local peasants and lower-level elites. While an element
of self-interest inheres in all bureaucratic power struggles, the Emperor's
policies, which actively encouraged administrators to seek to limit each
other's power, were not conducive to the establishment of a strong state:
the pursuit of personal power all but completely displaced the imple-
mentation of Imperial policies. For example, tax revenues are the life-
blood of the strong state Haile Selassie desired, yet the Ethiopian bureau-
cracy collected only a small proportion of the revenue potentially
available. Most members of the landed gentry simply refused to pay and
went unchallenged by administrators, and the money that was extracted
from the less affluent was subject to 'deductions' at each level of the
bureaucracy.[5]

Haile Selassie was extremely intolerant of all types of organi-
sations or attempts at a popular mobilisation, fearing that they would be
eventually used against the Throne. Where authority is completely person-
alised, demands which go beyond immediate self-gratification are viewed
as demands for a change of rulers, and are therefore suppressed or mani-
pulated rather than passively regulated. Except in Eritrea, the political
parties and agitation associated with independence movements elsewhere in the
Third World did not emerge in Ethiopia until the mid-1970s. (The struggle
against the Italian invaders took the form of an Ethiopian-style guerrilla
war.) This is not to say that politics did not exist in Ethiopia;
they were (and still are),rather, the politics of faction, manoeuvre
and personalism. They were also totally divorced from pressing develop-
ment issues or a need to appeal to the interests of the peasants. The

fear of intrigue and betrayal reduced the possibility of permanent political cooperation or the exercise of collective responsibility to the vanishing point.[6]

As John Markakis suggests, "Haile Selassie turned the father-child relationship into a basic moral justification for his system of rule".[7] The children were not to question what was best for them and State institutions did not merely act in loco parentis; they were direct manifestations of the parent's will. This kind of paternalism forms an intimate part of what Daniel Levinson terms an "autocratic ideology": emperors have long utilised the ethnocentrism, the strident nationalism, the anti-intellectualism and the political formula of Solomonic rule that are a part of the Amhara-Tigre heritage, and combined them with a cynical appeal to what might be termed man's baser motivations. A widely-shared political desire to maximise status and power gradations within hierarchic social structures perpetuated the policies of divide et imperia, thereby forestalling an evolution towards the uniform and monistic organisations associated with the so-called totalitarian regimes.[8]

As might be expected from a worldly politician subscribing to so conservative an ideology, Haile Selassie seldom attempted to acquire new powers at the risk of jeopardising a position sanctified by tradition. Such modernisation as took place during his reign was overwhelmingly defensive in character. The absence of a lengthy period of European colonialism retarded and blunted the impact of Westernisation on traditional Ethiopian institutions and, as in countries such as Thailand, (North) Yemen and Iran, the historic basis of a traditional state survived intact into the 1970s. Haile Selassie was virtually the only person with sufficient authority to introduce innovations, yet he used the Solomonic myth as an excuse for inflexibility and inaction, arguing that all changes must be rooted firmly in the traditional values of Amhara culture. Although tiny modernising elites pressed for substantial changes, there was little evidence that peasant rebellions, usually orchestrated by provincial elites, embodied demands for modernisation or development.[9] While many of these rebellions were attempts to force the Emperor to revert to traditional practices, others challenged the Emperor's right to rule (see Chapter One).

It was inevitable that some degree of political modernisation should come to Ethiopia, and a useful starting point for our discussions is the

year 1908, when Menelik II began to create the European-style ministries that were supposed to perform some of the tasks previously assigned to unspecialised courtiers. When Haile Selassie came to the Throne, he tried to make an impact on world affairs; he reduced the extent of slavery and some of the excesses of mourning, arrest and penal punishments; he established moderate levels of Western-style education and the formal concept of an elected parliament; he encouraged the expansion of transport and communications networks and other types of infrastructures (which remain primitive, even by Third World standards); and, most significantly, he Amharicised, modernised and centralised the military and, to a lesser extent, the bureaucracy. The Emperor also fostered changes indirectly, by making 'recommendations', encouraging imitation of royal examples, attempting to use educated elites as conduits for new ideas which he favoured, and treating change-resistant provinces with forebearance - since he could hardly do otherwise. Most of these reforms were virtually complete by the mid-1950s, however, and reflected a desire for an increased personal control over events rather than a quest for a broadly-based national development. As Haile Selassie reigned for so long a time without markedly changing the ways in which he pursued political power, policies which were premature when he introduced them in the 1920s had become, by the 1970s, one long series of anachronisms.[10]

We have characterised Haile Selassie's modernisations as defensive because they constituted the minimum of response or adaptation that would permit a traditional elite to survive relatively unscathed. As in the political strategy adopted by the Kuomintang, there was a ritual avoidance of socio-economic problems and reforms stopped far short of altering the traditional elites' control over local affairs. Haile Selassie acted as though he believed that, if order was to be maintained, the daily lives and traditional aspirations of peasants had to be preserved intact. His few reforms were therefore oriented towards an increasingly urbanised Throne and the major urban areas that, prior to the successes of Mao Tse Tung at least, were widely regarded as the ultimate locus of political stability. Changes which did not further the Emperor's personal control were blocked, retarded, drained of their substance and/or given over to traditional elites for implementation. By granting Constitutions of his own free will and broaching the minimal land reforms that are discussed

infra and in Chapter Six, he avoided the necessity of acceding to strident demands for more sweeping reforms a few years later. In this way, he was fairly successful in defusing the criticisms of his educated elite or of foreign aid donors.[11]

The proof of the success of the Emperor's politics is found in a lengthy but far from eventful reign. A few Ethiopianists had, however, begun to perceive cracks in the political system prior to the creeping coup of 1974. After an abortive coup in 1960, both the poverty and the development potential of Ethiopia became increasingly apparent, and the Emperor was seen to follow rather than to direct the processes of a minimal modernisation. He found himself caught between the forces of tradition and the modernising elites he had nurtured, and he increasingly permitted others to assert powers hitherto reserved to the Throne. When the 1974 coup came, the full extent to which the legitimacy of traditional authority had been eroded became apparent. It was also obvious that traditional political processes had prevented the legitimation of the Western-style institutions brought into a precarious existence under Ethiopia's Constitutions.[12] The Derg has stepped into the vacuum that resulted when the Emperor was deposed, but the urgent need for new sources of legitimacy remains unfulfilled (see Chapters Four and Five).

I. Constitutional Laws

While many lawyers and political scientists are preoccupied with broad analyses of constitutions and constitutional theory,[13] our focus is a narrower one: an assessment of the contribution that public laws have made to Ethiopian political development, and the extent to which the constitutional law-in-action reveals Ethiopian attitudes towards the functions and purposes of law. In contrast to the strenuous efforts to save the constitution, or to pretend to retain it, that commonly attend the collapse of constitutional government in other countries, few Ethiopians mourned the passing of the Constitution in 1974. The Constitution was only "suspended" initially and a modified Draft Constitution did make a brief appearance (see Chapter Five), but these events were straws in the wind of political change that swept the country and its shallow-rooted, Western-style political institutions.[14]

A. The 1931 Constitution

Menelik's widow, Empress Zawditu, apparently rejected a constitution drafted by one of Haile Selassie's officials, fearing that it would

diminish her authority and dignity. After her death, Ethiopia's first non-traditional Constitution was promulgated in 1931. It was based on the 1889 Japanese (Meiji) Constitution that had, in turn, been influenced heavily by the 1871 German Constitution. Arguably, the appeal of this Constitution for the Emperors of Ethiopia and Japan lies in the fact that, despite allusions to a Rechtsstaat, the overall emphasis was one of the glorification of Imperial power. When compared to provisos in the Meiji Constitution, the powers of the Ethiopian Emperor were simplified and expanded, a firmer base for an increasingly complex administrative machinery was established, and an advisory Parliament was introduced. The Constitution made little difference to the actual conduct of Government business except that, under it, provincial elites were gradually excluded from many of the state-sanctioned offices controlled by the Throne.[15]

It is worth noting some of Haile Selassie's attitudes towards law, as reflected in his interpretations of the 1931 Constitution, since Imperial pronouncements concerning law subsequently grew more veiled and ambiguous. In 1931 he said that, while the backwardness of Ethiopians had previously

> justified their sovereigns in ruling over them as a good father guides his children. . .,/ the/ moment had come for them to collaborate in the heavy task which up to the present their sovereigns have accomplished alone. 16

Paternalism was never repudiated however, and any collaboration was extremely one-sided. In his autobiography, the Emperor states that

> while the interests of the individual shall not be abandoned /under the Constitution/, the strength of the united community shall be paramount. Without sacrificing the benefits due to individuals or oneself, one is not to seek divisive private interests. 17

This statement could almost have been issued by the Derg in 1974, but an Ethiopian socialism formed no part of the Emperor's policies. Since feudalism had disappeared elsewhere in the world, he reasoned, it should not be reaffirmed in Ethiopia. He therefore directed that the following clause be inserted in the Constitution:

> The Emperor may assign hereditary land-rights/rest/ and land held as a fief / gult / either to nobles or to other servants of the realm. . . and in future things are to be arranged as required, having regard to their services. 18 .

Notwithstanding Haile Selassie's reasoning, this is nothing less than a constitutional sanction of feudalism (see Chapter One). Finally, Tekle Hawaryat, the Finance Minister and the reputed draftsman of the Constitution,

explained what might be termed the Grundnorm for 1931:

> The principle laws, by virtue of being based on the Emperor's know-
> ledge, shall remain permanently valid. Laws concerning matters of
> detail are to be considered by Parliament. . . .19

B. The 1955 "Revised" Constitution

A new Constitution, proclaimed to mark the Silver Jubilee of Haile
Selassie's reign as Emperor, made it appear as though laws no longer
sprang from the Emperor's brow. Few changes occurred, however. Like
its predecessor, the 1955 Constitution is typical of the laws of trans-
itional societies: it purported to infuse a more formal and Westernised
element of authority into a system of traditional law and politics. It
also furthered the centralisation and rationalisation of bureaucratic
power, chiefly by providing more specifically and precisely for its
aggregation, allocation and delegation. Both Constitutions affirmed the
values of a Solomonic rule and sought to impress domestic and international
audiences, in order to legitimate Haile Selassie's reign. While the
1931 Constitution (and the nominal abolition of slavery) had the specific
end-in-view of furthering an application to join the League of Nations,
the 1955 Constitution (and Articles 1 and 26 in particular) was an attempt
to forestall international criticisms of the absorption of a federated
Eritrea into a unitary Empire[20] (see Chapter One).

The Revised Constitution follows the pattern laid down by many
contemporary constitutions. It contains an emotional political
manifesto by way of a Preamble, an organisational chart of government
(Articles 1-36, 66-121), a list of the political rights of individuals
which is quite impressive on a first reading (Articles 37-65), and assertions
that the constitution is the political centre of gravity, the supreme law,
and the formal basis of all subsequent law, possessing a special per-
manence and sanctity (Articles 122, 131). The formal structure of
Government is based not on the Westminster Model that was exported
fully-blown to the "new" Commonwealth states, but on historical English
patterns of a gradual devolution of authority from monarchs to Parliaments
and ministers. In theory, the 1955 Constitution envisages a two-way
communication between Emperor and Parliament, with the Prime Minister
acting as middleman. Many of the overarching concepts in the Constitution,
and the civil rights provisions in particular, draw their inspiration from
the American experience and, to a lesser extent, from the Universal

Declaration of Human Rights. As in French public law, the resolution
of sensitive matters (the order of succession to the Throne and the
independence of the judiciary) is postponed, pending the enactment of the
'organic laws' called for in Articles 5 and 111 of the Constitution.
Although the Constitution is a lengthy one, it is far from complete and
many provisos are of prospective significance only, depending as they
did on further initiatives from the top.[21] The _jurisprudence_ of a particular
country has never been adopted in Ethiopia, but the influence of American
professors at the University encouraged students to adopt American views
of their Constitutional law. They did so eagerly, reporting that they had
grave difficulties in thinking about law in Amharic, the official language
of the law.

Like many Third World constitutions, Ethiopia's embodies irreconcilable
contradictions between American separation of powers concepts and English
notions of a concentration of powers. Ethiopian legal education has,
however, tended to suppress English constitutional theories. This was
unfortunate for, as Christopher Clapham argued, the

> Ethiopian 'Constitution', like the English, lies not so much in
> wirtten powers as in a gradually developing body of usage. The
> laws and the Constitution.... have themselves been so moulded by
> the conditions of government that they have had to fit themselves
> into the existing scheme before they could much affect developments.[22]

It is this growing "body of usage" which we shall use to evaluate the
impact of public law on Ethiopian politics.

In Ethiopia - as in India, where a traditional and religious order
based on caste has been subjected to an overlay of Western-style legal
education and constitutionalism - a basic conflict among ideologies has
been built into the fabric of the legal system. For Ethiopia, this
conflict gave rise to acute legal (but not political) controversies,
anomalous results, and a wide-ranging discretion in the choice of rules
and policies (see Chapter One). Ethiopian governmental processes mirrored
the inbuilt constitutional conficts between: three traditional jural
postulates (working principles)[23] - Imperial aspirations to absolutism,
the mutuality of support between the Church and the Throne, and the
continued Amharisation of politics; and five nineteenth century liberal
jural postulates - the modernisation and accountability of administration,
the widening of political participation through a Parliament, the estab-
lishment of an independent judiciary committed to the Rule of Law,

somewhat confused concepts of separation of powers, and a catalogue of individual political rights. As we saw in Chapter Two, these Western postulates are not necessarily the hallmarks of legal modernisation. Economic development was not one of the Ethiopian jural postulates: while the Preamble looks forward to "laying a solid basis for . . . happiness and prosperity", the text of the Constitution successfully aveids any direct reference to development issues. Over time, and in the absence of effective means of implementing them, the Western postulates were neutralised or circumvented in the pursuit of power by traditional means. For example, provincial elites acquired no functions under the Constitution which were consistent with their ascribed statuses, yet they managed to neturalise many nominally modernising policies by intervening in the implementation or enforcement of these policies.

C. Traditional Jural Postulates

Exercising only a bit of conjecture, it is possible to reconstruct a traditional Ethiopian jurisprudence from scanty source materials. After the emergence of Islam on all sides of the Amhara-Tigre Empire, the political order was concerned almost exclusively with defense and the maintenance of order, chiefly to enable the faithful to occupy themselves with salvation. The Amharic agara negus means both the country of a king and a tranquil land: an emperor is seen as a necessary precondition to peace. While Emperors were both spiritual and temporal rulers – God's representative on earth – they were tied to the cooperation of the nobility and the Church – 'estates' in a Standestaat. The legal order of the Empire, and particular laws and Imperial acts, derived their validity from the fact that the Emperor's will was incontestable, so long as he acquired and retained the Throne by right. As a result, the potestas came to Ethiopia – the Roman law concept that markedly influenced the public laws of civilian jurisdictions and can be dimly perceived in the Ser'ata Mangest and more clearly in the Fetha Negast (see Chapter One). Under this concept, the basis of all law, acts and physical coercion is the public personality of the emperor, a concept which is recognised in Tkele Hawaryat's comment, supra. The emperor is above all law, for law is itself the commands of the sovereign. Ethiopian jurisprudence thus parallels many of the ideas of St. Augustine, Thomas Aquinas, William of Occam (1280-1349) and Jean Bodin (1530-96) and, indeed, much of Ethiopian philosophy revolves around 'medieval' Christian speculations concerning the philosophies of Plato and Aristotle.[24]

The political power base through which these Ethiopian (and medieval European) ideas were realised rested on a tripod of emperor, feudal troop levies furnished by provincial elites, and the Church. It was, perhaps, a fatal defect in the 1955 Constitution that, while the power of the Church was recognised, the military was assigned no positive role in Government. The continuity of the concept of Ethiopian kingship belied the fact that it was little more than an empty vessel, standing ready for a family with enough military support to climb into it. The consent of the Church, symbolised by the anointing which formally conferred kingship, was the other precondition to emperorship, and the Church could absolve the faithful from their oath of fealty by excommunicating a recalcitrant emperor. It was, in fact, the excommunication of Iyassu, Menelik's brief successor, that propelled Haile Selassie to power as Regent in 1917. Despite the omnipotence of an Ethiopian sovereign in legal theory, he was forced to make give-and-take or live-and-let-live arrangements with his partners in power. Further, an emperor could only exercise power firmly in those areas under his direct surveillance.[25] Haile Selassie had a clear sense of the physical limitations on the close supervision of political actors, and did not dissipate his authority by intervening in situations where his personal interests were not directly affected – such as those involving a broadly based economic or political development.

It is obvious that the democratic and communitarian traditions found in many other African societies – what Tanzania's Nyerere, for example, sees as the foundations of an African Socialism – form no part of the traditions of the Amhara-Tigre Empire (see Chapter Four). Monarchy is not, on the other hand, totally unknown elsewhere in modern black Africa: apart from Siaka Stevens, no present chief executive came to power through a change in civilian government, other than by way of succession to a deceased incumbent. Many of the powers of an Ethiopian sovereign exist, de facto, in other Third World states. The proprietary theory of the state was derived initially from Roman law, and many contemporary rulers have adopted it eagerly for the purpose of personal aggrandisement; Ethiopian shum-shir, divide et imperia and the political allocation of offices, land and commercial concessions find their parallels worldwide and are reflected in the law-in-action. Diamond sees this eminent domain over persons and property as the hallmark of a "census-tax-conscription" state. In such a state, the ways in which law is used reflect a spontaneous opportunism in augmenting the power of bureaucracy

and sovereign, rather than the application of abstract principles, such as an impartial justice.[26] Diamond's characterisation fits the aspirations of Ethiopian emperors nicely, but it is also applicable to many other Third World states.

An Ethiopian emperor did not have to articulate, aggregate and communicate his interests to himself, and he tended to pacify rather than to adjudicate serious disputes. Much of the 1955 Constitution seemed, therefore, to introduce significant political changes. Provisos referring specifically to Imperial power did, however, simply restate the traditional position of the

> CONQUERING LION OF THE TRIBE OF JUDAH. . ./‾and_7 ELECT OF GOD(Preamble).

> By virtue of his Imperial Blood, as well as by the anointing /‾by the Church7 . . . , His power /is7 indisputable (Article 4).

> The Imperial dignity shall remain perpetually attached to the line of Haile Selassie I, descendent of . . . the Queen of Sheba, and King Solomon of Jerusalem (Article 2).

> . . . Sovereignty . . . is vested in the Emperor and the supreme authority over all of the affairs of the Empire is exercised by Him. . ., in the manner provided for in the present Constitution (Article 26).

Were it not for the subordinate clause in Article 26, the balance of the Constitution would have been totally superfluous. We shall see that this clause was in turn subordinated to a pragmatic exercise of the Imperial power that was, of course, indisputable only so long as the powerful chose not to challenge it. Under the Constitution, the Emperor's powers encompassed: the organisation of and appointments within Ministries, public agencies, local government and the military; conferring honours and titles; commanding the Armed Forces; directing foreign relations and trade; convening and dissolving Parliament and promulgating laws while it was not in session; and "maintaining justice" through the courts.[27]

Although the establishment of the Central Personnel Agency in 1961[28] marked a slight erosion of the Emperor's control over lower-level administrative appointments, he was nevertheless able to continue to counterbalance the power of provincial elites by appointing many officials who lacked a power base independent of the Throne. The grant of constitutional authority to the Emperor is extraordinarily broad, even when compared to the executive authority exercised under many other Third World constitutions. Imperial power is further expanded by the mysterious Article 36 of the 1955 Constitution, which confers wide residual powers on the Emperor that were apparently immune from formal constitutional restraint. A German jurist cites Article 36 as an example of the fact that

the Constitution is _lex_ _imperfecta_: few enforceable duties are imposed
as correlates of broad Imperial rights.[29]

While the growing Amhara domination of Ethiopian politics was only
briefly reflected upon in Article 125, which makes Amharic the official
language, the Orthodox or Coptic Church (discussed in the footnote)[30]
was well-remembered:

> it is the Established Church of the Empire and is, as such, supported
> by the State. The Emperor shall always profess the Ethiopian Orthodox
> faith (Art. 126).

> . . . The Emperor has the right to promulgate the decrees, edicts and
> public regulations of the Church, except those concerning monastic
> life and other spiritual /as opposed to "secular"/ administrations
> (Art. 127).

As Article 127 suggests, Haile Selassie had managed to assert a measure of
political control over the Church by 1955, but, since it exercised the
sanction of conferring or withdrawing Imperial legitimacy _de_ _facto_, its
authority was ultimately untouchable by secular authority prior to the
Revolution. It was, in any event, difficult to distinguish the secular
from the sacred under Hebraic notions of statism; biblical standards were
translated into Ethiopian administrative practices and emperors were the
prime movers of undifferentiated Church and state affairs. Like the
Russians, the Amhara-Tigre saw their Church as the natural successor to
the Byzantine Empire. Resistance to the will of emperor or tsar was
regarded as a sin as well as a crime. Until recently, emperors were
continually at war while the Ethiopian Church provided an element of
continuity, possessed a monopoly of educated officials, and held the
"power of the keys". Also, by virtue of the Church's landholdings,
tax exemptions, tax and rent collections, localised judicial functions and
influence on administration, it constituted a diffuse state within a
state.[31]

The Church suffered a relative diminution of its power in the twentieth
century because: it neglected the extension of its influence southward;
it continued to follow Egyptian traditions of a decentralised ecclesiastical
administration; and its higher officials became thoroughly discredited
in the eyes of other Ethiopian elites. The Church was, however, instru-
mental in creating the Eritrean Unionist Party that pressed for absorption
into a unitary Ethiopia. It is likely that Haile Selassie and other
politicians continued to fear the Church as an institution, rather than
the influence of particular Churchmen. Local priests were expected to
give a diffuse ideological support in return for the continued protection

of their privileges. The Church is still the main basis of Amhara-Tigre ethnic identity and cultural affiliation[32] and, like the religious institutions of South Asia, the Church can be described as the "emotional container" of a whole way of life and work, which is rendered more rigid and resistant to change by religious sanction. As Canon J.A. Douglas notes, Coptic and Syrian Christianity "remained as static as anything on earth can remain static",[33] and the Ethiopian Church practised a ritual avoidance of issues related to development, although it was willing to feed beggars individually.

Although the traditional laws that preceded the 1931 and 1955 Constitutions are no longer implemented and enforced actively (except through rebellion), they continued to generate the mutual expectations of the Emperor and his Amhara-Tigre subjects. The Constitution merely re-stated or consolidated existing powers; precious little was relinquished in return for desired gains in legitimacy, and the changes that were intro-duced lacked the political and military preconditions to effectiveness. Legal sovereignty continued to reside in the political formula of Solomon-ic rule, with the Throne as the guardian and exponent of Ethiopian civil-isation.[34] The historical depth of these traditional jural postulates contrasts sharply with the superficiality of Western ones - in Ethiopia and in many other Third World states.

D. Western-style Political Institutions

Haile Selassie's continued monopoly of bureaucratic appointments and rewards meant that most bureaucrats were still courtiers, performing traditional political functions in largely traditional ways, in order to procure the traditional rewards. Under the 1955 Constitution, ministers were appointed by the Emperor and were individually responsible to him. A minister's slender power depended chiefly upon the influence he could exert during an Aquabe Sa'at - his weekly confidential audience with the Emperor - and upon the number of his clients a minister could place in various government offices. The Constitution provided that ministers must answer Parliamentary questions and that they were individually responsible to "the State", but ministers treated Parliament with disdain. Prime Ministers consistently violated the Constitution because they deemed it beneath their dignity to answer Parliamentary questions. The collective responsibility of the Council of Ministers was stipulated in the Constitution, but it never emerged. The Council was restricted to

advisory and coordinating rather than policy-making roles, and its
position was often undermined by an ad hoc Crown Council. It is clear
that Haile Selassie stood above and apart from his 'cabinet', although he
occasionally deigned to arbitrate 'executive-legislative' disputes where
his personal interests were not directly affected.[35]

The Ethiopian Constitution was not without its mercies: a troublesome
member of the local elite could always be sent off to Parliament in Addis
Ababa where, with any luck, the joys of urban life would discourage a
return to his rural area. High property qualifications and the 'costs'
of elections meant that most Parliamentary candidates came from the upper
social strata, yet elections were contested hotly while voter participation
remained at about 10%. Legislative initiatives usually came from foreign
experts, and the total output of legislation from 1942 to 1969 was
roughly equal to that produced by an American state legislature in one
year. Few proposed laws were rejected outright, and amendments by Parl-
iament were relatively rare and usually served only to disrupt the (often
minimal) internal coherence of legislation. The essence of the power of
this (and other) Parliaments consisted of asking ministers embarrassing
questions and delaying enactments through debate. These tactics did not
fetter the Emperor, however: he removed MPs from office if they made
"political statements", and denied benefits to recalcitrant MPs and
their 'constituents'. He could also dissolve Parliament, decree the laws
he desired, and force incumbent MPs to bear the costs of the bribes and
the extravagant feasts associated with elections. Nevertheless, Parlia-
ment injected an element of the consent of some social groups into Ethiopian
politics. While there were a few radical MPs, Parliament as a whole saw
itself as defending traditional virtues against a liberal Emperor and
bureaucracy.[36]

Despite constitutional provisions designed to suggest a European-style
monarch exercising his authority on the advice of a democratically-
selected Parliament and Cabinet, Ethiopian constitutional realities were
otherwise. MPs possessed no power bases independent of the Throne in
Ethiopia's "no-party" state. Together with a lack of technical expertise,
such as the one associated with the growth of specialised legislative
committees in the United States, this powerlessness meant that Parliament
was unable to develop independent ideologies, programmes, development
plans, budgets or legislative initiatives. These kinds of political

conditions lead Rene Dumont to conclude that, as parliamentary democracy
is only successful in Nordic or Protestant states, too much time and
money is lost in other countries through a caricature democracy which
enables a privileged class to profit from an illusion of mass power. [37]
There is much to be said for Dumont's assertions, but he goes too far.
The strictly legislative functions of parliaments in what Dumont sees as
successful democracies have been eroded, although these parliaments still
recruit political leadership, exert some control over administrators,
and serve as forums for policy discussion. Ethiopia's Parliament began
to play these roles in a rudimentary fashion, much like the Parliaments
of Tudor England. These Parliaments, and Ethiopia's, generated little
popular enthusiasm for increased taxes and special interest legislation.
Where a monarch over-stepped inherited and instinctive feelings, popular
protest took the form of riot and rebellion rather than Parliamentary
speeches or votes of censure. Rebellion was all but expressly incor-
porated into these traditional constitutions[38] and, given time, Ethiopia's
Parliament might have evolved, like England's, into an alternative to
rebellion. Time is, however, a scarce commodity in twentieth century
politics.

E. Separation of Powers and the Judiciary

Theories of a constitutional separation of powers are extremely
diffuse, and attempts to embody them in contemporary constitutions have
resulted in diverse institutions. The core idea underlying these theories
includes the isolation, immunity or independence of legislative, exec-
utive and judicial functions, with checks and balances between the branches
of government. Although divisiveness and conflict often results from such
a separation, a political integration is nevertheless achieved through
a commitment to consensus values. As we saw in Chapter One, consensus does
not characterise Ethiopian politics - or the politics of most other
Third World states. It was therefore inevitable that felt needs for order
and unity would cause the separation of powers provisions in Articles 66
through 112 of the 1955 Constitution to be overridden. Inherent conflicts
between these Articles and provisions licensing the overarching inter-
vention of the Emperor in all levels of government could only, in Ethiopia,
be resolved through the application of traditional political power. Nominal
rights of Western-style institutions that were enumerated in the Constit-
ution found no corollary in the minimal duties of the Emperor - an
intentional lex imperfecta. A fair measure of division of labour did,

however, emerge in those few areas where the Emperor did not choose to intervene consistently and directly. Ministerial responsibility to Parliament is one of the (imperfect) checks on an undue concentration of power in, for example, Britain; in Ethiopia this control never evolved and would have been largely irrelevant in any event, since ministers were powerless in comparison with the Throne, and Parliament also lacked an independent power base.

The overall failure of an Ethiopian separation of powers is best illustrated by the position of the judiciary under Haile Selassie. Judicial authority under the Constitution was vested in "courts established by law" and exercised in the name of the Emperor (Article 108). It is unclear whether Article 35 conferred an inherent jurisdiction to intervene in court proceedings: "The Emperor has the right and duty to maintain justice through the courts." Haile Selassie did, however, intervene indirectly through an unfettered control over judicial appointments and directly through the traditional Chilot, a tribunal somewhat like the Star Chamber, which was bound only by the Emperor's notions of fairness and expedience. Despite the assurance in Article 110 that judges "shall submit to no other authority than that of the law", courts were operated, particularly at the lower levels, as appendages of the bureaucracy by the Ministries of Justice and Interior. The formal hierarchy of Supreme, High, Awraja (sub-province), Woreda (district) and Atbia Dagnia (local) Courts, and the separate system of Muslim courts are discussed in the foot-note.[39]

Invariably, courts are intensely political institutions, and their greatest weakness as a check on governmental power is that they are ultimately helpless in the face of ruthless political opposition. Judges place themselves in a difficult position if, as sometimes happened in Ethiopia, they took seriously a rule which the executive promulgated for symbolic or propaganda purposes only. The legal position of Ethiopian judges is particularly untenable. Under traditional law, they were treated as fonctionnaires, and lacked the independence of a French administrative court that is guaranteed through tradition and attitudes of a legal professionalism. The British military authorities that occupied Ethiopia after the defeat of the Italians exerted their influence on behalf of a court system in the common law tradition. The new courts were left to fend for themselves, lacking both a traditional prestige and independent

administrative resources; judges were unable to establish a convincing
independence from Government when left to fend for themselves.[40]

In any event, it is unlikely that Ethiopian judges, who are members
of the ruling elites, would have wished consistently to challenge Imper-
ial authority. Like other officials, many judges sought out influential
patrons and knew that they had to favour northerners over southerners and
rich against poor. In many court cases, the true 'ratio decidendi' was a
bribe. As in Japan, case decisions favoured the status quo or faits
accomplis and judges attempted to rationalise these results on the basis
of suspect legal premises. The public did not respect judges, and there
were numerous appeals. Judges, in turn, often lacked self-confidence and
more than a minimal education, and they were poorly-paid: a Woreda Court
judge earned less than a primary school teacher or a policeman.
Paradoxically, litigation was extremely popular in Ethiopia. There is one
judge for every 20,000 Ethiopians (excluding atbia dagnia or local judges
and members of customary tribuanls), compared to 1:50,000 in the litigious
United States and to a ratio of doctors in Ethiopia of 1:50,000.[41]
It can be convincingly argued that, prior to the Revolution, judges in
the higher courts had come to display a judicial independence and a high
standard of competence in private law matters (see Chapter Seven).

In 'obiter dicta', Ethiopian courts asserted that Article 122, which
stated that the Constitution was supreme and that inconsistent laws were
void, accorded them powers of an American-style judicial review. The
courts failed to establish their point for three reasons. Judicial
review is derived from closely-related principles of a separation of
powers and due process, and the fact that these principles were not
firmly embedded in the 1955 Constitution was reflected in the uncertainties
surrounding judicial review. Secondly, all countries which permit a
judicial review after the promulgation of legislation adhere to the
doctrine of stare decisis and/or establish a special constitutional
court. No such court was created in Ethiopia, judicial review was often
restricted or barred by statute, and only an extremely attenuated form of
stare decisis entered Ethiopian legal thinking. The most important
constraint was, however, that the kinds of political conditions and psy-
chological attitudes that existed when, for example, Chief Justice Marshall
decided Marbury v. Madison are lacking in Ethiopia. A civil law expert,

George Krzeczunowicz, concludes that an Ethiopian judicial review would be
pointless and inconsistent with prevailing systems of law and politics.[42]

F. Civil Rights

The limitations imposed on judicial review in Ethiopia became
apparent on those rare occasions when an individual challenged Govern-
ment's actions under the individual political rights provisions found in
Articles 37 through 65 of the 1955 Constitution. Seven of these cases are
summarised below, and they show the performance of Ethiopia's courts to
have been exceedingly uneven. Most of these and other civil rights cases
involved judicial interpretations of Article 43 which, in the English
version, states that: "No one within the Empire may be deprived of life,
liberty or property without due process of law". "Due process" has no
inherent meaning, existing apart from the extensive judicial gloss it has
received in America and elsewhere, and it is not surprising that this
complex concept could not be translated adequately into Amharic. A
literal translation of the official Amharic version of Article 43 reads
". . . except in accordance with the law". In most of the cases brought
under Article 43, the courts refused to challenge Government's authority
where they could find some kind of statutory justification for it
(e.g., Aryaya, Mebratu - infra). "In accordance with the law" was inter-
preted as a mere admonition to follow the law, a construction which has
been adopted by the courts of, for example, India and Burma.[43] In a
few cases (e.g., X, Savadjian, Sherif), however, the Ethiopian courts
attempted to invalidate governmental acts, and cited due process concepts
and, in a few instances, American cases. Indian courts have also followed
this practice.[44] The Ethiopian courts often declared their independence
and their commitment to following the law fearlessly (e.g., Savadjian,
Woube, Sherif), but cases in which a court was simply ignored by Government
were all too common.

In Lij Aryaya Abebe v. Imperial Board of Telecommunications,
2 J. Ethiopian Law (JEL) 303 (1964), the High Court held that the felling
of Aryaya's trees by the Board, under authority of a Proclamation, did
not constitute an unconstitutional deprivation of property under Article
43, even though the Proclamation did not provide for compensation. The
enactment of the Proclamation itself satisfied the requirements of
Article 43. In a similar case, Highway Authority v. Mebratu Fisseha,

2 JEL 37 (1964), the Supreme Court reasoned that, since the purpose of the Proclamation in question was to benefit society, the interests of the individual may be sacrificed.

In the case of X v. Ministry of Posts, 2 JEL 332 (1964) the High Court enjoined a Ministry from making further deductions from an employee's salary for purposes of satisfying its claim against him. The fact that the Ministry was party, judge and executor in one and the same case was held to violate due process of law.

In Ministry of Finance v. Avedis Savadjian, Su. Ct. Civ. Ap. 720/50 (1958), Savadjian appealed an Inland Revenue Department tax assessment to the Tax Appeal Committee and, ultimately, to the High and Supreme Courts. The Department moved to dismiss his statement of claim on, inter alia, the ground that the Court lacked jurisdiction, since the Transaction Tax Decree did not expressly authorise a court appeal with regard to Departmental assessments. The Supreme Court held that Art. 110 of the Constitution required that the courts follow and interpret the law and that it ensured a judicial independence. In the absence of an appeal provision in the Decree, a person aggrieved by the decision of an administrative official must have a legal remedy, or else a denial of due process under Article 43 would result. The High Court has held, however, that a Proclamation provision allowing appeals to a court on questions of law only bars judicial review of findings of fact, in Mayhob Syid Razik v. Internal Revenue Dept., Civ. Ap. 416/56 (1964).

In Graz. Woube W. Selassie v. Dej. Kefelew W. Tsadik, 2 JEL 54 (1962), an awraja governor ordered an awraja judge to settle a land case by transferring the land to one of the parties. This was declared by the High Court to be a void executive interference with the judicial independence guaranteed by Article 110 of the Constitution. Matters were not so simple, however, in Tewfik Sherif v. Public Security Dept., H. Ct. Order File 22/58 (1965). Tewfik's advocate sought 'habeas corpus', contending an unlawful detention. The Security Department repeatedly refused to produce the prisoner, causing the High Court to observe that:

> The order of the court must under no condition be violated since according to Art. 108 of the Constitution judicial power is exercised by the courts in accordance with the law and in the name of the Emperor. /The Court has the power/ to examine whether the relevant provisions of the Constitution and the Criminal Procedure Code have been observed. . . .

The accused was a member of the Enlightened Few, a "modernising Hindu organization" formed in India, in Public Prosecutor v. Sutra Porlal, Addis Ababa Woreda Court Cr. Case 201/58 (1965). He addressed an advertised meeting, advocating the modernisation of religious practices such as those relating to cattle, and deeply offended five Hindus in attendance. He was convicted of a "blasphemous or grossly offensive utterance" under the 1957 Penal Code, Article 771. The Court reasoned that he was engaging in reform rather than the religious "rites" protected under Constitution Article 40, and that his freedom of speech was legitimately abridged "in accordance with law" (Art. 41) by Penal Code Article 771. The Court held that, by inserting this phrase, the Constitution's draftsmen "retained the power in the ordinary legislative authority to limit the freedom of speech in cases where such limitation seemed appropriate."

Major rights catalogued in the Constitution other than 'freedom' of speech - assembly, association, property ownership, religion, travel and occupation-were also restricted by phrases like "in accordance with law", even in the English version. Diligent research has failed to uncover a successful challenge to Government under these provisions,[45] which were qualified still further by Article 65: "the requirements of public order and the general welfare shall alone justify any limitations on the rights guaranteed. . . ." "Public order" and "general welfare" are so broad as to justify most limitations on rights;[46] this is the position taken by, among others, the European Commission on Human Rights.

Reviewing Ethiopian enactments from 1942 to 1969, William Ewing concludes that

> there is a general lack of legislation dealing with the relative powers and duties of citizens and the government and of various private power groups within the population, for example, landlords and tenants. /Many/ relationships, often including that between government officials and private citizens, continue to be governed by traditional master-servant norms. [47]

Minimal rights were declared in the Constitution without providing the means to secure their enjoyment, although the traditional rights of the Amhara - privacy, private property, a wife's control over her own property, petitioning officials and the Emperor, and access to the courts - received considerable recognition in practice. The guarantism of constitutional government - what civilian lawyers regard as distinguishing democracy from autocracy - was lacking in Ethiopia; the application of public (and, to a lesser extent, private) laws did little more than

passively reflect the political style of the Emperor. Contemporary Third World constitutions are scarcely complete without a reference to due process,[48] and how convenient it was that a foreign audience could not read Amharic and that most Ethiopians did not understand this alien concept.

G. A Symbolic Constitution

That the 1955 Constitution was little more than a monument to formalism - an elegant status symbol - is exemplified by numerous lex imperfecta provisions, escape clauses such as "in accordance with law", and the 'organic' law techniques that were used. We can characterise this Constitution as nominal, semantic, inauthentic and alienating: some provisions were ignored while others froze political processes in the interests of Emperor and his 'modernising' nobility; added together, these provisions created a Westernised veneer of political responsiveness which fuelled the growing alienation of modernising elites during the 1960s and 1970s that lead up to the Revolution. New Constitutional institutions and safeguards were not publicised or widely understood within Ethiopia, and there was no question of their being broadly incorporated into the social fabric. Western-style institutions had little reality beyond a mere physical existence. The symbolic functions of Ethiopian Constitutions (and Haile Selassie's land 'reforms' and private law Codes - see Part III) were grasped as early as 1931.[49] Many of the yawning gaps between law and practice in Ethiopia can be explained by the fact that there was little political interest in the implementation and enforcement of rules that were intended to have no practical effect.

The 1931 and 1955 Constitutions did not embody the essence of a Western-style constitutional government: they failed to counterbalance the politics of force and manipulation with a government by consent. They were paternalistic gifts, of dubious benefit to the recipients; consent was neither sought nor could it have been obtained, even within the Emperor's core constituency - large-scale landlords in the South. Since these Constitutions were not political acts of the people, Government was not obliged to treat them as the supreme law and they evoked little public pride: as the traditional basis of the State had survived, a constitution was not the precondition to and symbol of independence. A Western consensual constitutionalism - the jural analogue of Talcott

Parsons's notion of an equilibriating social system, which was discussed in Chapter One - could not emerge in the absence of public consent. The effects of clever draftsmanship were that no aspect of the Emperor's power was proscribed, the real powerholders were accountable only to themselves and to the Throne, and decision-making procedures were not prescribed in any concrete fashion. The essence of a Western liberalism, a legitimate opposition with an authority to challenge authority, was neither guaranteed by law nor countenanced under traditional politics. The Western-style provisions in the 1955 Constitution were inherently ill-suited to Ethiopia for, as Nyerere argues, a Third World state should not import a constitution which fosters dissensus concerning the fundamentals of national policy. In any event, the absence of an Ethiopian political consensus meant that the Constitutions could not serve as neutral umpires of power struggles in the Western mould. They were, rather, weapons wielded by one man in these struggles and could not survive his political eclipse.[50]

A Marxist jurist would not register surprise on hearing this assertion, and several of Marx's criticisms of Louis Bonaparte's Constitution parallel the arguments we have developed.[51] We have, nevertheless, chosen to assess the Ethiopian Constitutions on the basis of Western legal criteria because the structures of the new institutions created, the phraseology adopted, and public statements by various officials invite such an evaluation. The continuation of politics by force and the manipulation of superficial Western-style institutions prevented the emergence of political predictability and orderliness - indicia of political development for some theorists - through new institutions. The fundamental problems of centralised governments - succession to high office and the institutionalisation of disagreements - were not solved through Ethiopia's Constitution and continue to plague her today.[52]

When the Derg began to move against Haile Selassie, most of the Western-style institutions collapsed quickly (see Chapter Four). Two major non-constitutional restraints on the exercise of Imperial power - provincial elites and the Church - were effectively neutralised through political rather than legal means, although some kind of accommodation must have been reached with the Church, since the Derg and the Church do not regularly attack each other, despite manifest conflicts of interest. New restraints on absolutism, such as increasingly militant urban opposition

parties and rural separatist groups, are now making themselves felt, however. A largely undifferentiated military committee, increasingly dominated by one man, is attempting to perform most of the functions of both traditional and Western-style institutions. Despite a great deal of motion, little political development has been recorded in twentieth century Ethiopia, and nation-building through institution-building and structural transformation remains a critical priority.

II. Courtiers and Bureaucrats

In 1974, the Derg fell heir to a government consisting of concentric circles of personalities and institutions surrounding a throne. This administrative apparatus did not usually function in the manner anticipated by the 1955 Constitution, and was in the midst of a transition from a series of personal cliques towards the executive arm of a modern state. For Menelik and, to a somewhat lesser extent, Haile Selassie, few matters lacked political significance or were too small to attract attention and supervision, if not direct control. Traditionally, no distinction was made between politics and administration; in the absence of industry and large-scale commerce, political power rather than economic productivity served to generate wealth through an 'office', preferably one which was state-sanctioned. Officials behaved like traders, manipulating interstices in the political order for the benefit of themselves and others. To a very large extent, bureaucratic and military power stemmed from bonds of obligation based on the patron-client relations that are discussed in Chapter One: each power holder drew strength from below and acquired authority (legitimated power) from above. Most transactions between administrators and peasants were conducted through a local nobleman. Peasants assumed that power would be abused, and they were suspicious of the rare official who did not try to use coercion to implement his desires.[53]

A. The Growth of Administration

From the eighteenth century onwards, Ethiopian officialdom consisted of personal retainers dependent on their master for remuneration as well as feudal allies bound by an oath of fealty. Political recruitment was therefore only partly ascriptive, although officials continually attempted to convert personal power into family privilege and prominent Shoan families

realised major benefits from a close affiliation with the families of
Menelik and Haile Selassie. Menelik's _Ghibbi_ (literally, palace)
provided an extensive administration, but a division and separation of
administrative functions only began to take shape when nine European-style
ministers were appointed in 1908-9. These ministers had little political
stature and almost no notion of their responsibilities, and the Council
of Ministers was initially little more than a fresh focal point for feudal
intrigues. Permanent administrative headquarters, foreign advisors and
European-style regulations did not begin to emerge until the 1920s, under
Haile Selassie. He used the new ministries gradually to transfer power
away from those provincial elites whose only claim to office lay in
the military achievements of their families. The pace of administrative
change was slow: by the time of the Italian invasion, serious reforms
had only extended to the military and police, customs administration and
the few district governments that had fallen under the influence of the
Western-educated "Red Ras" (radical Prince) Imru Michael.[54]

The Italians were partly successful in imposing a centralised admin-
istration on Ethiopia by force, backed by new transport and communications
networks and a systematic dismantling or co-opting of local political
institutions. Haile Selassie followed up on this windfall from the 1940s
onwards, particularly with regard to internal security, finance and a
partial homogenisation of local administration. While the techniques of
modern government do require a certain amount of centralisation, Haile
Selassie's policies went much further to satisfy an inordinate desire for
prestige, power and control. While central Government continued to have
almost no effect on the daily lives of peasants (owing to the lack of
penetration we discussed in Chapter Two), the financial and control arms
of the State became overcentralised, in the sense that local initiatives
were stifled, minor disputes were referred to the top, and constant,
high-level administrative conflicts were generated. Provincial elites
tried to go their own way, remarking that "centralisation is for those at
the centre". With the exception of the Ministry of Education, there were
few attempts to centralise the activities of service and development-
oriented agencies - a reflection of their lowly status within traditional
political processes. These agencies were created more recently, promoted
feebly and achieved fewer political successes, when compared to the older
agencies of finance and control.[55]

The service agencies lost almost all of the few battles they waged for social change through administration, largely because they failed to develop networks of political power which could have rivalled those of the finance and control agencies. The overall tendency was for new agencies to become as subservient to the demands of traditional politics as the older ones, and to lapse into traditional administrative habits: the entrenchment of personal power; a disdain for peasants and for development activities; acting as buffers rather than as channels of communication; and resorting to force because of an inability to persuade the public. In other words, administration in Ethiopia followed many of the practices adopted by other colonial regimes in the Third World, although at a lower level of efficiency. As under European colonialism, policies related to a broadly-based development received only a tardy and half-hearted recognition, since they formed no vital part of the political interests operating in the 'metropole'.[56]

Broadly speaking, administration in Ethiopia thus encompassed two divergent groups who cut across institutional boundaries and were held together by the Emperor: traditional politicians who completely dominated finance and control agencies and often held positions of power in the service agencies; and educated modernisers, who chafed in subordinate technical positions in the finance and control agencies and tried to exert their influence through the service agencies. While the forces of tradition seemed firmly in command on the eve of the Revolution, the modernisers had, in fact, acquired political muscle and, on occasion during the 1960s, successfully asserted their interests. The main distinguishing characteristic of these modernisers is their Western-style education: the bureaucracy partially displaced the Church and military as a channel of upward social mobility, and education became the passport to an administrative job for the young. As in many other Third World countries, graduates strongly prefer government posts to business jobs, and the educational system was geared towards producing clerks and generalists rather than scientific or technical staff.[57]

Ethiopia's political system was not, however, designed to deal with demands from ever-larger numbers of educated people. Haile Selassie therefore felt it necessary to curb the influence of the modernisers by using elderly politicians who were jealous of their potential to supervise them and by utilising their technical skills while suppressing their

attempts to assert a political power and advocate innovations. The Emperor rarely sided with the modernisers in their numerous and inevitable conflicts with tradition-reared officials. As might be expected, most of the bureaucratic modernisers became deeply alienated and withdrawn, although, in the end, many adapted to the requirements of traditional politics and were rewarded accordingly. It should be noted that the infusion of educated officials did not result in a diminution of (the largely Shoan) Amhara control over politics at the centre: most schools were located in Addis Ababa or the 'traditional' Amhara provinces, and most places at domestic and foreign schools were obtained by Amhara from the upper social strata.[58]

B. Defects and Weaknesses

The administrative practices that attracted the most universal condemnation by Ethiopian modernisers revolved around nepotism and corruption. The varying forms of Imperial favour could be regarded as clear-cut species of nepotism and corruption, save that, traditionally, no formal authorisation of privilege was required other than the word of an emperor. Governmental funds could only be pried out of the Ministry of Finance on Haile Selassie's order after an official audience. Funds were then dealt with haphazardly, and often found their way into an official's personal account. In 1963, for example, the Auditor General reported to Parliament that Eth. $30.5 millions of governmental funds could not be accounted for (Eth. $2.08 = U.S. $1). A large percentage of tax receipts fell into private hands and bribes were the ordinary means of doing business with government. As in Indonesia, for example: the Penal Code contained stern injunctions against corruption yet those who demonstrated political loyalty were never prosecuted; Government's attempts to improve accounting procedures, so as to stem low-level leakages, were all but futile; and the public never roused itself to demand an honest administration, which formed no part of traditional politics. While maintaining an aura of personal sanctity, the Emperor manipulated the corruption opportunities of others to his own advantage. Losses resulting from corruption were huge, yet they paled in comparison with wastage due to sheer inaction, inefficiency or incompetence.[59]

Ethiopia is not alone in facing problems associated with corruption and, indeed, she suffers from many of the other administrative defects and weaknesses commonly ascribed to Third World governments, although they

are found, in varying degrees, in all bureaucracies. Zyg Plater argues that

> Ethiopia has bureacratic failings in common with the rest of the
> world. The list is long and depressing: inefficiency; corruption;
> lack of coordination between agencies, between capital city and the
> field, between government and subjects; restricted program capabil-
> ities; low responsiveness to immediate issues; low program coor-
> dination over time and so forth. . . . To the universal dysfunctional
> elements of political and economic pressures, avarice and bureau-
> cratic concern with job preservation rather than goal achievement,
> African societies /including Ethiopia's/ often add tribalism /?/,
> a tradition of gift-giving within authority structures, and a lack of
> public service tradition. . . .60

These defects add up to one of the four crises Jurgen Habermas ascribes
to advanced capitalist countries: "the administrative system does not
produce the requisite quantity of rational decisions. . . ."[61] As in
so many other states, reasonably secure political underpinnings for the
implementation of decisions are lacking in Ethiopia. Much time is wasted
in the superfluous processing of papers, endless cups of coffee and
committee meetings and senseless policy shifts. Much of this time-wasting
results from attempts to shift work onto the shoulders of others.[62]

Under Haile Selassie, the bureaucracy was firmly in the grip of the
personal machines of the powerful: bureaucrats were expected to advance
the schemes of their patron and frustrate the designs of his enemies,
rather than to put Government's policies into effect. In such an atmos-
phere, there can be no place for a reasoned criticism of a superior's
proposals (short of outright rebellion), and conspicuous success, as well
as failure, attracted unwanted attentions from above. It is therefore
unsurprising that Haile Selassie's cynical realism was echoed throughout
the bureaucracy and that inaction or 'interpreting' the policies of your
opponents out of existence, rather than an extremely hazardous entrepren-
eurial risk-taking, were the canons of Ethiopian bureaucracy. A civil
service composed of retainers employs too many people, most of them
unqualified, exerts a constant inflationary pressure on the economy and
fuels natural bureaucratic tendencies toward intrigue and secrecy. Where
decisions are made under conditions of utmost secrecy - as in Ethiopia -
crucial procedures are not reduced to writing, decision makers cannot
acquire all or even most of the relevant information, and the 'facts'
themselves must be treated with suspicion. Under such circumstances, the
safest course is to take no action, in the hope that the matter will cease

to concern you personally before action is inescapably demanded by a
superior. Asking for advice or opinions is an admission of weakness and
a threat to your own authority, as is a delegation of authority where
power is regarded as personal and indivisible rather than institutional-
ised. From the Emperor downwards, it is felt that to delegate is to
deprive yourself of power and dignity, as the subordinate then becomes
the social equal of his superior. In such an atmosphere, concrete
decisions are rare favours to particular individuals rather than a matter
of administrative routine governed by law. If a policy succeeded, the
Emperor took the credit; if it went wrong, the relevant administrators
became convenient scapegoats - another reason for secrecy and inaction,
in the absence of sustained pressure from the Throne.[63]

C. Law and Administration

As we shall see in Chapter Five, many of these features of Ethiopian
bureaucracy survive more or less intact under the Derg, and law has done
little to alter traditional administrative practices. Prior to 1909,
Ethiopian administration was all but unregulated by law. There are at
least three reasons for this state of affairs: individual commands in
particular situations were seldom supplemented by general rules (presumably
because such rules would have conferred a more open-ended authority);
under a proprietary theory of the state, traditional laws made few hard-
and-fast distinctions between a politician's personal interest and what
might be termed the public interest; and rapid socio-economic changes and
a sustained growth in state power, which are associated with the evolution
of administrative law in industrialised states, were absent in Ethiopia.
Emperors found that particularised commands and more general penal pro-
hibitions sufficed for their purposes, that there was no need for more
flexible rules which encourage and regulate wholesome activities or which
attempt to promote sensible policy-making.[64]

While the extensive and precise analytical distinctions that are
made between public and private law by continental jurists tend to break
down in twentieth century Ethiopia (and elsewhere), there are other grounds
on which to distinguish the bodies of law promulgated under Haile Selassie.
While private laws were imported virtually wholesale (see Chapter Seven),
public law, and particularly administrative law, are more 'home-grown'
products. The predominant tendency in the area of public law (prior to 1974)

was to adapt Western institutional models, cast them in Ethiopian legal moulds, and then let chance determine whether these institutions acquired significant functions.[65] Legal "forms impose a slight discipline in the performance of Ethiopian administration";[66] indigenous administrative traditions are "barely obscured by an overlay of modern vocabulary"[67], which was often provided by Anglo-American 'experts' in administration and law.

Anglo-American models are ill-adapted to Ethiopian circumstances because they focus on a politically-irrelevant issue: reconciling the necessary exercise of governmental power with the protection of individuals and groups against its abuse.[68] In practice, notions of natural rights or the implementation of non-governmental interests obtained precious little recognition in Ethiopia. As in Anglophonic Africa, and subject to a few exceptions (discussed in the foonote)[69] where governmental acts were declared 'ultra vires',Ethiopian judges do not serve as humane and impartial guardians of a public interest,as they sometimes (but by no means always) do in the West. Although a remedy against a government tort-feasor is, in theory, possible under the Ethiopian Civil Code,[70] bureaucrats are not accountable to the public in any meaningful sense (see Chapter Five).

The commands embodied in Ethiopian administrative law are seldom precise and there are no enforceable guarantees against the abuse of power; the law means no more than what administrators choose to do with it. Usually, law was simply ignored, used as a pretext for inaction, delay and oppression, or as a vehicle for personal power. This was relatively easy to do in a "soft state", and practices found in most systems of administrative law were utilised widely: reluctant ministers delayed in bringing enacted legislation into force or simply refused to do so, and the power to promulgate essential subsidiary rules was often neglected or exercised in a manner which negated the (usually vague) policies found in the statutes. Like Ethiopian constitutional law, statutes relating to administration were largely symbolic: the actual duties of officials had little to do with titles, job descriptions or enumerated powers and duties. The essential criterion was the traditional one of an ability to control subordinates and the public, who were expected to do whatever was required of them. Many units of government, and local administration in particular, retained a substantial autonomy,

despite Haile Selassie's centralising rules. There was little coordination
in the initiating of administrative legislation, despite the existence of
a Legislation Committee under the Chairmanship of the Justice Minister.
Administrative laws and regulations piled up as an amorphous mass of
esoteric standards. This was one of the reasons for the lack of coherent
policies and of a united impetus throughout government; in any event,
crucial decisions were not implemented principally through law.[71]

On the eve of the Revolution, there were eighteen ministries plus
a confusing jumble of "autonomous" agencies - public corporations, some
of the Emperor's private businesses, institutions performing specialised
tasks for a particular ministry, and agencies designed to coordinate the
activities of several ministries. Although minor changes in the juris-
dictions of ministries and agencies occurred from time to time, the overall
effect of the growth of administration under Haile Selassie is one of new
institutions superimposed on existing structures, without a thoroughgoing
reform. The resulting structure served to further Haile Selassie's
policies of **divide et imperia**, of institutionalising the capacity
of one organisation to forestall the designs of another. Administrative
jurisdictions were ill-defined and overlapping, functions and duties were
fragmented and there was much duplication of effort[72] (see _infra_).

Ministers were "directly responsible" to a Prime Minister and,
"above him", to the Emperor and "the State".[73] In practice, this meant
that Ministers served as a personal staff for Haile Selassie, for whom
l'Etat, c'est moi. The coordination of administrative policies that is
associated with the principle of collective ministerial responsibility
was clearly absent. Ministers were appointed by the Emperor, and the
duration of appointments averaged four to six years, or longer than those
in the U.K. in some instances. The structural arrangements of adminis-
tration varied from ministry to ministry and even within a ministry, but
the common organisational pattern, from the top downward, encompassed
departments, divisions and, generally, sections. A department was run by
an assistant minister, aided by a departmental director who was responsible
to his minister, and one or two vice ministers.[74] In theory, bureaucrats
from the rank of assistant minister downwards are appointed by the
nominally independent Central Personnel Agency, under the merit principle and
other criteria which are fairly uniform. In practice, the Emperor intervened
in all but the very lowest levels of appointment in central Government.

The legislation that created this Agency also purported to spell out the rights and duties of bureaucrats, but these provisions were accorded little practical recognition. (Related issues are discussed in the footnote).[75]

III. Selected Aspects of Ethiopian Administration

Much of the balance of this study is devoted to an analysis of the legal regimes underlying particular administrative activities and the impact that legal and administrative reforms could have on Ethiopia's development potential. Brief 'case studies' concerning planning, public finance, rural administration, and the 1972-73 famine in Wollo Province are introduced at this juncture because they highlight problems which are found, in varying degrees, throughout Ethiopian administration.

A. Planning

In Chapter Two we discussed the importance of planning in relation to development and argued that Ethiopia was a "soft state" because of, inter alia, a persistent unwillingness and inability to implement development plans. Successful development planning requires that the state take a decisive role in the economy, organising all of its activities to take account of the framework of a plan - conditions which did not obtain in Ethiopia. As development is, among other things, a process of rationalisation - the application of techniques promoting efficiency for the public benefit - a development plan must be rationalist in approach, aiming at the elimination of contradictions and sporadic activity, and conveying a clear picture of how resources which are actually available should be used.[76] Given the irrationalities of the Ethiopian administrative structures and laws that we have discussed, rational plan implementation would have been impossible, despite there being a strong desire for it.

Such a desire was not, however, widely shared within a bureaucracy preoccupied with traditional power struggles. Ethiopia engaged in symbolic or pseudo-planning, and planners were restricted to forecasting occurrences over which they had little or no control, in an attempt to stimulate the growth of Western-style marketing arrangements. The combination of feudal traditions and low levels of social discipline encouraged the adoption of narrowly economic planning models. These models served as convenient rationales for existing production functions and the social status quo,

deflecting the possibility of attacks on the underlying conditions of underdevelopment. Like her Codes of private law, Ethiopia's five year plans were designed to give a reforming face to the regime rather than actually to change the way things worked. Plans reflected Ethiopia's almost infinite needs rather than her resources and capacities, amounting to little more than shopping lists for foreign aid and invitations to treat with multinational companies.[77] The "real planning problem" of "how to squeeze and twist consumption in such a way as to speed up development"[78] was never considered. To have done so would have threatened the lifestyles of traditional elites.

Ethiopia's First Five Year Plan emphasised the creation of various types of infrastructure; the Second Plan stressed directly productive investments in industry and mining; and the Third Five Year Plan (TFYP, 1968-73) focused on commercial agriculture and education. These shifts in priorities were only partially consistent with Ethiopia's needs (objectively considered) at the time, as these priorities were filtered through the perceptions of traditional politics. Despite the proclaimed aims of development, planning priorities aimed at an unbalanced economic growth which would benefit the upper social strata among the Amhara and, to a lesser extent, foreign businessmen. Peasant agriculture was starved for funds, although this imbalance would have been redressed somewhat in the Fourth Plan that was overtaken by the Revolution. The goals announced in the Plans were, for the most part, wildly optimistic. For example, the annual growth rate of 6% projected in the TFYP would have required an annual net investment of 18-24% of GNP (assuming an incremental capital-output ratio of 3 or 4). When 5% of GNP for depreciation of existing capital and 11-12% for recurrent government expenditures are added to this figure, only 59-66% of national income was left over for private consumption – in a country perpetually on the verge of starvation! Further, Ethiopian national income statistics were more reliable than most in Africa, but they were subject to a margin of error of plus or minus 15-17% and the reliability of planning targets suffered accordingly. For administrators, plans were little more than budgetary exercises, although administrative reforms received some attention in the TFYP.[79]

Ethiopian planning suffered from a lack of coordination, poor timing, beliefs that plans are self-executing, a failure to involve local government or voluntary associations, and a failure to specify manpower, equipment

and the full measure of financial needs. Although recurrent expenditures
on planned projects were inadequate and the mobilisation of domestic
resources was neglected, capital outlays were generally satisfactory,
subsidised as they were by foreign aid donors. Physical capital formation
was, however, handicapped by a serious bottleneck that remains to this
day: the small size of Ethiopia's construction industry.

A review of the institutional frames through which Ethiopians
engaged in planning points up some of the reasons for the failures we
noted. A Council of the National Economy was created in 1954,[80] but
seems to have done very little in comparison with the Yugoslavs who were
primarily responsible for drafting Ethiopia's first two Plans. In 1966,
planning arrangements seemingly acquired a higher status under a new
Ministry of Planning and Development.[81] This Ministry was, however, often
unable to secure the release of development funds from the Ministry of
Finance; it lacked the authority to enforce the implementation of plan
provisos; and it failed to evaluate critically the projects submitted by
other ministries and to coordinate the deployment of foreign aid and
technical assistance. Most of these defects were perpetuated when the
Ministry was replaced by the Planning Commission in 1970, although the
coordination of planning activities with those of the Central Statistical
Office and the Technical Agency was improved, in theory, by placing all of
these activities under the "direct authority" of the Prime Minister.[82]
We have, however, noted that the Prime Minister lacked power bases
independent of the Throne, and he was unable, and usually unwilling, to
compel the cooperation of the other ministries in planning activities.
For example, the Commission lacked the statutory power to compel the
production of statistics or even project proposals from other ministries,
and planning proceeded in an atmosphere of extreme secrecy.

Ministers regularly circumvented this Commission in an attempt to
win direct approval of their proposals from the Emperor. Planning was
deemed to be his prerogative under Articles 27 and 36 of the 1955 Constit-
ution, and Haile Selassie displayed little interest in the regularisation
of planning procedures that would have diminished his control over the
ministers. As the composition of the Commission largely duplicated that of
the Council of Ministers, the same group met twice to consider the same
proposals, under the Emperor's watchful eye. Beyond the foreign loan
agreements and annual budgets that required Parliamentary approval, the

decisions of the Council/Commission (including the Five Year Plans) lacked the force of law and were not examined meaningfully by Parliament. There was little coordination between planning priorities, on the one hand, and business licensing or the income tax and tariff relief granted to foreign companies under the Investment Proclamation, on the other[83] (see Chapter Seven).

B. Public Finance

The connection between development planning and budgeting - creating the financial statements of government's plans and expectations - is an obvious one, yet the connection was by no means always evident in Haile Selassie's Ethiopia. There, budgets reflected the exigencies of the moment and the relative positions of traditional politicians, rather than a coherent formulation of purposes closely tied to development priorities. There was no uniformity in the classification of accounts for the public sector as a whole, and the annual budget was nothing more than an aggre-gation of the temporary victories of ministries and agencies. Ethiopian budgets failed to perform the classic function of balancing anticipated revenues against expenditures, and budgetary inefficiency and incompetence hindered the creation of a coherent fiscal policy. As in many Third World states, the requirements of administration, defense, 'development' projects and the leakages represented by various forms of corruption quickly outpaced the modest increases in revenue that were perennially overestimated. From 1956 to 1966, for example, Governmental expenditures trebled, and the gap between domestic revenue and expenditure averaged Eth. $53 millions per year from 1968 to 1973.[84]

To some extent, this gap was filled by foreign aid, but the strong desire to return the budget to some kind of a balance always necessitated ad hoc cutbacks in expenditure. The Minister of Finance would refuse to release budgeted sums without authorisation from the Emperor, whose decisions were based on his personal political needs at the time. These budgetary interventions almost always entailed maintaining expenditures on salaries and weaponry while cutting back on some mixture of social services, building construction, the acquisition of equipment, and projects conducive to economic growth. The implementation of Five Year Plans was thus constantly stalled or disrupted by a lack of funds. Successive Ministers of Finance sought to exercise power while avoiding responsibility,

at least with regard to the larger budgetary appropriations. There were
no legal or political prohibitions on their doing so: Parliament's
attempts to intervene in the budgetary process were almost always un-
successful. Below the Minister of Finance, however, there is a high
degree of functional specialisation and educated administrators were
able to exercise a technical expertise free from many of the frustrations
that arise in other ministries.[85]

The potential for the mobilisation of financial resources in Ethiopia,
represented by the excess of consumption over that minimum essential to a
decent life, is quite small: many peasants fall below any standard of
a decent minimum. In any event, much of this potential was never tapped
through taxation under Haile Selassie. While the ratio of governmental
revenue to GDP 'ought' to have been 17 to 19%, Ethiopia managed only about
8% and ranked 71st out of 72 countries in a "tax effort" survey by Lotz
and Morse.[86] There are many reasons for this, but the main one is that
the way in which the tax laws were drafted, combined with corruption and
the ease of tax evasion for the wealthy, meant that the tax system exacer-
bated inequalities in income distribution. When compared to the situation
in neighbouring states, lower social strata in Ethiopia bore a larger
share of the tax burden, received less by way of a return in the form of
social welfare payments or programmes, and regularly displayed an intense
hostility towards so inequitable a system (see Chapters One and Six).
No attempt was made to tax those economic privileges - such as conspicuous
consumption - that perform no positive social function and do not serve
as production incentives. In sum, Ethiopian taxation and budgetary processes
clearly failed to advance any of the four partly-conflicting objectives
emphasised by an Ethiopian economist, Eshetu Chole: revenue maximisation,
economic stabilisation, capital formation, and a tempering of gross
economic inequalities.[87]

The Ethiopian tax system has always been used by emperors to control
their officials: shum-shir (promote-demote-transfer) had its analogue in
the enlargement, diminution, confiscation and reallocation of state-
sanctioned rights to raise revenue. These rights often amounted to little
more than species of ransom, tribute or baksheesh. While there were
significant changes in this tax system under Haile Selassie, they took
the form of increasing the burden on traditional revenue sources for the
most part, little attention being paid to the overall tax structure. In

Chapter One, we noted the excessive reliance Ethiopia placed on indirect
(customs, excise and sales) taxes, which are regressive and less yield-
elastic (less stabilising economically and less likely to counter infla-
tionary pressures) than direct forms of taxation. Indirect taxes are,
however, more easily collected by an inefficient, incompetent and corrupt
bureaucracy such as Ethiopia's. Import and export tariffs have long been
used in Ethiopia; they came to be based on extremely complicated schedules
which were out of step with international nomenclature (this was corrected
in 1976) and which provided abundant opportunities for the suborning of
customs officials. As most tariffs were assessed ad valorem, revenues from
exports fluctuated wildly in parallel with international price trends.
The imposition of export tariffs also damaged Ethiopia's international
competitiveness. Policies of import-substitution imposed a constraint
on the realisation of revenues through import tariffs, and excise taxes
on sugar, cotton yarn, textile fabrics, alcohol and petroleum products
were designed to recapture some of the revenue that was lost. Trans-
action taxes included: an additional 1% tax on imports and 2% on exports,
5% on domestically manufactured goods, 2% on each sale of goods, and 2%
on the value of construction work. The amount of revenue realised from
these taxes was extremely small, owing to the small size of the commercial
sector of the economy and the virtual absence of the bookkeeping practices
that would have facilitated the collection of sales and construction
taxes. As the sales tax was applied to articles of mass consumption, the
burden of this tax fell primarily on the urban poor.[88]

When, as in Ethiopia, the economy consists of many small producers
who, for the most part, fall outside the monetised sector and employ few
people, little revenue can be realised from direct forms of taxation.
The only kinds of direct taxes used in Ethiopia, prior to the Revolution,
concerned personal, business and agricultural income, and the ownership of
land and cattle. While income taxes are, in theory, based more on the
ability to pay than are indirect taxes, a highly sophisticated administrative
apparatus is needed to insure that all income is reported and that
exemptions are not misused. The P.A.Y.E.-type of tax under schedule A
of the Income Tax Proclamation was, in practice, far from self-enforcing;
it applied to relatively few people and the rate of taxation was much
lower than in, for example, Tanzania, Uganda or Kenya. Rental income,

taxed under Schedule B, was seldom reported to Ministry officials, who found it difficult to estimate the value of rents paid in kind. In any event, the rate of tax on rental incomes was lower than that on wages and salaries: e.g., 10% on Eth. $10,000 and 20% on Eth. $30,000. Similar rates were payable, under Schedule C, on the business incomes that were systematically understated by businessmen, who were unwilling or unable to adhere to bookkeeping practices. Business tax assessments were thus capricious in the extreme, and were often inflated in an attempt to solicit a bribe. It was impossible for businessmen to predict their tax liability in advance, and this increased the uncertainties of doing business in Ethiopia. Capital gains were impossible to trace or estimate: the Ethiopian Stock Exchange was disorganised and all but unregulated, and many transactions did not pass through the Exchange.[89]

The history of land and cattle taxes and of agricultural income taxation under Schedule D is extremely interesting. Traditional land tenures and taxing arrangements held absolute sway in rural Ethiopia until 1944, when the need for additional revenue, to pay the army salaries that had just been instituted and to maintain the infrastructure created by the Italians, was keenly felt. In that year, a Land Tax Proclamation decreased the costs of tax collection and simplified an agrarian tax structure, which had consisted largely of divergent feudal tributes (tithes). The resulting taxes were regressive, generated only 3% of ordinary revenue, and captured only 0.7% of total agricultural value added.[90] Tax evasion was widespread and whole provinces refused to pay taxes for several years at a time. This state of affairs was unacceptable to educated modernisers in the Ministry of Finance, and the Agricultural Income Tax Proclamation of 1967 was promulgated to subject income from agricultural activities to a more equitable tax which did not, however, penalise those who neglected to use their land. This intended instrument of land reform and expansion of the monetised sector - the wisdom of which was debatable - became little more than another poorly implemented tax.

Parliament, overwhelmingly composed of large-scale landlords defending "traditional" virtues, roused itself and cleverly watered down the Proclamation by enabling local landlords to assess their own tax liability. Administrative overwork, corruption, and the occasional assassination of a zealous tax official completed the picture of non-implementation. In 1968, the Gojjamis rebelled against this Proclamation which, they felt, would destroy their rist system of landholding (see Chapter Six).

After assassinations, spontaneous riots and retaliatory bombings and Army operations, all tax liability was forgiven. These events, so typical of the gap between written and applied law in rural Ethiopia,

> verified again that if enforcement is demanded by government, overriding traditional attitudes, the forces of the latter will take whatever steps necessary to halt government action. 91

Neither the land tax nor the agricultural income tax reached the wealth of the landed aristocracy, who could simply shift such minimal tax burdens as were actually imposed onto the shoulders of their usually impoverished tenants. The cattle tax was more of a symbolic tribute than a revenue device: the amount of revenue realised from it was negligible (at, _e.g._, Eth. $0.25 per cow per year), as the nomads against whom it was directed simply ignored it.[92]

In sum, the laws that constituted Ethiopia's tax system were poorly drafted and poorly administered. Taxes overlapped and provisions contradicted each other and fostered inequities, while the chosen revenue base continued to be extremely narrow. The time and manner of payment and the amount to be paid were far from clear, plain and nondiscriminatory. Collection procedures had never been rationalised: it was almost impossible to ascertain tax liability easily and fairly, and enforcement mechanisms and checks on corruption were clear failures.[93]

C. Rural Administration

Events surrounding the implementation of the agricultural income tax typify many of the defects found in Ethiopian local administration prior to the Revolution. A "restrictive, self-seeking, narrowly responsive" Ethiopian local administration[94] reflected the direct impact that social stratification had on politics: traditional provincial elites, whose politics focused on narrow, local and personal issues had an all but absolute control over administration at the local level; and they also occupied many strategic posts at the centre, particularly within the Ministry of Interior. The bureaucratisation of Ethiopian life (in the Weberian sense - see Chapter Five) had not proceeded to the point where the services of these elites and their proteges could be dispensed with, owing to, among other factors, the unevenness associated with a personalised administration, poor communications and standards of literacy within the bureaucracy, inadequate budgets and staffing, and the ethnic variations and conflicts we discussed in Chapter One.[95] The primary function of

local administration was, and largely still is, the organisation of
loyalty to the regime; central Government tolerated

> a high level of local autonomy and variability /in structures, the
> functional performance of similar units and power relationships
> among officials/, provided order and security are maintained. 96

Haile Selassie was even forced to tolerate large leakages from badly-
needed tax revenues, and such simple functions as record-keeping often
went by the board.

With significant exceptions, such as some of the projects of the
Governor of Tigre Province, Ras Menegesha Seyoum (see Chapter One),
locally-administered development programmes existed in name only:
funds either were used to construct administration buildings or found
their way into the pockets of officials. At the local level, development
became little more than an excuse for additional demands for taxes and
compulsory labour. These tendencies fostered public apathy towards, or
rebellion against any form of development advocated by Government.
Ethiopian rural administration proceeded on the basis of an Indirect Rule,
in the sense that quasi-autonomous and tradition-oriented structures
were interposed between Emperor and people, filtering out what little
positive influence each might have had on the other.[97] The system served,
rather, to maximise what might be termed negative influences: taxes and
orders were often (but by no means always) enforced brutally by police
and the army, provoking riot and rebellion - the means by which the people
exerted their influence.

Officials at every level could be described as general handy-men,
exercising an undemarcated residue of whatever governmental authority was
left over to them by their superiors. John Markakis notes that, until
recently,

> the authority of officials was limited neither by law nor by trad-
> ition; it extended over every phase of the people's lives, and they
> ruled their fiefs like petty autocrats. . . . They administered
> justice personally - a function which they turned to profit. . . .98

This situation prevailed until Haile Selassie was deposed: apart from
vague provisos concerning tax collection and the maintenance of order,
the scope of, or limitations on, power were not demarcated. Officials
were not compelled through law to show results or to assume responsibility
for specific policies or projects.[99]

At the top, the Emperor continued to define his authority as all-embracing, yet local elites knew that this assertion seldom accorded with reality. With few exceptions, provincial governors exacted what they could from the Emperor and the people, giving as little as possible in return. The boundaries of a province usually corresponded with those of a petty kingship under a _ras_ (roughly, prince), and an incumbent _ras_ often retained power sufficient to force Haile Selassie to appoint him as a provincial governor. Even though governors lost the automatic rights to keep a private army and to appoint all of their own subordinates in 1942, they continued to wield a fair measure of power - usually through direct action in their province rather than by influencing decisions at the centre. The same can be said of an _awraja_ (sub-province) governor, who was often appointed because he had been a 'vassal' of the provincial _ras._ Governors tended to have a traditional Church education, and this was regarded as an advantage in what was termed the reconciliation of modern administrative techniques with tradition. Other traditional officials varied widely in their titles, duties and manner of appointment, but can generally be termed _woreda_ (district) governors, _ballabats_ and, under them, the _chika shums_ (roughly, village headmen) who were responsible for local tax collections and executing communal decisions. The opportunities for corruption under Haile Selassie are illustrated by the fact that, while a woreda governor's salary was only Eth. $100 per month, people would pay as much as $10,000 for such a governorship in a fertile area.[100]

Some of the confusions and anomalies that resulted when a Ministry of Interior was superimposed upon these traditional arrangements will be familiar to students of Indirect Rule in Anglophonic Africa. The Ministry of Interior, begun under Menelik in 1909, was reorganised in 1942. Its activities then remained virtually unchanged until 1973. Following a French and Italian pattern, Interior has retained public order and security powers while losing many of the welfare and technical functions that are associated with the police power in America, eighteenth century Prussia and, to a large extent, contemporary Germany. Nevertheless, many of the Ministry's functions continue to overlap with those of the more service-oriented ministries and agencies, and the Ministry was therefore able to exercise a conservative - or, more accurately, reactionary - influence on Government's policies with regard to the rural areas. Young and educated

administrators were considered unsuitable for employment by the Ministry
of Interior and innovations were not required from its officials, who
regarded established traditions as justifying any action they might wish
to take.[101]

A variety of local councils were promulgated. In theory, they were
designed to introduce a small measure of coordination and popular part-
icipation into local administration. Overwhelmingly, they failed to do
so: local development committees (lemats), for example, had only a formal
existence and were used only occasionally -- and then as an additional
instrument of compulsion - contra an unpublished 1963 Directive from the
Ministry.[102] The interactions of local councils, traditional administrative
arrangements, the Ministry of Interior hierarchy and the other ministries and
agencies active in the rural areas added up to an Italian-style unin-
tegrated prefectural system of rural administration. In theory, field
agents from service ministries are to receive administrative directives
from the local governor and technical directives from their own ministry,
activities being coordinated by a bewildering variety of councils. In
practice, there were never-ending quibbles over what constituted an
"administrative" or "technical" directive; field agents preferred to
follow the orders of the ministry that paid and promoted them as well as
preferring the lifestyle of the towns, and they failed to penetrate either
the countryside or the bureaucratic muddle surrounding them; and, from top
to bottom, there was no meaningful coordination of government's rural
activities. If development-oriented projects were proposed by field
agents, they were seldom adopted: there was an inbuilt conflict of
policy goals between suspicious, conservative and authoritarian local
officials and potential agents of change sent out from the centre. Owing
to vague and overlapping territorial and administrative boundaries, peas-
ants were often unable to ascertain which tax area, court jurisdiction,
ballabat, etc. they were subject to. Unofficial channels of communication
became the official ones over time, as bureaucratic confusion fostered
opportunities for bribes and power struggles.[103] There was, therefore,
little pressure for reform from within the rural bureaucracy. Further,
as John Cohen and Peter Koehn note, the Emperor and his ministers
benefitted

> from encouraging such conflicts and divisions, because they reduce
> the likelihood that groups in outlying areas will present unified

demands upon central government institutions and they serve to protect central autocratic power from encroachment by strong provincial rivals. 104

It is against this background that foreign 'experts' and the Ethiopian intelligentsia urged the adoption of non-ascriptive appointment policies, a rationalisation of the Ministry of Interior's structure, and a substantial decentralisation of administrative authority. In response to these pressures, a fairly radical Local Self-Administration Order was put into effect in 1966, which authorised awraja (sub-provincial) councils to raise taxes, approve expenditures and dismiss their governors. Displaying rare activity, Parliament subsequently rejected the Order but, in what was arguably an unconstitutional step, Haile Selassie promulgated a much watered-down version of the Order in 1967. The main innovation introduced was the use of councils to supervise the health, public works, water and agricultural services supplied by field agents, although the lines of accountability were not particularly clear. There matters stood until 1973; while the Order was applied experimentally in a few awrajas, the budgetary allocations required to make it broadly effective were never presented to Parliament. Parliament did, however, have the opportunity to reject an Awraja Internal Administration Tax Proclamation, which would have permitted the councils to collect and allocate the minor health and education taxes. 105

In 1973, growing urban dissatisfaction with Haile Selassie's regime - and with maladministration during the Wollo Famine (infra) in particular - encouraged the Emperor to promise that funds would be made available for awraja self-administration and to promulgate the Teklay Gizat /Provincial7 Administration Order. 106 Under this Order, the order maintenance and record-keeping powers of the administrative head of a province, the enderasye, are defined with a greater specificity and disaster relief measures are emphasised, as is a limited grant of power concerning Ethiopian foreign relations - a tacit recognition of the remoteness of the border areas from Addis Ababa. Jurisdictional conflicts were bound to arise as a result of expansions in the enderasye's powers over the provincial police and Territorial Army (infra). Parallel responsibilities were imposed on awraja and woreda chief administrators under the 1973 Order. Provincial councils, weighted heavily in favour of bureaucrats, were to make recommendations to the enderasye. While this Order offered a marked improvement, in terms of specifically defining the

tasks of high-level officials and in the coordination of Government's rural activities, many crucial provisions were extremely vague. In any event, the new style of decentralised administration envisaged by the Derg makes the Order largely irrelevant (see Chapter Six).

D. Famine in Wollo

This tragedy, which showed the depths to which Ethiopian administration could sink, was mentioned to Chapter One and is ably documented in Jack Shepherd's Politics of Starvation. In 1972, a reliable Ministry of Agriculture report forecast serious crop failures in Wollo and Tigre Provinces. These and other warnings went unheeded by administrators, primarily because they came from junior officials. The public first began to learn of the crisis when, in February 1973, 1500 starving Wollo peasants marched to Addis Ababa and camped in front of the Parliament building (and my house). The Governor of Wollo opined that there was "some problem of drought", but that this was little cause for concern. An official inspection team was despatched in an attempt to defuse Parliamentary and other criticisms; it helpfully concluded that the marchers had been "affected by a shortage of food". Reports on the situation were disseminated through the Ethiopian 'underground', yet Haile Selassie professed to be surprised and "greatly saddened" by conditions when he toured Wollo in November. He reportedly issued several decrees, including one which would permit starving peasants to regain their lands upon repayment of the paltry sums they received from distress sales. These decrees were not, to my knowledge, published and they were certainly never implemented.[107]

This was all an elaborate smokescreen: when the Director of the United Nations Development Programme for Ethiopia presented the facts concerning the famine to Haile Selassie in the beginning of 1973, he found the Emperor surprisingly well-informed. The Emperor's attitude seemed to be that peasants always starve, nothing can be done about it and, in any case, it is not the Shoan Amhara who are dying.[108] Wollo peasants had earned his enmity when they spat at him in 1936 for abandoning Ethiopia to the Italian invaders; Haile Selassie had a long memory and administrators knew it. Since the War, Wollo had been a disfavoured province, in terms of the numbers of roads, schools and hospitals that had been built, and it had been bound over as the fief of Haile Selassie's pathetically incompetent

son, Asfa Wossen. When the National Emergency Relief Committee was re-
activated in April 1973, most of its activities were directed towards
attacking press reports of the famine. Protests in Wollo were met with
gunfire.[109]

Reacting to a July 1973 UNICEF report on the situation, the Ethiopian
Vice-Minister of Planning stated:

> if we have to describe the situation the way you have in your report
> in order to generate international assistance, then we don't want
> that assistance. The embarrassment to the government isn't worth
> it. Is that perfectly clear? [110]

Eventually, an uncoordinated international relief effort was mounted, no
thanks to Ethiopian administrators or workers. The unloading of grain
was a priority matter at Ethiopia's ports, but the workers were on
strike for up to a month at a time, as were railway employees. There
was a shortage of rolling stock, as many wagons were being used for
storage purposes. Lorry drivers were engaged in a dispute with Govern-
ment concerning transport fees and refused to haul the grain unless
they were paid a premium by the foreign donors. In the past, Government
had acted swiftly to suppress these kinds of expressions of militancy, but
Haile Selassie's regime had virtually ceased to function as a government.
Troops which could have transported the grain were used to maintain order
among the starving peasants.[111]

In any event, Government officials only allowed relief grains to
trickle onto the market; as landlords, they did not wish to depress a
rising grain market. Of the 11,500 tons received in Addis Ababa in
November 1973, for example, only 5,800 tons was distributed immediately.
The 20-30,000 tons of grain in commercial warehouses and the 17,000 tons
held by the Ethiopian Grain Corporation were not commandeered by Govern-
ment; presumably for the same reason. There was also an attempt to have
much of the relief grain declared unfit for human consumption, so that it
could be fed to the livestock of large landowners. Once the grain arrived
in the rural areas, local administrators would distribute it only if
their jobs were threatened, and the helicopters provided by aid donors
were used primarily for joyriding ("inspection tours"). Officials sold
relief grains locally for treble the price originally paid by the donors,
often exchanging grain for the peasants' land, valued at as little as
Eth. $2.50 per acre. Since few people could afford to buy grain locally,
it was often rebagged by administrators, sent back to a port and exported,

chiefly to Yemen. From 1972 to 1974 – the height of the famine – Ethiopian grain exports quadrupled.[112]

Many small refugee camps were established in remote areas to keep starving peasants out of sight. Local administrators refused to permit these camps to expand, in the hope that they would not become burdened with additional refugees. As a result, unsanitary campgrounds sprang up around the perimeter of official camps, and overcrowding created ideal conditions for the spread of diseases – smallpox, meningitis, dysentery, pneumonia, typhus, measles (killing children) and cholera. The Ministry of Health labelled cholera "gastro-enteritis C", because Government feared that exports would be quarantined and tourism would decline if the existence of cholera was admitted. The employees of international agencies were threatened with deportation if they mentioned cholera and, as a result, the necessary supplies, particularly intravenous fluids, were unavailable locally.[113]

Drought and disease affected Sudan, Kenya and Somalia as well as Ethiopia, and only Somalia made no attempt to conceal the disaster. Presumably, a desire not to be seen as 'another Sahel' was at work: governments reacted to perceived political aspects of the disaster rather than to its effects on the people, and relief efforts were virtually poisoned by becoming so thoroughly politicised. What distinguished Ethiopia from Kenya and Sudan was the magnitude of bureaucratic incompetence, callousness, corruption and exploitation, and the failure even to attempt to devise an overall plan for the deployment of drought relief.[114] The conclusion that "drought, famine and coverup. . . shattered the Ethiopian people and altered their living patterns as surely as any revolution"[115] should be supplemented by the observation that drought became an intimate part of the larger Revolution that unfolded during and after it (see Chapter Four).

E. What These Analyses Show

Many Ethiopianists have stressed that Haile Selassie inherited a system of administration which he lacked the power fundamentally to change. This proposition must be regarded as dubious at best; our analyses have at least demonstrated that it was in the Emperor's political best interests to change most administrative arrangements as little as possible. In all of our 'case studies', there was a complete absence of

administrative accountability to the general public: most of the rare and minor Parliamentary interventions were by and on behalf of traditional elites. Traditional notions of administrative secrecy prevailed in development planning activities, the area where secrecy is least desirable. The formulation of economic policies was not guided sensibly through law, by modernised institutions backed with a political commitment. Tax policies and the relationship between the Ministry of Interior and provincial elites represent an extension of traditional arrangements, little attention having been devoted to the shape of the overall system. The surveys of planning, public finance and rural administration illustrate the lack of uniformity and coordination in governmental processes, and the institutional gaps at the centre and between central, provincial and local levels of administration. In the area of rural administration in particular, authority is "blurred, divided, confused, variable, and shifting."[116] Once traditional political considerations are taken into account, however, these anarchical practices acquire a certain logic, that of maximising the opportunities for power struggles and corruption within an overall system of divide et imperia.

As a result, there could be little administrative development or development through administration - the rationalisation and expansion of administrative services for the public benefit. Experiments with institutional forms, such as took place with regard to planning, the agricultural income tax and awraja "self-administration", did little to remedy underlying problems or to forestall a lapse into traditional practices. John Markakis's evaluation of the Central Personnel Agency can be taken as referring to all of Ethiopia's administrative 'reforms':

> Designed by experts from developed countries, it was conceived on the most advanced and, consequently, the least compatible level in the context of a traditional society. This approach, which often works well in the realm of technology, turns out to be an exercise in formalism . . . . In the short-run, the innovation simply fails to work, and is commonly regarded with levity by those involved in it. In the longer run, the initial attitude of circumventing . . . an unworkable arrangement may become ingrained and thwart meaningful reform in the future. 117

Clearly, the experts failed the Ethiopian people although they helped tradition-reared politicians to help themselves. In Chapter Five, we register an extreme scepticism towards many of the theories of development administration, particularly those which advocate the creation of an open

framework within which administrators will be free to innovate.[118] The
Wollo Famine illustrates some of the innovations Ethiopian administrators
are prepared to introduce where law and political circumstance provide
such an "open framework". While Wollo probably reflects the outer
limits of bureaucratic inefficiency, incompetence, corruption and just
plain cruelty, it is also the kind of situation that ought to have prompted
such humanitarian sentiments as exist within the bureaucracy.

Anticipating our arguments in Chapter Five, Ethiopian administrative
law defines a rigid bureaucratic hierarchy which is irrelevant in practice,
without either imposing legally-obligatory tasks or conferring the power
necessary to perform them. The law does not tell a bureaucrat what,
precisely,he is expected to do and then firmly require him to do it on a
pass/fail basis. The problem is one of creating the balance between
initiative and obedience (or control) that is appropriate for Ethiopia,[119]
assuming that appropriate techniques of bureaucratic recruitment and
socialisation can also be created and supported by a substantial degree
of political commitment.

IV. From Spear-Throwers to Tanks in the Desert

For many societies, military institutions are an excellent starting
point to an understanding of society as a whole: in ancient Greece,
Rome and feudal Europe for example, military obligations and organisations
strongly influenced politics and relations between strata generally.
This is particularly true in Ethiopia, where chronic internecine warfare
served to foster prominent military skills, virtues and ambitions.
Christian and Muslim alike are vicarious participants in 1300 years of
struggle, and the eventual success of their cause breeds an enormous
self-confidence among the Christians. Most important government posts
have a military origin - especially in rural areas - and military culture
permeates Amhara-Tigre social structures: force is seen to generate its
own legitimacy, so long as government maintains large reserves of force
and does not attempt to impose positive responsibilities on peasants;
and military (and Church) occupations have long been regarded as the least
impeded channels of upward social mobility. These attitudes may be
changing, however. In a 1958 survey in Addis Ababa, for example,
soldiers ranked below doctors, engineers, teachers and mechanics in terms
of occupational status, but they were nevertheless ranked above such occu-
pational groups as lawyers, policemen, farmers and clergymen.[120]

Historically, a relatively small and permanent palace guard was supplemented by feudal levies during wartime. These armies, raised by provincial governors, would despoil the countryside to conserve supplies and, if they lost, the people would take their revenge as individuals retreated in disarray. These "spear-chuckers" were organised quickly, performed erratically and were dissolved in an instant. Defections and desertions were chronic, as a result of shortages in supplies, the death of a leader, rumours of crop failures or epidemics, and shifts in allegiance during what amounted to civil wars. From Menelik's time onwards, reliable supplies of modern arms became essential to the maintenance of military superiority and, in the early 1920s, Haile Selassie argued that prohibitions on the export of arms to Ethiopia had markedly increased the number of "worthless idlers" (presumably a euphemism for shifta or bandits)in the provinces.[121]

Haile Selassie was the first emperor successfully to reform traditional notions of military administration (and, to a lesser extent, closely related structures of local administration). After World War II, a national army was organised as a counterweight to the power of provincial elites, and the close connection between governing and military services eroded gradually. Localised police forces, nominally controlled from the centre, also supplanted some of the personal retainers of provincial governors. After 1960, however, the Emperor tried to use the Territorial Army, based in the provinces, to counterbalance the growing assertiveness of his regular Army. The attempted coup of 1960, which illustrated the growing influence and independence of a military which almost succeeded in taking power, was an attempt "to re-enact the classic praetorian play" rather than a revolution.[122] Traditional and modernising elites alike lost many of their key members, and Haile Selassie's subsequent policies encouraged a further fragmentation within the military, through an accelerated shum-shir and by utilising many different foreign sources of weaponry and training (see Chapters One and Four).

The role of the military during Haile Selassie's reign typifies Samuel Huntington's "king's dilemma": policies which foster short-term successes also served to endanger the monarch's long-term survival.[123] Prestige, the maintenance of internal order and deterring Somali ambitions required a technological and organisational modernisation of the military which, in turn, created a power base potentially rivalling that of

the Throne. Huge amounts of scarce resources were devoted to military
modernisation: one of the largest and most efficient African military
establishments was created by devoting 20.9% of the national budget to
"defense" from 1964 to 1969. This expenditure looms large when compared to
Ethiopian health and education expenditures of 17.3%, and a twelve-state
African average of 8.7% of budgetary expenditures on defense and 21.0%
on health and education. Ethiopia also received a great deal of military
aid from a variety of donors, the largest of which, the United States,
contributed half of its African military aid to Ethiopia - $200
millions from 1953 to 1975. Ethiopia received 12% of the military aid
that went to Africa as a whole. (Other comparative statistics are
presented in the footnote.)[124]

On the eve of the Revolution, Ethiopia's Ground Forces were organised
in four Divisions of three battalions each. The First Division (the
Imperial Bodyguard - trained by White Russians from 1919 to 1930) in
Addis Ababa, then under the command of Lt. General Abebe Guemeda, comprised
7,000 men and has very modern equipment but little heavy armour. The
Second Division in Asmara, led by Major General Seyoum Guedle Giorgis and
comprising 15,000 men, has been concerned primarily with dispiriting
attempts to control Eritrean separatist movements. The Third Division,
under Major General Nega Tegegne, the husband of one of the Emperor's
granddaughters, consisted of 12,000 men and is stationed in the Ogaden
Desert, near the border with Somalia. The Fourth Division brought
the Army up to its pre-Revolutionary strength of 40,000 and has its
headquarters in Addis Ababa, in addition to other centres throughout the
country. It was under the command of Brigadier General Mulatu Yifru.
Each Division had its own commando and airborne units and a heavy mortar
company, while the services of tank, armoured car and engineering bat-
talions and several artillery batallions were allocated as needed. Much of
the weaponry was outdated (immediately post-World War II) and obtained
from the U.S., Britain and Italy. Most of the twelve medium and 50
light tanks (American M60s and M41s) and 100 armoured personnel carriers
were deployed along the Somali border. A Territorial Army of some 5,000
men under General Belete Abebe was composed of young men who gave two
months' active service each year in return for land grants (see Chapter
Six). This successor to the feudal levies of provincial elites was under
the (sometimes tenuous) control of the Minister of Interior and functioned

as a skeletal paramilitary force designed to supplement the police and keep the regular army in check.[125]

The 2,000-man Ethiopian Navy was re-established after many centuries in 1955, when Ethiopia regained access to the Eritrean coastline. It consisted of a converted seaplane tender, patrol and torpedo boats and landing craft, and was commanded by Iskender Desta, a grandson of the Emperor who fled to Djibouti during the early stages of the Revolution. The Air Force, based near Addis Ababa in Debre Zeit, is also small – some 3,000 men – but played a significant role in the 1960 coup attempt, the 1974 Revolution and the 1977-78 Somali War. In 1974, it consisted of some 37 reliable combat aircraft and was composed of seven squadrons of: nine American supersonic (F-5A) fighters, U.S. fighter-bombers, British light (Canberra) bombers, Swedish prop-driven ground attack craft, American prop-driven and jet trainers converted for reconnaissance, British and U.S. prop-driven transports, and French jet helicopters. There was a certain amount of elitism within the Air Force (and the Imperial Bodyguard) and many officers became sympathetic towards student radicalism while attending University courses.[126]

Ethiopia's national police force, organised in 1942 and re-organised when it was separated from the Ministry of Interior in 1970, totals about 30,000, plus a 10,000-strong paramilitary and extremely mobile carabinieri. Police in the major towns are fairly efficient, but most provincial policemen perform their functions in a traditional fashion. Most of them are, for example, unable to read and write and thus keep few records. The lines of police command are extremely blurred, particularly as governors regularly tried to augment their vague powers over the police within their locality. The police took little part in the 1974 Revolution. They have a lowly status because they are regarded as arbitrary and venal censors of behaviour who are not involved in the important task of national defense.[127]

For purposes of a brief comparison, Somalia's armed forces totalled some 25,000 in July 1977. They were armed with 175 ancient Russian T-34 heavy tanks and about 100 modern T-54/5 medium tanks, 310 armoured personnel carriers, 14 Soviet torpedo boats, 44 MiG 15s and 17s and 12 MiG 21s. This gross imbalance in weaponry was more than redressed during the course of the Ethio-Somalia War: estimates of deliveries to Ethiopia from the Soviet Union include a few T-60 tanks, 200 to 300 T54/5 tanks, 50 T-34 tanks, 200 armoured cars, up to 60 MiG 21s and 20 of the advanced

MiG 23s, 28 lorry-mounted "Stalin organ" multiple rocket launchers (used to great effect in Angola), and a variety of Sam anti-aircraft missles. By the end of the War, Ethiopia had 100,000 men effectively under arms and the Soviet Union had contributed U.S. $500 to 1,000 millions in military aid.[128] Ethiopia's is unquestionably the best-armed military in Black Africa.

Lefever argues that:

> Acutely aware of the uncomfortably close historic tie between military power and political ambition, Haile Selassie sought assiduously to develop in the military service a recognition of their instrumental role and the habit of unquestioning obedience to the crown.[129]

A tenuous loyalty was maintained by encouraging dissension in the ranks and through land grants to and direct Imperial patronage for favoured officers. Beginning in the early 1970s however, demands which were immune to these traditional means of satisfaction and control were exerted by young and better-educated bureaucratic and military elites.[130] In 1973, Haile Selassie responded to these pressures by attempting to modernise and rationalise the law governing the military.

A. Law and Military Organisation

The Army Proclamation of 1944 and the Territorial Army Order of 1958 deal only vaguely with such matters as military organisation, powers of commanding officers, discipline and courts martial;[131] the 1973 legislation was designed to fill in the numerous gaps without significantly truncating the Emperor's powers. The Defense Establishment Reorganization Order of 1973[132] created an explicit chain of command: Emperor, Prime Minister, Minister of Defense, Chief of Staff and the Commanders of the Army, Air Force and Navy. Upward channels of communication are also established in reverse order (Art. 6). This lengthy command structure is the one that was theoretically utilised heretofore, except for the insertion of the Prime Minister: this was presumably an attempt to build up the authority of that office and to discourage the traditional tendency to confer directly with the Emperor on all matters. In the past, the Minister of Defense (usually a General) occasionally found Commanders and the Chief of Staff unresponsive to his commands, and Article 4 of the Order places these officers under the Minister's "authority, direction and control". The powers of Commanders and the

Chief of Staff are defined vaguely while the Minister's enumerated responsibilities are reduced to those of coordinating "Defense Establishment" efforts and issuing regulations which "better implement" the Order.[133] These legal changes seem to have been an ambiguous response to the demands of senior officers for greater autonomy for the various branches of the military.

The Armed Forces Promotion, Obligatory Service and Dismissal Regulations of 1973[134] clarify the equivalent ranks in the three services, specify the minimum time to be spent in each rank, and create a Board composed of at least five senior officers which recommends promotions to the Emperor for the senior ranks (Arts. 4-6, 9, 12). A three-man Dismissal Board recommends the action to be taken in the event of substantial nonperformance of duty, moral or professional dereliction, or general unsuitability. The Board's recommendation can, however, be ignored by the relevant commander, the Minister or the Emperor (Arts. 26, 31-3). The Schedules to the Regulations establish a promotion points system and state that promotions are to meet military needs and "to reward officers with appropriate and fair advancement according to their merits". The Police Force Administration Order and the Police Officers Promotion, Obligatory Service and Dismissal Regulations exactly parallel the Order and Regulations governing the Military, and equivalent police-military ranks are established.[135] These laws were obviously designed to counter the criticism that discriminatory promotion policies were pursued among branches of the military and that favoured persons rose rapidly without regard to their ability while other officers were, by Third World standards, promoted too slowly. The Regulations did nothing, however, to alter the Emperor's widely criticised traditional policy of shum-shir, which served to eliminate such military (and general administrative) efficiency as might have resulted from long job experience and the consistent application of policy. This traditional practice - later termed "divide and rule" by the Derg - was one of the major justifications cited for the deposing of Haile Selassie (see Chapter Five).

Emperors had heretofore utilised an ad hoc conscription in times of emergency. The National Military Service Proclamation of 1973[136] was promulgated with modern manpower requirements in mind. Under the Proclamation, all men are required to register after their nineteenth birthday, are subject to induction between the ages of 20 and 21, and may be required to serve for two years' active duty, three years' ready reserve and ordinary reserve duty up to age 45 (Arts. 4,7,10). The National

Military Service Boards Order of 1973, designed to strengthen defense and
to "direct and coordinate" the activities of young men, established
Induction and Assignment Boards at the awraja, Teklay Gizat and national
levels.[137]

Despite the elaborate nature of these statutory changes, they in
no way restricted the Emperor's traditional powers: until the Revolution,
his personal supervision of the military continued to follow the patterns
found in such other monarchical-military states as Morocco, Iran, Jordan
and Saudi Arabia. Article 29 of the 1955 Constitution was little more
than a restatement of the Emperor's broad traditional military powers,
while the military was cast in the classic Western constitutional rôle of
neutrality and isolation from political activity. It is interesting to
note that the Derg has not abrogated the 1973 statutes we have discussed.
Arguably, the vagueness of these statutory provisons allow free rein to
conflicts within the Derg and law could not, in any event, regulate an
essentially political process of reorienting the military after the
Revolution. Ethiopian military law, like that of many other African
states, thus fails clearly to define the role of the military and to
provide meaningful rules of discipline or the means by which new pro-
cedures and institutions can be created.[138]

B. The Military as Others Saw It

A review of academic thinking about the Ethiopian military from
1964 to 1970 reveals a swift politicisation within the military – as
well as the hazards attending attempts to predict political events in
the Third World. Writing in 1970, Lefever finds that, within the Ethiopian
military, the "growing dedication to professionalism has increased
efficiency but has not led to uniformity in political outlook". He
concludes, however, that loyalty to Haile Selassie and its role in
promoting social stability mean that the military is "more patriotic
than conspirational", "Keynesian rather than Marxist", and pragmatic and
experimental rather than ideological. Likewise in 1970, Van Den Berge
contended that the Ethiopian military is not an independent source of
power or policy, and that its role remains the historic one of supporting
particular pretenders to the Throne during succession crises.[139]
These kinds of conclusions are probably the result of analysing the
predilections of senior officers; promotions based on ascriptive criteria

engendered loyalty to the aristocracy, if not to the Emperor. Although aware of the education and generation gap between senior and junior officers, Lefever, like many Third World analysts before him, under-estimated the junior officers' and NCOs' capacity to mount a coup. The younger, more ambitious and better educated members of the Ethiopian military are recruited primarily from urban middle-income strata, have close links with the modernising bureaucratic elite, and rejected the anti-technological and feudal traditions espoused by their senior officers. In the end, the Derg rejected the traditional politics of the privileged few, rather than the whole of Haile Selassie's authoritarian ethos. This rejection was based on the strong patriotism observed by Lefever, with the Ethiopian people and the enduring nation being exchanged for the Emperor as the object of the Derg's patriotism[140] - a Pandora's Box which was, for example, opened in Korea by General Douglas MacArthur.

In 1969, J.M. Lee argued that:

> The Sudan and Ethiopia have a sufficiently distinctive political culture to enable them to find a satisfactory role for their security forces. Both, especially the latter, are vulnerable to a military revolution which claims to reconstruct the social system. But neither has an army which is likely to behave as an autonomous organization. A breakdown in the structure of command is unlikely in countries which have such a high degree of homogeneity, and where the security forces are closely integrated into the political system. [141]

Although carefully hedged by qualifications, the thrust of Lee's argument is defective in several particulars that are discernible even without the benefit of hindsight. The "satisfactory role" of a military is, of course, a matter of definition, and the definition of those with the preponderance of power resources ultimately will be adopted. Given the prominence of military culture in Ethiopian political life, it is control over coercive capacities which will determine this issue (but not necessarily others), and by a lengthy process, the Derg succeeded in wresting control from Haile Selassie. The homogeneity and integration perceived by Lee were simply non-existent. There were numerous and disparate cultural groups represented in the lowest ranks of the military, who were mostly peasants recently migrated to towns; senior Amhara (particularly Shoan Amhara) officers found themselves increasingly unable to dictate the course of military events, especially as junior officers were increasingly recruited from other ethnic groups; there were marked divergences in educational attainment, foreign military training, ideology and age; and,

because of the nature of shum-shir and patron-client relations, there
was an extremely low level of political integration, even when compared
to the military establishments of many other Third World states.

In the short run, these factors prevented members of the military
from claiming a political role but, once cooperation was secured on
matters of common interest such as salaries and conditions of service,
the Derg suddenly sensed the full measure of its power, realising that
it could perform its tasks for its own purposes rather than those of
Haile Selassie (see Chapter Four). As Claude Welch, Jr. notes:

> the 'disposition to intervene' is . . . prompted by evidence of
> political weakness, but is ultimately acted upon as a result of
> slights upon the armed forces or the belief that the country – and
> its military – would be better served by direct military control. 142

Writing in 1968, Donald Levine found that the Ethiopian military was
interested in playing a political role, and is the only institution "that
is simultaneously traditional, modern and national". He felt, however,
that its capabilities were so low as to preclude political involvement.143
Levine misjudged his subject: like the military in other African states,
Ethiopia's was already equipped, training, motivated and employed in an
essentially internal security role, and cooperation between units created
both the political ability and the will to exercise this pre-existing
capacity to rule.144 Whether this cooperation will continue, in view
of the determined opposition faced by the Derg, is another matter.
Arguably, the minimal unity that has been achieved within the military
results from a recognition of the abyss into which civil war would plunge
the country. This perception, fears of a brutal leadership and the con-
tinuing need to counter insurrections and invasions are likely to promote
at least a minimal degree of unity in the foreseeable future (see Chapters
Four and Five).

Margery Perham offered a safer conclusion than Levine's: it is
impossible to predict any future role for the Ethiopian military because
"the future of all armies is in question".145 Highest marks for pre-
science go to Morris Janowitz who, after identifying the crucial weaknesses
of the Ethiopian military from the standpoint of political potential
as domination by subjective authority and a lack of group solidarity,
concluded in 1964 that:

> the authoritarian-personal type of control, as in the case of
> Ethiopia, is a format which cannot produce the conditions for
> modernization and which seems certain to be swept aside by some form
> of collective leadership – civil or, more likely, military. 146

*   *   *   *   *   *   *   *

While the divergence between academic opinion and the subsequent
realities of the Ethiopian military's political role serves as a warning
not to venture too far into the thicket of theory and pseudo-theory
concerning coups and revolutions,[147] we shall nevertheless attempt to
trace some of the causes and effects of the Ethiopian Revolution in the
next Chapter. Ethiopian constitutional law failed to promote a primarily
political development, largely because it failed to deal meaningfully
with the emerging power of modernisers within the bureaucracy and the
military. Like its constitutional law, Ethiopia's administrative and
military law was based on Western models which were irrelevant to
Ethiopian political preoccupations. One effect of this irrelevance was
that administrative law failed to foster a primarily economic develop-
ment under state guidance, notwithstanding the 'reforms' that were
adopted on the advice of Western 'experts'. Firm distinctions cannot
be drawn between politics, administration and soldiering in Ethiopia;
likewise, the prospects for political and for economic development
are closely linked and dependent upon the new types of public law
that have been adopted by the Derg since 1974.

Chapter 4: The Emerging Military State

In this Chapter we shall explore the ways in which revolution came
to Ethiopia, the ideas, policies and strategies of the groups involved,
and the extent to which these events have changed Ethiopian politics as
practised under Haile Selassie. At the beginning of 1974, the Crown of
the Lion of Judah seemed to sit easily on the 82-year-old Emperor's head.
He was old but then, as Robert Seidman remarked in 1969, the second gener-
ation of Ethiopian students who were awaiting the Emperor's death had begun
to attend American universities. Little change was foreseen after the
Emperor's demise, even by Ethiopian Marxists. By the end of 1974, however,
after "a series of piecemeal strokes,"[1] it became apparent that an Ethiopian
Revolution was in the making. The military's intentions went far beyond
the replacement of elites that motivates many coups d' état; profound
changes in the distribution of wealth and power proceeded under what is
arguably the most radical political programme to be implemented in Africa
to date.[2]

The events occurring since 1974 are hardly without precedent in
Ethiopia: Europe first learned something of this troubled country's long
history of political assassinations, coups and "revolutions" from Father
Jerome Lobo in 1659. Serious attempts were made to overthrow Haile Selassie
in 1943, 1947, 1951 and 1967, and the abortive coup of 1960 had come to
within an ace of succeeding. The traumas of 1960 very much coloured urban
politics during the 1960s and early 1970s: a quietism prevailed, except
among students. There were other significant anti-regime groups - 'liberal'
elements in the military, bureaucratic modernisers, frustrated middle-income
groups (including much of organised labour), exploited unskilled workers
and the unemployed - but they lacked leadership and the ability to cooper-
ate for a common purpose. There was widespread suspicion at large among
groups and individuals, a fear of manipulation in the interests of others,
and an awareness that their impact on traditional politics had hitherto
been confined to riots or general displays of unrest.[3]

The omens were thus inauspicious for revolution in 1974, but only
because the full extent to which the liabilities of Haile Selassie's regime
had accumulated was not appreciated (see Chapter Three). Government faced
growing difficulties in accommodating the conflicting demands of different
groups through the traditional means that had always worked before. In

1974, through a policy drift that was, perhaps, literally fatal for Haile Selassie, some of the demands of groups opposed to the regime were met. The result was an explosion of further demands which outstripped the ability to grant or to repress them within existing political arrangements. While the events of 1974 reflected deep-seated grievances produced by the processes of social stratification and ethnic fragmentation at work during the last eighty years (see Chapter One), they were sparked off more immediately by the self-interest of the military, the catastrophe of rural famine (see Chapter Three) and the hardships caused by inflation in the urban areas. Economic and social crises were abruptly transferred to the political arena precisely because of the widespread indifference and incompetence displayed by (largely undifferentiated) politicians and bureaucrats. The poorest of city dwellers had little to lose and, seemingly, everything to gain by revolting, while the better-off saw a chance to improve their positions in relation to traditional elites.[4]

1. The Creeping Coup[5]

Haile Selassie's last chance to enjoy the role of an elder statesman came during the Tenth Anniversary of the Organisation of African Unity. During the feasting in Addis Ababa to mark this event at the end of 1973, and while the relatively well-fed residents of the city were watching (on television sets installed in the main squares) the proceedings at Africa Hall (the main entertainment being the clowning of Idi Amin - a sight hardly conducive to Pan-African feelings among Addis Ababans), an enormous number of people were starving to death as a result of drought and administrative neglect in northern and central Ethiopia. University teachers went to Wollo Province to investigate, and the news and photos they brought back - of unburied dead and children suckling dead mothers - were given a wide but clandestine circulation in the city. No relief efforts could be organised because Government continued adamantly to deny the existence of the drought, until the teachers' efforts were publicised by foreign journalists. These reports, by what Government termed "irresponsible rumour-mongers", received physical confirmation when refugees began to reach Addis Ababa. City dwellers only clenched their fists at first, but they began to realise that significant segments of Government were not functioning in relation to the drought. Wollo came to mirror everything that was wrong with the State: "Arrogance, indifference,

incompetence, and amour-propre. . . ."[6]

Retail prices of food and drink in Addis Ababa had increased by 68% from 1963 to 1971 while incomes remained fairly static among the lower strata. The Wollo drought caused substantial further grain price increases, as less grain was harvested and nobles and middlemen hoarded their stocks in expectation of additional price increases. While "bread riots" in ancient Rome and medieval European cities had prompted governments virtually to eliminate the role of middleman, Haile Selassie failed to do so and the Derg, learning from the events of 1974, began to nationalise grain collection and distribution in 1975. The combination of famine and inflation also caused a breakdown in the system under which the Emperor bought off elites through grants of land.[7] Disloyalty began to look more attractive as the rewards for loyalty diminished.

A. February 1974

Ministers and MPs had granted themselves substantial salary increases, but the public outcry that followed led to an announcement, on 1 February, that these "allowances" would be diverted to famine relief efforts. Another storm erupted when the Ministry of Commerce announced a 50% increase in the price of petrol. The public concluded that international developments surrounding the Arab oil embargo did not justify so large an increase (this was later confirmed by the Ministry), and taxidrivers went on strike on 18 February. They were joined by students and other city dwellers in the stoning of buses and large private cars - particularly those of ministers and the nobility. The city was effectively paralysed yet the police winked at the whole affair, recognising that more than the price of petrol was involved. The bus company was rumoured to belong (and this was later confirmed) to members of the royal family and other aristocrats, and attacking the buses was a way of showing the protestors' feelings about these people. Teachers had been on strike and they were joined by various wildcat strikers. In an attempt at placation, Government offered to negotiate with the teachers, announced token anti-inflationary measures and a nominal petrol price reduction. City dwellers were not mollified; they were beginning to see what seemed to be a once-in-a-lifetime opportunity. The Revolution had begun, as many do, with unplanned disorders which destroyed the stable expectations of the public and the myth of the regime's invincibility.[8]

In spite of the rising expectations of townspeople, Government
continued to feel secure in its power to dictate to them. A clear illus-
tration of this political insensitivity was the release of a World Bank-
sponsored Education Sector Review during these unsettled times, on 22
February. Parents (taking the part of their radicalized children, prob-
ably for the first time) joined with students and the striking teachers
in denouncing the Review. Rejecting the official view that a termination
of state-funded education at the primary school level would be more
"relevant" to Ethiopia's needs, these groups convincingly argued that
such a policy would perpetuate the status quo for generations to come,
depriving the urban poor of the slender chance they had to improve their
socio-economic status. Taken aback by the depth of feeling that had been
aroused, Government announced on 28 February that implementation of the
Review had been "postponed".[9]

In the meantime, the military had demanded, and received, a salary
increase on 24 February, pledging their gratitude and loyalty to the
Emperor on the following day. Privates and NCOs had become dissatisfied
with salary rises received in 1973: Eth. $7 per month extra did not keep
pace with inflation, and officers had received $200-$300 (and ministers
$700) per month.[10] The salary of a private rose another Eth. $18 to $100
a month (Eth. $2.08 = U.S. $1), and civilians complained widely that the
Emperor was bribing his way out of a coup, at the taxpayer's expense. It
was learned a few days later that the Emperor had been placed in a diffi-
cult position: the Fourth Brigade of the Fourth Division (stationed
along the Somali border and then accounting for some 60% of the country's
armour) had mutinied, arrested their officers and petitioned the Emperor
for better living conditions in the barracks. Senior officers sent from
Addis to investigate were also detained, and they became extremely ill
when they were forced to share the troops' water and food.

The pay increase did not satisfy the Second Division in Asmera, where
officers were arrested, the city was taken over and the airport and public
buildings were closed. Twenty-three demands were cabled to the Emperor,
concerned mainly with such parochial questions as military pay, clothing
and food, and another high-ranking military delegation was dispatched and
detained by the rebels on 26 February. A second pay increase was then
granted four days after the first.

Under Haile Selassie, officials were often dismissed, but resignation

was regarded as an act of disloyalty to the Throne. The resignation of
the entire Cabinet of Prime Minister Aklilu Habte Wold on 26 February was
therefore not only unprecedented but unthinkable. Both the times and the
Emperor had changed, however, and he quietly accepted the resignations and
invited the President of the Senate, General Abiye Abebe, to propose a new
Cabinet. Owing to rumours - probably unfounded - that the Army favoured
Lij Endalkatchew Mekonnen as Prime Minister, he was duly appointed on
28 February and Abiye became Minister of Defense. Zewde Gebre Selassie,
an historian resident at Oxford, took over the Interior Ministry and Imru
Michael - the son of Haile Selassie's leftist contemporary, the "Red Ras"
- became Commerce Minister. These members of the nobility were extremely
popular among the older educated Ethiopians. A couple of those chosen
were reappointed from Aklilu's Cabinet, including the popular Foreign
Minister, Dr. Minassie Haile.

B. March 1974

The balance of Aklilu's Cabinet was detained by the military, nomin-
ally because they had deserted the Emperor but probably in response to
public demonstrations against their incompetence and venality. City
dwellers were bewildered when representatives of the military handed the
former ministers over to the Emperor on 1 March. Haile Selassie promised
to deal with them and thanked the soldiers for their "unswerving loyalty",
treating their actions during February as traditional petitions to the
Throne.[11] He also mentioned the receipt of statements of loyalty from
every province and district. These same groups were to send similar messages
to the Derg in September.

Endalkatchew - young by previous standards, Oxford-educated, a noble-
man and son of a Prime Minister - addressed the nation and invoked the
names of the last four Emperors while arguing that Ethiopia had "a sacred
heritage of unity to preserve." The new Prime Minister obtained little
support from students and teachers however, and pamphlets were quickly
distributed in Addis Ababa, accusing him of making education inaccessible
to the poor (as Minister of Education), of exploiting the poor (as one of
the major landowners in Addis Ababa), and of unlawful self-enrichment (as
Commerce Minister). Early in March, 3,000 people marched in Addis Ababa
and demanded his dismissal. Endalkatchew reportedly convinced Haile
Selassie that a new constitution was needed, one which reflected recent

developments. On 5 March, the Emperor announced over the radio that a
new constitution would be drafted, in order to make the Prime Minister
directly responsible to Parliament and to "further guarantee" the rights
of the people (see Chapter Five).

In spite of leaflets dropped by Army helicopters - which, people
were heard to observe, could drop other things as well - calling for land
reform, the establishment of political parties and freedom of the press
and assembly, it was clear that the unrest in the military camps had sub-
sided. The new Cabinet was immediately faced with a new civilian crises,
however. The Confederation of Ethiopian Labour Unions (CELU - see Chapter
Seven) backed up its sixteen-point ultimatum with threats of a general
strike. While work stoppages traditionally accompany pleas for "justice
and mercy" in Ethiopia, a general strike was unheard of until March 7,
when CELU's three-day ultimatum expired. Teachers and taxidrivers were
still on strike, and townspeople began to feel the effects of the general
strike as one commodity or service after another became unavailable. A
settlement of sorts was reached with Government on 10 March, although
teachers and telecommunications, civil aviation, Municipality and Finance
Ministry employees remained on strike for a while longer.

Many peasants had migrated to Addis Ababa because of the famine and
had a chance to observe the general strike. Finding only poverty and
unemployment in the city, they returned to the countryside bearing tales
of Haile Selassie's vacillations. The patterns of urban politics commonly
found in other countries began to emerge in Addis Ababa: an organised
group - CELU - began pursuing its own interests - more jobs, minimum wages
and lower food prices - within the existing framework and at the expense
of others - the peasants. As virtually the only organised element in
civilian society, CELU viewed the course of events as favouring them.
Its leader, Beyene Solomon, told Africa magazine that:

> We cannot say that the [Ethiopian] labour movement is devoid of
> politics. But before now we had been busy organising our members.
> I think we have now reached a stage where we can have an influence
> on the way the country is run. We hope that . . . we may be able
> to form a political party.[12]

As we will see in Chapter Seven, things did not turn out as Byene expected.

Prior to the turn of the century, any sign that an emperor was losing
a firm grip on the reins of power was a sign for official rebellion (see

Chapter One). Under a more centralised monarchy, however, a sign of weakness (such as the onset of Menelik's illness in 1908) prompted more extreme forms of bureaucratic inertia, caused by official fears of retaliation by the Emperor or his successor. Further, most politicians had remained torpid and passive since the 1960 coup, under the carrots and sticks wielded so adroitly by Haile Selassie. Endalkatchew's Cabinet was incapable of breaking out of these patterns to take decisive action; it could only vacillate between small concessions and tentative attempts at repression. This lack of continuity in the Cabinet's policies is the most dangerous course a traditional (and colonial) polity can pursue: the hopes of moderates were dashed, traditionalists were disconcerted and revolutionaries were able to project an image of a two-faced Government.[13]

A few decisions were made, however: an austerity budget on 22 March, the establishment on 26 March of an Enquiry Commission to investigate official misdeeds (see Chapter Five) and, on 28 March, a salary increase for low-paid Government employees - but these measures were not taken seriously. On 21 March, Endalkatchew announced the appointees to the Constitutional Conference that, with a few worthy exceptions, consisted of feudal landlords and ex-Ministers. Observers immediately and correctly concluded that the new Constitution (see Chapter Five) would be a lukewarm attempt to pacify rather than to satisfy the people. An abortive coup reportedly occurred on 25 March.

C. April to September 1974

In view of what had been happening, April was a logical time for Haile Selassie to attempt to settle the perennial question of succession to the Throne. Zara Yacob, an Oxford student and the eldest son of the incompetent and partially-paralysed Crown Prince, was to succeed to the Throne if the Prince "declares his inability or unwillingness." The Emperor's failure previously to spell out the succession had been cited as indicative of an attitude of "apres Moi, le deluge"; in 1973, a waggish novelist put it into Haile Selassie's mouth that "apres Moi, les soldats".[14]

For the first time, Parliament began to try to act like a parliament (see Chapter Three): it refused to listen to the Prime Minister's set pieces and, on 10 April, demanded answers to hard questions, the rights to choose the Cabinet and form political parties, and adequate guarantees

of Parliamentary free speech. Eight M.P.s went too far, however, when they petitioned the soldiers for the release of the former Ministers (who had been detained again on 28 April) on 26 June. The indignant military responded by detaining the M.P.s and a number of other officials, ex-officials and members of the nobility. The number of detainees had now swollen considerably beyond the initial twenty-five, and the military grew increasingly suspicious of Parliament.

April was a month of demonstrations: on the eleventh, some 10,000 Addis Ababans protested against their Mayor, who was dismissed that evening. When Muslims began a march in support of a genuine religious freedom and a separation of Church and State on 21 April, students and other residents of Addis Ababa swelled their numbers to an estimated 100,000 - the largest demonstration in the country's history. The spate of strikes and demonstrations began to decline - many smaller ones than those mentioned had taken place - soon after the University was closed, for "academic" reasons, on 25 April. Government began to feel strong enough to issue stern warnings against further strikes, backed by the mysterious Committee for National Security, within the Ministry of Defence, that threatened CELU with dissolution.

Addis Ababa began to quiet down and the military seemingly kept out of Government affairs: at the end of June the soldiers reiterated that the pay increases had satisfied them. Early in March, the Second Division in Asmara had sent a message to all units stating that, as their demands had been fully met, they would not support the politically-motivated demands of others. In retrospect, it can be seen that this period of apparent calm was being used by new leaders within the military to consolidate the support of their colleagues and the public, who flooded the barracks with messages of approval and support.

By July, the military felt confident enough to begin to assert their power and to communicate directly with the public. On the third, they submitted "proposals" to the Emperor "concerning the welfare of the nation." These included: a large-scale political amnesty; permitting exiles to return; speeding up the promulgation of the new Constitution; and allowing an Armed Forced Coordinating Committee, which had become popularly known as the Derg - variously Dirg, Dergue and Dirgue, a hitherto little-used Amharic word meaning "committee" - to maintain contacts with Government officials. The Emperor accepted these proposals and acceded, on July 5th,

to the Derg's request that Lieutenant General Aman Michael Andom replace
General Abiye as Chief of Staff and Minister of Defense. It has been widely
rumoured that Abiye was planning rightist putsch with Endalkatchew and,
on 22 July, the Derg accused Endalkatchew of fostering dissent within the
military, hindering reforms and sympathising with arrested ex-officials.
Haile Selassie dismissed the Prime Minister and appointed Lij Michael Imru,
who was considered to be much more radical, in his place. Endalkatchew
and nine other officials were detained on August 1st.

Now that the coup was definitely under way, the Derg took steps to
protect itself from potential opposition. It also became unclear which
policies came from the Cabinet and which emanated from the Derg - a con-
venient confusion in a coup situation. On July 31st, the Derg prohibited
all public meetings, except for those convened for the sole purpose of
supporting the new slogan of Ethiopia Tikdem or "Ethiopia First" (infra).
This motto had been announced as the basic guideline of the Military
movement, although little elucidation of this esoteric phrase was provided
at that time. A curfew was also established and the Derg announced the
takeover of the public radio stations in order to better propagate its
views.

Subsequent events include the nomination and appointment of Prime
Minister Michael's Cabinet on 3 August and the completion of the proposed
Constitution, which was presented to the Prime Minister on August 6th and
summarised in the nation's few newspapers (see Chapter Five). Over a
short period of time, the balance of political forces and the expectations
of city dwellers had changed so radically that the Draft Constitution be-
came obsolete. New demands were for fundamental change rather than patch-
work reforms. Urban indignation over a Constitution which reserved real
power for the Emperor showed clearly that the Monarchy was being blamed
for the crises faced by Ethiopia. The Draft Constitution helped Addis
Ababans to formulate their desiderata more concretely, thereby accelerating
the pace of this on-and-off revolution once again. The Church, through
its Abuna (Patriarch), announced its opposition to the "letter and spirit"
of the Constitution on 17 August, particularly those provisions requiring
a separation of Church and State.

On 16 August, the military began gradually to tighten its grip - or,
rather, to loosen the grip of Haile Selassie - on the country. Jet fighters

screamed overhead in Addis Ababa, with tanks, armoured cars and lorries filled with troops parading to the cheers of the people. Rumours of discord between the Air Force and the rest of the military were thus dispelled. The abolition of the Corwn Council and the Emperor's Chilot Court (see Chapter Three) and personal Ministry was announced, and all Imperial palaces were made public property. The institutions that had been proof of the grandeur and worldly success of the Emperor, his officials and others who made their fortunes by ingratiating themselves were now described by the military as proof of the corruption and irremediable decadence of the regime.

Many companies belonging to aristocrats and Government officials were nationalised during August and September, in a move calculated to undermine their prestige and power. These nationalisations were not regularised under law until March 1975 (see Chapter Seven). On 5 September 1974 the Emperor was accused of embezzling public funds through the St. George's Brewery and the Haile Selassie I Prize Trust; both were promptly turned over the Ministry of Finance. Another scathing attack followed on September 11th, when it was alleged that the Emperor was hoarding gold bullion worth Eth. $3,000 millions in Swiss bank vaults; the Haile Selassie I Foundation was also nationalised. A carefully-orchestrated campaign culminated in a television programme on the evening of the 11th, in which pictures of peasants dying of starvation were juxtaposed with those of the Emperor and his guests lifting champagne glasses at lavish feasts.

While it was clear that Haile Selassie would never again be an absolute monarch, few townspeople were prepared for a radio announcement the next day, September 12, that the Conquering Lion of the Tribe of Judah and Elect of God had been deposed. Proclamation No. 1 of 1974 (a new beginning) was quickly issued to emphasise this fact, and to "suspend" the 1955 Constitution, dissolve Parliament and sketch the Derg's new roles (see Chapter Five). The Emperor was driven away in a battered Volkswagen to a comparatively-luxurious detention. Searches of Jubilee Palace disclosed over $100,000 in small notes, presumably used to reward retainers and informants, stuffed into nooks and crannies. Little more was heard of Haile Selassie until 25 August 1974, when his death, officially attributed to the aftereffects of a prostate operation, was announced. It is impossible to determine what happened, and the Derg had little to gain

(or lose) by killing him at that stage. Circumstances were suspicious: none of the Emperor's three doctors was allowed to view the body, no post mortem was announced and the manner of disposing of the body was never publicised.

Although Asfa Wossen (the Crown Prince) and some of the Emperor's grandchildren were living abroad, many members of the royal family were detained several months before he was deposed. Repeated rumours that they were to be executed prompted massive international protests, but have proved groundless to date (apart from those executed in November 1974 - see infra). Amnesty International reports that they are living in over-crowded and unsanitary conditions and lack adequate medical attention, although they are treated much better than the many other detainees.[15]

D. An Interpretation

This was the way the last of the world's absolute monarchies ended, not with a bang and hardly with a whimper. Many of the conditions commonly held to attend revolutionary coups were absent in Ethiopia. There were economic tensions but few of the disorientations associated with moderni-sation, simply because little modernisation had taken place. The mere existence of the Ethiopian military could hardly constitute "a radical criticism of the existing policical system"[16]; many of the aspects of traditional Ethiopian politics that were examined in Chapter Three - poli-cies of divide et imperia and shum-shir, domination by (quasi-) traditional elites, patron-client relations, secrecy, intrigue, nepotism and corruption, a disdain for peasants and, of course, a ready resot to coercion - were found, to a somewhat lesser extent, within the military. Nevertheless, the military was not only the most modern and effective but, paradoxically, the most democratic institution in Ethiopia. It was, therefore, a not altogether "heavy" institution functioning in a "light" society with low levels of social discipline; the leisurely pace of the coup illuminated the strengths as well as the weaknesses of Haile Selassie's regime.[17]

In Chapter Three, we discussed some of the myths about Haile Selassie's regime and his military that were perpetuated by journalists and Ethiopians. Myth-making did not suddenly cease in 1974, and newspaper reports by Africanists such as Colin Legum and I.M. Lewis are fertile sources of new ones. Myths can even be found in the post-1974 writings of so careful a scholar as Peter Koehn. John Cohen and Seleshi Sisaye have identified

four such myths in Koehn's writings: the conditions leading up to the "creeping coup" were wholly _internal_ to Ethiopia, intellecturals had _clear_ and _commonly-held_ values and strategies, a _unified_ student movement adopted _clever_ strategies, and the power of traditional elites had _declined_ markedly, leaving a _vacuum_ that had to be filled.[18]

The latter perception is clearly erroneous: the disquiet within the military, strikes and demonstrations would have brought down most other African regimes long before Haile Selassie's fell. The power reserves that the Emperor could call upon, in contrast with those of the shallow-rooted elites that assumed power on the collapse of European colonialism in many countries, dictated a gradual relaxation of his very real authority. Many townspeople had begun to see the Emperor as remote, indifferent, avaricious and even timid, but almost no one wished to dispute with him directly. The Revolution went forward because, in the early stages, the Derg convinced even the cynics that it not only had no intention of taking power but also realised that it was an unmitigated lust for power which was causing the collapse of the old regime. Events were later to prove that a reluctance to take power lasted only as long as it took to construct a military consensus and demonstrate the Derg's mass urban support. Even then, the Derg fostered the impression that a monarch would be retained to legitimate the new Government. Ironically, an _Ethiopian Herald_ editorial justifying the November 1974 executions (_infra_) reiterated the commonly-misquoted statement that "power tends to corrupt and absolute power corrupts absolutely"[19], conveniently forgetting that the Derg had by then acquired an almost absolute power itself.

This power was not obtained unaided, however. Going against the recent trend of events in the Third World, ordinary Ethiopian city dwellers were able to play significant, but ultimately supportive rather than directive political roles. Contra the theories of Freud and Gustave Le Bon, these Ethiopian "mobs" did not feel absolved of responsibility while following a leader. There was often no apparent leadership and spontaneous groupings were, rather, consciously displaying a moral outrage and trying to assert responsibility for life's circumstances. These demonstrations and strikes served to paralyse urban society, but they provided no solutions to the problems of meeting regular needs for food and shelter. Leaders were needed who knew what they wanted, were willing to seize power and to use it ruthlessly to restore order.[20]

While individuals moved to take power, the Ethiopian military as a whole was initially unwilling and unable to perform this role: "the soldiers literally stumbled into a position of power for which they were unprepared."[21] Like most townspeople, the soldiers are intensely nationalistic while, in the junior ranks, displaying little attachment to the existing order. Encouraged by the passivity of traditional elites, the military eventually moved from behind the scenes, frustrated as they were by governmental paralysis and embittered by crude attempts to foster dissention in the ranks. They seemingly understood Richard Greenfield's analysis of the shortcomings of the 1960 coup attempt. The overthrow of a regime dominated by one man requires, above all, that he be effectively neutralised, along with all military leaders not known to subscribe to the new aims being advanced. Propaganda designed to appeal to intellectuals amounted to preaching to the converted in 1960; the repetition of Palace scandals proved a more effective means of winning over ordinary townspeople in 1974.[22]

Can we generalise about the causes of the Ethiopian (revolutionary) coup, comparing it with others? Coups have long been outnumbered by scholarly efforts to explain them, and the circumstances under which they occur are so disparate that there seems to be a random patterning, reflecting a chronic political instability in the Third World. There are "foolish contradictions" in most theories about coups, "the variables cannot be stated with precision and the explanations conflict, overlap and confound the generaliser."[23] In recent years, the coup has become the modal form of governmental change in Africa, and earlier theories which stress its abnormality have thus been proved wrong.

Without pretending to an analytical elegance or to exhaust the subject, we can note that the (relatively) well-organised Ethiopian military was presented with an occasion for political action (provided by themselves and by Addis Ababans) and acquired an eventual disposition to intervene. Robert Dowse's statistical analyses disclose an inverse correlation between the likelihood of military intervention on the one hand, and, on the other, the percentage of the nation's population living in cities of more than 20,000 inhabitants, the number of newspapers, radios, university students and literate adults per 1,000 people, the level of per capita incomes, and the degree of political mobilisation[24] - a difficult variable to measure. While the Derg did stage a coup, and while Ethiopia ranks

extremely low with regard to the indicia he cites, any cause-and-effect relation we might postulate would be hazardous.

We can, with greater confidence, maintain that some, but by no means all, of the frequently-cited causes for Third World coups were present in the Ethiopia of 1974: their significance as causal factors can be 'proved' by an examination of the laws that the Derg subsequently enacted, which are discussed in Chapters Five through Seven. These laws serve to contrast the Derg's and Haile Selassie's perception of the public interest in the following areas: solutions to chronic economic problems such as inflation and urban unemployment, devices designed to decrease inequalities in the distribution of land and other forms of wealth, and controls over discrimination among ethnic groups, maladministration and corruption. These controls, in turn, exemplify an ascetic revulsion towards conspicuous consumption and a desire to moral regeneration under the banner of Ethiopia Tikdem. Like other military interventions, Ethiopia's has moved progressively from strikes involving threatening demands on government and the testing of public opinion, through forcing politicians to resign, to political manifestos and a direct assumption of power. Typically, in the next stage, a struggle for stability ensued, with attempts to build popular support and a consensus within the military. Ethiopia has reached a third stage in the prototype coup situation in which pronounced splits within the military develop over a continuation of direct military rule, and these disagreements reduce the effectiveness of a transition towards new forms of government.[25]

The parallels between the 1974 coups in Ethiopia and Portugal are striking. Both states consist largely of an impoverished peasantry that had been ruled by traditional elites under constitutions (i.e., Salazar's of 1933) which refused to countenance political parties and posited a theoretical liberalism through a symbolic use of law. Similar events occurred at roughly the same time during 1974 in Ethiopia and Portugal. The military in both countries initially complained about low pay and protracted struggles against liberation movements. Both countries were later ruled by Armed Forced Coordinating Committees composed of young men from the lower ranks, with popular and frank elder generals (Aman and Spinola) fulfilling nominal leadership roles. While the first steps to power were popular and "civilised", with little violence and few

detentions, it was felt that there was a need for public mobilisation and indoctrination and, later, land reform, the nationalisation of businesses and financial institutions, and the punishment of vague offenses against the new movements. While both coups can be analysed as exampled of a 'new' type of political activity, the left-wing revolutionary coup, the ways in which events have diverged radically in the two countries since 1975[26] serve as a warning of the fragility of political similes.

There is much in the 1974 Ethiopian coup that is unique. Owing to the Derg's anonymity that survives, to some extent, to this day, it is impossible to assess the idiosyncratic personal factors that help to determine the pace and direction of coups in many other countries. The particular ambitions of specific individuals who mounted the Ethiopian coup remain unknown, with the possible exception of Colonel Mengistu (infra). For several years, the Derg resisted the common tendency to move quickly from a collegial council to a cabinet type of government, and the embryonic public personalities and leadership roles of General Aman and (the then) Majors Mengistu and Atanafu were not allowed to develop. It is therefore likely that personal ambitions did not play a significant role in the coup and that it was indeed accomplished out of a genuinely collective concern for the people's plight.

As yet, the Derg has not sacrificed its vision of revolutionary changes in Ethiopian social stratifications, property relationships, and ethnic relations to mere self-aggrandisement. While military governments usually express a commitment to development, they also tend to dampen consumerism and non-economic forms of modernisation and promote, instead, policies moving toward heavy industry and even heavy agriculture.[27] As we shall see in Chapters Six and Seven, this is not the Derg's plan for Ethiopia, where more innovative ideas are being tried out.

The revolutionary element in the Ethiopian coup looms large in our subsequent discussions, and it is therefore unfortunate that general analyses of revolutions are, if anything, less satisfactory than those concerning coups as such. The subjectivity, ambiguity and self-contradiction of most theories is exposed ably by W.F. Wertheim, who argues, contra Crane Brinton, that it is impossible to establish a fixed and stereotyped sequence of revolutionary phases.[28] We will therefore excuse the necessity for picking and choosing among theories on the basis that we are trying

to explain an Ethiopian revolutionary coup, rather than attempting primarily to compare it with others. Chalmers Johnson's ideas are praised by Wertheim, and they fit events in Ethiopia quite well, at a fairly high level of generality:

> an 'intransigent elite', blocking avenues for gradual, evolutionary emancipation, is as essential for a prerevolutionary situation [i.e., revolution is not guaranteed] as the existence of a group aspiring at social advance and determined to achieve it.[29]

Ralf Dahrendorf adds that, in one type of revolutionary situation,

> a common condition of deprivation on the part of one group is accompanied by mismanagement and growing self-doubt on the part of the other, with an internal or external crisis adding to the predicament.[30]

It was the impossibility of an Ethiopian political evolution under Haile Selassie, given the slow pace of social change and the absence of broadly-based development in a permanently-transitional state (see Chapter Three and Part III), that called forth demands for revolution.

This is what Marx had in mind when he argued that it was futile to demand peaceful but meaningful reforms from a regime dominated by a Louis Philippe or a Louis Napoleon,

> a state which is nothing but a police-guarded military despotism, embellished with Parliamentary forms, alloyed with a feudal admixture, already influenced by the bourgeoisie and bureaucratically carpentered, and then to assure this state into the bargain that one imagines one will be able to force such things upon it 'by legal means.'[31]

Marx's fairly detailed but convoluted assertion can be applied to Haile Selassie's regime without doing violence to either, particularly as the Western-style institutions created under the laws discussed in Chapter Three were either incomprehensible or discredited in the eyes of the people. The paucity of legal discussion in this Section reflects the fact that law was treated as irrelevant to the Derg's initial seizure of power.

II. The Derg

The nature and origin of the Derg is surrounded by rumour and speculation. The most plausible explanation is that a nascent committee was formed for another purpose, that of mediating disputes between graduates of Harar Military Academy and of the Guenet Military School in Holeta. The latter was established before the Italian invasion and, more recently,

recruits were prepared for short-service commissions and NCOs were trained to become officers by Israeli instructors. Its graduates seldom rose above the rank of captain and tend to be poorly educated, older and more conservative, although Mengistu graduated from Holeta. Harar, established in 1958, staffed by Indians and "more Sandhurst than Sandhurst", attracted the best of Ethiopia's secondary school students, sharing them with the law and medical schools. Harari graduates often acquired additional degrees at the University and rose rapidly through the ranks. In a recent survey, it was found that 70% of Harar's cadets come from landowning families, 58% were Amhara and 21% were of the aristocracy.[32]

There was constant friction between Harari and Holeta graduates, the latter deriding formal education without experience and the former sneering at a lack of "scientific" training. An anonymous group of rather low-ranking officers realised that these disputes could develop into a full-scale melée and decided to try to reconcile the factions. This same group apparently gained additional experience in coordinating efforts toward the only goal that all military units had in common - the February 1974 pay increases. There were at least five other groupings within the military that were, however, narrowly committed to the interests of their own members: the group of elderly senior officers who followed the Emperor into exile during the Italian War that was headed by General Abiye; ethnic groupings representing Gallas and Shoan Amhara; a younger group ready to stage a coup and establish a liberal regime after the Emperor's death; and a committed leftist nucleus within the Air Force.[33]

A. First Steps

Except for the latter, these established groups saw no political role for younger officers and NCOs in Ethiopian politics and were outflanked during the event of 1974. In May 1974, a coordinating committee ensconced itself in the Fourth Division Headquarters in Addis Ababa and began to issue a barrage of instructions, including a notice to all units to send representatives to join in designing a "Movement." There was a rapid response to this call, as most units had begun to discuss recent events through "soviets" organised by young and well-educated officers. Some representatives were apparently chosen at random or for trivial reasons, such as their being in Addis Ababa at the time or because their commanding officer wanted to get rid of them. After initial reshuffles, however, the

Committee's membership stabilised and became a power in the land. Apart
from the "proposals" presented to the Emperor and the ordering of a few
detentions, the aims of the Committee were decidedly murky - a reflection
of disparate ages, ranks, educational backgrounds and political orientations.[34]
The difficulties inherent in forging a consensus within such a group is
reflected by the on-and-off tactics initially employed and in contemporary
Ethiopian law and administration.

The Derg is similar to the governing arrangements initially adopted
by the military in other countries: it was hastily created, with blurred
lines of authority and an ambivalent legitimacy. The potential for vio-
lent conflict within such a group is, of course, at a maximum,[35] especially
as the participants have weapons at their disposal and know how to use
them to good effect. The Derg is composed of some 120 representatives
of the Army, Air Force, Navy, Police and Territorial Army, although its
membership fluctuates from time to time as a result of purges and could
conceivably be as low as sixty as of this writing - July 1978. By the
end of 1974, subcommittees with specialised tasks (defense, security,
politics and foreign relations, economics, information, legal, and admin-
istrative) began to emerge, the most important of which is a standing
committee of some fifteen Derg members (see Chapter Five).

Little is known of the day-to-day workings of the Derg, as policies
of secrecy, anonymity, collective responsibility, shielding members against
assassination by outsiders and, until 1977 at least, avoiding personality
cults are rigorously pursued. Much information can, however, be gleaned
from acquaintances who are reputed Derg members and inferred from the
Derg's political impact, the kinds of laws it promulgates and the manner
of their implementation. It is quite likely that the Derg is composed of
roughly equal numbers of privates, NCOs and officers from low and middle
ranks. The latter group provides the leadership and moulds opinions,
standing near enough to both the soldiers and their commanders to evalu-
ate and guide politics within the military. While few members of the
Derg are wholly committed Marxists, several of the opinion leaders have
pronounced leftward leanings - another fertile source of conflict.
Senior officers have been excluded from the Derg on the ground that they
would intimidate more junior members and/or lose their effectiveness as
field commanders. Until the July 1977 Somali invasion, a conscious attempt
was made to segregate the purely military activities of the Armed Forces

from the Derg's political activities.[36]

Even less is known of the first head of the Derg, Colonel Alem Zewde
Tessema. While he took a leading role in the events of April and May 1974,
he was removed from office in June and executed in November (infra) for
allegedly attempting to rally Gojjami aoldiers behind him and for plotting
with his cousin, Prime Minister Endalkatchew. A rotating chairmanship
was temporarily adopted and a serious split grew within the Derg over
whether Haile Selassie ought to be deposed. After a time, a consensus
emerged, probably because uncommitted pragmatists within the Derg were
persuaded of the need to remove him and that the anticipated armed uprisings
could be contained. This was not the end of the story however: a group
attempting a fresh coup in April 1975 demanded, inter alia, that the
Emperor be released and that a more moderate Derg be created. During the
period under discussion, the major policy conflicts revolved around the
timetable for a return to civilian government, whether policies of recon-
ciliation or repression should be adopted for Eritrea, the treatment of
traditional elites, and the nature of projected land reforms and changes
in local administration.[37]

B.   The Rise and Fall of Aman

The fear that ambitions like those of Colonel Alem would be fueled
by choosing a leader from within the Derg, combined with the need to find
a public spokesman yet preserve the Derg's anonymity, led to the appoint-
ment of the Defense Minister, General Aman Michael Andom, as the Derg's
Chairman on 12 September 1974. Peter Enahoro summarises the unwieldy
channels of communication that evolved between the Derg and the skeletal
remains of Haile Selassie's regime:

> [Aman's] position is, to say the least, confusing. He is not
> a member of the Provisional Military Council, but he is its
> Chairman. He is not a member of the Coordinating Committee
> which is said to number about 30 and which acts as the stand-
> ing committee of the Provisional Military Council. He is a
> member of the Council of Ministers but although he acts as its
> principal spokesman he is not officially designated Prime
> Minister [a post left vacant after Michael Imru became Minister
> of Information]. He acts as Head of State on diplomatic occa-
> sions, but the office of Head of State is collectively held by
> the 120 member Provisional Military Council.
>
> [The] fact that the Provisional Military Council reversed the
> appointments of two Generals made shortly before General Aman
> resigned as Chief of Staff strengthened the belief that even
> though he remains Minister of Defence, the Chairman of the
> Military Council is in fact a figurehead.[38]

While Aman has long been considered progressive, he was not approached
by the plotters of the 1960 coup because he was believed to be loyal to
the Emperor.[39] They definitely fell out in 1965, Aman advocating an all-
out preemptive strike on what was then a weak Somalaia and the Emperor
favouring restraint, probably because he expected to receive a much-coveted
Nobel Peace Prize. Aman was an Eritrean who belonged to the Mekane Yesus
Chruch, an offshoot of Germano-Swedish Protestant missions. He compiled
an excellent record at an English military academy. It was a mark of the
changing times that someone other than an Orthodox Christian would be given
such a post. Aman was popular with townspeople and temperamentally un-
suited to the role of a figurehead, and people began speaking openly of
him as a future civilian 'President'. These views received a check on
18 November 1974, when the appointment, from inside the Derg, of (then)
Major Mengistu Haile Mariam as First Vice-Chairman was announced. Specu-
lation ensued: had Mengistu become so powerful that he could impose his
will on the others and seek public popularity?

Some of these queries were answered a few days later, when the Derg's
policies took a major new tack. Aman was dismissed from the Chairmanship
of the Derg on 22 November: many reasons for this step were announced,
but the important ones seemed to be his growing public popularity and
advocacy of a negotiated settlement with Eritrean separatists. His re-
moval was hardly surprising; Addis Ababans were, however, shocked by a
Radio Ethiopia announcement on November 24th. A "political decision" had
been taken and immediately carried out the previous evening. Sixty persons
had been executed for crimes they had allegedly committed against the
Ethiopian people: gross abuse of authority, the perpetuation of maladmin-
istration, and the injustices resulting from "a deliberate system of
divide and rule along tribal and religious lines, unlawful enrichment,
attempts to incite civil war and disrupt Ethiopia's popular Movement and
attempts to create dissention among the various units of the Armed Forces."

Among the victims of these summary executions were General Aman,
former Prime Ministers Aklilu and Endalkatchew, other high officials and
noblemen, Iskender Desta (a grandson of the Emperor who had commanded the
Navy), and soldiers who had been members of the Derg. Although the response
of Addis Ababans was that of shocked disbelief - excluding those few who
celebrated - outward manifestations of disapproval were absent. Western
newspapers were, however, outraged, and a number of countries expressed

their opposition to the purge. The General Assembly of the United Nations passed a Resolution condemning it and expressing grave concern for the well-being of those officials still under detention, particularly Haile Selassie. The Derg promised that the remaining officials would be brought before the Courts-Martial established for this purpose. A special Penal Code had also been proclaimed to be retroactively applicable in the trials of detained ex-officials. (These topics will be discussed in the next Chapter).

Upon being bombarded with adverse international opinions, the Derg felt it necessary to explain the motive behind their "political decision" in a statement issued on November 26. It was disclosed that General Aman was not formally executed, but killed in a shoot-out while "resisting arrest." "Repeated plots . . . that might engulf the country in a blood-bath", and the imperative of saving "the lives of innocent people that had suffered for so long in the past", were two of the reasons given for the execution of the 59 other ex-officials. This justification was ex-panded upon by a reputed member of the Derg who was later executed, re-portedly for granting an interview to Newsweek:

> [Our purpose] is not to install a new set of people by removing the old set, but to have a movement that will benefit the people by bringing about fundamental changes. . . . Maybe only for a period of time . . . [we need] a cleansing phase. [W]e know that if there is chaos, it is the average man who will suffer most. Why should we create a fire that would consume the very people we say are suffering? ... . So we are trying to protect the people from the aftermath of this thing, at least from the bloodshed. We use the minimum force possible to keep the move-ment going.[40]

The Derg sent a lengthy cable to United Nations Secretary-General Waldheim which included the following statements:

> [E]qual social and economic opportunities will be assured and justice based on the rule of law will prevail,
> [E]vents taking place in Ethiopia purely fall within Chapter 1 Article 11 of the United Nations Charter,
> [T]he General Assembly's appeal has been somewhat speculative as far as future actions of the PMAC [Derg] are concerned, based as the appeal is on erroneous assumptions and false and malicious newspaper reports.[41]

Many foreign correspondents disagreed with these assessments, argu-ing that "violence on such a scale cannot easily be stopped from spreading"[42] or that the executions were the result of the mystical belief of a "lunatic fringe" within the Derg that bloodshed was necessary in order to complete

the Revolution.[43] These and related issues concerning an Ethiopian "revolutionary justice" will be analysed in the next Chapter. The only prominent Ethiopianist actively to support the Derg in this matter, Peter Schwab, argued in 1975 - correctly we think - that international outrage was due to the fact that elites rather than peasants had been executed. The executions, he argued, were a "limited example" intended for those who "could be expected to try and destroy socialism at its very birth."[44] With the benefit of hindsight, we know that there are few limitations on politically-motivated executions or assassinations in Ethiopia; otherwise, there is something in what Schwab says, but as an explanation rather than a justification. Among the crimes with which the executed ex-officials were charged, the one most stressed was their hindering of the fair administration of justice - that which they themselves were denied.

C. The Good Soldier Teferi

On 28 November 1974, Brig. General Teferi Benti was named as the new Chairman of the Derg, and his second name was quickly changed to Bante to disguise his Galla origins. The 53-year-old Teferi came from a humble background; a taciturn moderate and a lacklustre speaker, his military career had been wholly undistinguished. These facts may explain why he was chosen as Aman's successor and why he functioned almost exclusively as a public relations officer for the Derg. This means that his statements, many of which are quoted infra, reflect the impression that the Derg as a whole wished to convey at the time. On 11 December, for example, he told disbelieving journalists that "peace and security prevails in all parts of the country and . . . the government is in full control of the situation." The actions of the Derg continued to dominate Ethiopian politics under Teferi although, during 1974 and early 1975, it was really a Derg (i.e., committee) of Dergs which had to reach at least a minimal consensus, as no single group could muster decisive support. While the Cabinet remained nominally in civilian hands, its role was one of implementing the Derg's less important decisions - its main function today. The Derg did order periodic Cabinet reshuffles, including major ones in December 1974 and February 1976, but these failed to stem the rising tide of criticisms of military rule.[45]

While the pace of political events quickened during Teferi's Chairmanship, he failed to make any personal mark on policy changes. A zemecha

programme, under which secondary school and university students were expected to assist in implementing new policies (see Chapters Six and Seven), was announced on 20 December 1974. Banks, insurance companies and 108 of Ethiopia's largest businesses were nationalised on 1 January and 3 February 1975 (see Chapter Seven), despite repeated assurances to the contrary by the Derg. All rural lands were nationalised on 4 March (see Chapter Six) and all urban lands on 26 July (see Chapter Seven).

A State of Emergency was declared in Addis Ababa on 30 September 1975 and rescinded on 5 December. Some 1,600 people were detained, including former Prime Minister Michael Imru. Security forces were "empowered to take a final measure proportional to the situation created", in the event of strikes, slow-downs, absenteeism, opposition conspiracies, unlawful pamphleteering, speeches, demonstrations or assemblies, curfew violations, and disturbing public peace and order "in any manner".[46]

This Declaration was in response to a variety of opposition activities in Addis Ababa during September. An underground Marxist group, the Ethiopian People's Revolutionary Party (infra), had formally announced its existence at the beginning of the month. During official parades to mark the first anniversary of the deposing of Haile Selassie (on 14 September 1975), vociferous demonstrations called for the establishment of civilian rule, the legalising of political parties and the release of detained students. Tighter security was adopted for subsequent demonstrations, when smaller crowds gave a rather muted support to the Derg. On 23 September, representatives of 184 trades unions at a meeting of the Confederation of Ethiopian Labour Unions (CELU) passed numerous resolutions calling for the establishment of democratic liberties, the right to strike and the release from detention of union leaders, teachers and students. CELU threatened to call a general strike at the end of October if the Derg failed to make substantial progress towards fulfilling these demands. Remembering that a general strike in February 1974 helped to topple Haile Selassie's regime, the Derg acted swiftly. When an Ethiopian Airlines employee attempted to distribute the CELU resolutions at Bole Ariport outside Addis Ababa on 25 September 1975, security forces tried to arrest him. Other employees prevented the arrest and troops opened fire, killing seven and wounding about 25.[47] The Labour Proclamation issued on 6 December (see Chapter Seven) represents another response to

CELU's political activities.

A few days before CELU announced its abortive resolutions, the Ethiopian Teachers' Association issued extensive and wide-ranging demands of their own and threatened to strike. One of these demands was the nationalisation of private schools, many of which had generated a tidy profit by offering grossly inadequate education to children who were unable to obtain a place at a State school. On 29 September, the Derg nationalised private primary schools and empowered the Minister of Education to schedule the schools affected. Although it was stated that "foreign community" and "mission" schools would not be nationalised,[48] the German School was nationalised in 1977. While appearing to respond immediately to a political demand, the Derg also forestalled a teacher's strike by announcing that the reorganisation of the school system necessitated by the nationalisation measures would delay the opening of all schools. The Ministry of Education now manages each private school, with the cooperation of its former owner, until it is handed over to a school committee composed of elected representatives of kebelles (urban cooperatives – discussed in Chapter Seven) and parents. The Ministry will then retain a supervisory role with regard to curriculum, staffing and general administration.[49]

New public holidays were declared - May Day and the Prophet Mohammed's birthday - reflecting departures from the traditional orientations of Ethiopian politics. The Abuna (Patriarch) of the Orthodox Church was dismissed in March 1976 (infra). Early in July 1976, a "special military tribunal" (see Chapter Five) found that Brigadier General Getachew Nadew and eighteen other soldiers and officials had been involved in a "counter-Revolutionary plot"; they were executed immediately. General Getachew was not a Derg member, but he had governed Eritrea under martial law for the previous eighteen months. A second counter-coup attempt in July, by the 26th Brigade stationed in Addis Ababa, was also announced. In October a Derg member, Lieutenant Colonel Alemayhou Asfaw, retired into the bush with 250 troops and resisted attempts to capture him. The closing months of 1976 saw a diminution of the rural revolts that were related to land reform (see Chapter Six) and an escalation of urban assassinations prompted by both the Derg and anti-Derg forces (infra).[50]

Only a few Derg members have acquired a public personality, and we will examine some of them briefly at this juncture. Since the death of Aman, Lieutenant Colonel Mengistu Haile Mariam has clearly been at the

centre of the amorphous structures of the Ethiopian State. Given the
recurrent struggles within the Derg, rural rebellions, the Somali invasion
and the preferences of Ethiopia's new Marxist allies, it is difficult to
speak of him as Ethiopia's strongman, at least until 1978. Little is known
of Mengistu's background, except that he is about 40, poorly educated and
a Galla Christian who was trained at Holeta and, briefly, in the U.S. It
is thought that he is the leader of a group of Gallas who are exerting
a growing influence over Ethiopian politics, and that he has the support
of the NCOs within the Derg. Mengistu has a reputation for ferocity and
for a purist commitment to a collectivist ideology. There have been sev-
eral (and perhaps as many as nine) attempts to assassinate him, notably
in September 1976 and in January 1978, when a bomb missed a car carrying
Mengistu and Raul Castro, killing six Cubans and a Russian. A Fifth
"Flame" Division of the Army was created in 1976 and trained for "anti-
terrorist" activities. It is said to be composed exclusively of illiterate
Amhara who display a personal loyalty to Mengistu.[51]

Even less is known about (the then) Major Atnafu Abate, who was made
Second Vice-Chairman of the Derg and, until his execution in November
1977, was regarded as Mengistu's chief rival for power. Atnafu was one
of the Derg's major theoreticians and an early leader of its radical wing,
yet he seemed to have a more moderate and pragmatic turn of mind than
Mengistu and proved a consistent supporter of the Church. While both of
them were bent on dominating the Derg, Mengistu and Atnafu reportedly
closed ranks on several occasions when the power they held jointly and
severally was threatened by others. While the Derg succeeded in bringing
them to heel in November 1975 and again in December 1976 (infra), they
reportedly concluded an agreement between themselves earlier in 1976, and
affirmed it in February 1977 (see Chapter Five), under which Mengistu ran
things at the centre while Atnafu operated in the field. Two other prom-
inent and popular Derg members ought to be mentioned: Major Sisaye Habte,
an American-educated computer engineer and chairman of the Derg's politi-
cal subcommittee, who reportedly masterminded the urban land and business
nationalisations and was executed along with General Getachew (supra);
and Captain Moges Wolde Michael, an economics graduate drawn from an air-
borne unit and chairman of the economics subcommittee. It perhaps reflects
the Derg's priorities of the time that Sisaye and Moges were more influ-
ential than the chairmen of the defense and security subcommittees,

Colonels Tesfaye and Teka.[52]

As is the case in many post-coup situations, initial policy differences
were transformed, during Teferi's tenure of office, into bitter personal
rivalries. Most conflicts concerned the questions of how power was to be
shared out within the Derg and how, when and if at all a political party
or parties would be established. The power wielded by Mengistu and Atnafu
scared and embittered their supposed equals. There was growing frustration
over an inability to carry out far-reaching promises quickly and over the
tenacity of many traditional institutions. Channels of communication
between the Derg and its constituents - military units and, to a lesser
extent, the public - were often disrupted after Aman's death, and purges
and the jockeying for power within the Derg seemed irrelevant to outsiders.
As in the French and Russian Revolutions, factions began to accuse each
other of betraying the Revolution. A notable attempt, led by Captain
Moges, to "streamline" the Derg was enacted into law in December 1976
(see Chapter Five). Teferi's powers were expanded at the expense of
Atnafu's and those of Mengistu, who was made Head of the Council of Ministers
(without the title of Prime Minister) in an attempt to occupy him with
policy implementation and military-civilian relations rather than with
policy making.[53]

This attempt at restraint soon came to naught when, on 3 February 1977,
Teferi, Moges and five other Derg members were killed in a battle at the
Grand Palace, the Derg's Headquarters, just after the Derg had condemned
them. Four supporters of Mengistu, only one of them a Derg member, were
also killed. The apparently passive Teferi had been quietly organising
opposition to Mengistu since September 1976. He and his colleagues were
also charged (retroactively, in public) with being in contact with the
Conservative Ethiopian Democratic Union (see Chapter One), with favouring
negotiations with the Ethiopian People's Revolutionary Party (EPRP, infra),
and with delaying the "arming of the masses" (infra). Significantly,
Atnafu and several other Derg members were not in Addis Ababa at the time
of this battle; the requirement in the law promulgated in December that
such "revolutionary measures" be taken by the Derg as a whole had been
circumvented.[54]

D. Mengistu's Regime

The next day, 4 February 1977, some 200,000 Addis Ababans demonstrated

their support for Mengistu. On 12 February, he assumed all of the powers
Teferi had gained in December, in addition to those previously held.
Mengistu thus became Chairman of all three of the Derg's major organs:
a sixteen-man Standing Committee, a 32-member Central Committee and the
Congress of all Derg members (see Chapter Five). In addition to acceler-
ating the deployment of the People's Militia (see Chapters One and Six),
Mengistu's first steps after Teferi's death involved arming the kebelles.
Fifteen members from each of these 291 urban coops in Addis Ababa were
armed so as to do battle with the EPRP at the neighbourhood level (see
infra and Chapter Seven), and kebelles in several other towns were armed
as well.[55] On 12 February, Mengistu stated that

> arming the genuine progressive forces . . ., the workers and
> the toiling masses, . . . is continuing. [This] Revolutionary
> Flame will serve the suppressed and attacked classes and the
> revolutionary mother country. . . .[56]

Later, Ethiopia's Chargé d'Affaires in London, Mesmaku Asrat, contended
that the Derg trusts the people: "We have armed and trained civilians.
What other nation - at least in Africa - would do that?"[57]

Most of the significant political events of late 1977 and early 1978
concern an outright state of war between the Derg and its civilian opponents
on the streets of Addis Ababa, and discussions of these matters have been
deferred to Chapter Five and the end of this Chapter. After the death of
Teferi, "[a]nyone not directly connected with Mengistu was suddenly in
serious jeopardy and Ethiopians began to live, once again, in fear of their
leaders."[58]

Around 12 November 1977, a "revolutionary step" was taken against
Derg Vice-Chairman Atnafu. Roughly the same age as Mengistu, Atnafu's
influence within the Derg was about equal to Mengistu's, who was less
popular throughout the military as a whole. Atnafu had, however, been
deeply involved in the organisation of the People's Militia that had per-
formed so poorly. At the time, Atnafu's assassination was justified on
the basis that he put the welfare of Ethiopians above the correct appli-
cation of scientific socialism; he was, in other words, more of a nation-
alist than a leftist ideologue, a "military bourgeois" in Mengistu's eyes.
In July 1978, the Ethiopian News Agency stated that Atnafu had been im-
plicated in an attempted assassination of Mengistu. Like most of the
Derg members killed to date, Atnafu was an Amhara.[59] While this fact has
been cited as evidence of a growing Galla domination within the Derg, there

may be no particular significance in it: as Amhara constitute a large proportion of Ethiopia's military elites, more of them are bound to be killed.

The Somali invasion of July 1977 has retarded the growth of opposition to the Derg: an intense nationalism came to dominate political preferences, and austerity programmes and repressions found a readier acceptance during wartime. Further, the Derg, has been buoyed up by the military, financial and diplomatic support of the Soviets and the Cubans that began in May 1977. These new allies have strengthened the hand of the Marxists over the nationalists within the Derg, and vast quantities of weapons have revived the flagging military morale that was epitomised by a September 1977 mutiny in Jijiga, which permitted Somali troops to penetrate far into the Ogaden. The morale of the troops has also suffered in Eritrea; the guerrillas' strategy is to force Government troops into garrisons and to then cut off water supplies and air and road links. Batches of officers and soldiers whom the Derg blame for defeats in Eritrea are executed, and a moderate number of soliders have surrendered to the separatists. Repeated forecasts of the impending collapse of the Ethiopian military as a fighting force have always proved false, however: while morale is not high, it has never really been dangerously low either. The major complaints among the soldiers concern the growing remoteness of the Derg and the rawness of new recruits.[60]

Public criticism of and, under Menguistu's Chairmanship, armed opposition to the Derg have been major causes of the radically-leftward shift in the Derg's policies in 1975-6, which was accompanied by a growing conservativism with regard to its own power. Riven by faction, the Derg and the wider military are nevertheless kept together by sobering thoughts of the chaos that would result from military disunity or even, perhaps, a civilian government. Ethiopia's extensive experiences with anarchy in the past suggests, to Ethiopianists, soldiers and some civilians, that there would be very few winners and many losers if this were to happen. Ethiopia is presently a "functioning anarchy" - Galbraith's characterisation of India, which is superior to a journalist's description of Ethiopia as "frozen chaos".[61] A slogan announced by the Derg late in 1977, concerning the need to "combat white terror with red terror" (see infra and Chapter Five), constitutes an admission by the Derg of the fluid and highly unfinished nature of its Revolution, and that substantial chunks

of it are out of control.[62]

While there is no reason to look for a gravitation towards Western
liberal democracy or a Communist party-state in Ethiopia, it is nevertheless
apparent that little political development has occurred since 1974 through
the Derg device. Order, stability and, to a lesser extent, bureaucratic
control have eluded the Derg although, admittedly, it has faced extra-
ordinary pressures - some of which are of its own making. Other aspects
of political development fully under the Derg's control have not been
achieved either: as under Haile Selassie, little specialisation or exper-
tise has been brought to bear on problems, and there is little in the way
of coherent policy formulation or implementation. We will return to these
assertions at the end of the Chapter.

III. Ethiopia Tikdem

The Derg and its supporters have been successively provided with a
slogan, a "philosophy" and an ideology, all under the rubric of Ethiopia
Tikdem. Over time, it became reasonably specific and comprehensive
(although a degeneration into slogan-mongering is noted infra), so as to
constitute an ideology in at least five senses of that term: it represents
a combination of interdependent facts and values (like law - see Chapter
Two); it reflects the desire of an elite to establish its intellectual and
moral leadership; it attempts a wholesale resocialisation of families,
social groups, schools and the media; it has become a guiding, supporting
and even a restraining factor in political behaviour, providing explana-
tions, justifications and, to a much lesser extent, a strategy for achiev-
ing the good life; and it has also helped to cloak shabby actions. The
reasons for creating this new ideology are also fairly clear. A military,
composed of specialists in violence, must acquire the facility to use
symbols effectively if it is to exercise meaningful political power for
more than short periods of time. With the eclipse of the Solomonic myth
(see Chapters One and Three), a rationale for new patterns of obligations
and reasons for obeying Government had to be found.[63]

The continuous incorporation of new demands has meant that, like the
initial forumulations of other ideologies, Ethiopia Tikdem is loosely-
structured, shifting and vague. It is still at a stage where few would
regard it as an example of sophisticated thinking, but it continues to
crystallise - as a consensus is increasingly imposed among military elites

and as theoreticians are given time to systematise its tenets.[64]   Our
reason for exploring the evolution and radically-leftward shifts of Ethiopia
Tikdem is that these trends are paralleled, step by step, in the Derg's
laws that are discussed in the next three Chapters.   Further, the motto
constitutes the new Grundnorm (to adopt Kelsen's term, for want of a
better one) of Ethiopian public law: each proclamation is promulgated
with reference to it, the stated objective of the Derg and any new con-
stitution is its implementation, and a major function of the new Special
Courts-Martial is to punish offenses against it.[65]

At least three meanings can be attributed to this motto in Amharic,
a language preoccupied with conveying many levels of meaning simultaneously.
A literal rendition into English is "Ethiopia First" or "Forward":   unity
in the face of ethnic, regional or religious divisiveness, a launching of
Ethiopia on the path of radical change, or a chauvinistic desire to dom-
inate Africa.   It is likely that all three meanings are intended.   Ethiopia
Tikdem used to appear on the masthead of a defunct newspaper, Ethiopian
Dimts (the Voice of Ethiopia) - a fact which may be unknown to the Derg.
It is more likely that the slogan was appropriated from Prime Minister
Endalkatchew, who issued a manifesto in which the stated goal of his
Cabinet was ensuring that "Ethiopia came first."

A.   Initial Formulations

On 20 October 1974 a group of intellectuals - mostly University
teachers - attempted an elaboration and explanation of Ethiopia Tikdem
over the radio.   The underlying concept, it was stated, is that the in-
terests of the many came before those of the individual; the slogan is to
serve as a guiding principle of development-oriented policies.   Particular
emphasis was placed on equal access to education and medical care, on the
prevention of "moral degeneration" and on the instituting of "a process
of self-regeneration".   Land was described as "a free gift of nature and
. . . being the wealth of the people as a whole, land should be brought
under effective governmental control so that . . . people can live and
work together for the common good."   A major political canon was to be
Lincoln's government of, by and for the people.   Social justice, "brother-
hood and mutual respect with the entire World community and particularly
with neighbouring nations" were all stressed.

T.here was only a passing reference to tradition ⌐ Government's awareness of "our cultural heritages" ⌐ and no mention of religion, an ⌐intensely-felt and divisive topic. Many Orthodox Christians found the notion that land was "a free gift of nature" rather than God to be bizarre. Many townspeople inferred a socialist drift in the Derg's thinking from these statements regarding land, and this was confirmed on 21 December 1974, when Ethiopia was declared a socialist state:

> . . . Ethiopia Tikdem means Ethiopian Socialism and socialism means equality, self-reliance, hard work for the overall interest of the people and above all the supremacy of Ethiopian unity.[66]

The "people's revolution" was said to be motivated by a sense of sacrifice arising out of hardship, pride and patriotism, and spearheaded by the Armed Forces; it was not accidental or without direction. It can be encompassed by five fundamental precepts discussed at length in the Ethiopian Herald during December 1974:

> 1. Discrimination on the basis of tribe, sex, language or religion will be abolished and "complete equality, freedom and social justice" will prevail.
> 2. There will be a redress of past injustices and an eradication of poverty. "The limitless idolatry of private gain which has chained our people to poverty and which has so humiliated our country in the eyes of the world will be abolished. Henceforth, the interests of the community will be paramount."
> 3. The right of popular participation in government is "restored", but apparently restricted to the local government level. The concept of federalism is implicitly rejected: "the central government will be responsible for national or otherwise fundamental matters of state and give aid to communities in those areas where they exercise self-administration."
> 4. "Respect for labour and the dignity of the toiling masses" will be secured (an innovation in many Ethiopian societies) and "exploitation and parasitism will be socially condemned modes of living."
> 5. "Above all, the sacred unity of Ethiopia will be upheld."
>
> This philosophy is no foreign import, but springs from the people's aspirations and from "Ethiopian culture"; it should bring Ethiopia closer to her progressive neighbours.[67]

While several ideas broached in October 1974 recur in this December formulation, emphases and the general thrust of the propositions differ significantly. This "political philosophy", as it was now termed, was still extremely nebulous; the Amharic equivalent of Ethiopian Socialism can be interpreted as anything from a pious humanism to a reference to the community of the people. As can be imagined, these expositions gave

rise to many discussions in Addis Ababa. The Derg's attitude towards these debates alternated between suppressing and encouraging criticisms depending, presumably, upon which group in the Derg achieved a temporary dominance. Freedom of the press flowered during the initial stages of the Revolution, until the Derg put a stop to it in August 1974. A brief revival of press freedom occurred in March 1976, when the Derg stated the need for critical debate "among progressive elements." Positions markedly contrary to those of the Derg and echoing those advocated by the Derg's new-found enemies - students and teachers - were vigorously maintained in Government-owned newspapers: substantial provincial autonomy based on self-determination and an immediate settlement of the Eritrean conflict.[68]

The Derg was probably canvassing support for policies it already had in mind: the National Democratic Revolution Programme, published in April 1976, gives little indication that divergent civilian views were taken into account. The Programme is detailed but couched in an oblique language. Moves toward civilian rule and the establishment of political parties had been promised before by the Derg; in April 1976, it was stated that the transition to socialism, towards a "peoples' democratic republic", is to take place under "the vanguard of the revolution" - a working class party cooperating with peasants. The formation of a National Revolutionary Front is a precondition to the election of a Revolutionary Assembly, and Government assistance is promised to "all democratic parties who wish to carry on the struggle under the umbrella of . . . anti-feudal and anti-imperialist objectives." A People's Organising Provisional Office (a regularisation of a pre-existing Politburo - see infra and Chapter Five) will spread socialism and help the people to organise the Revolutionary Front. The "right of any nationality . . . to self-determination" is mentioned, but made subject to the maintenance of territorial integrity "in accordance with the spirit of Socialism." In March 1978, Government's aims were reformulated slightly: all "nationalities" are to "live in equality under the principle" of "diversity in unity", and "workable levels of regional autonomy" will be established.[69]

When combined with the February 1975 Declaration of Economic Policy, the April 1976 Programme also furnishes the latest detailed outline of the Derg's economic policies. The major aim is a more equalised distribution of incomes, educational opportunities and health services, particularly

as this requires a transfer of resources from urban to rural areas.
Agriculture will be the vehicle for Ethiopian development, along with
smaller industries which meet the consumption needs of the poorer strata.
A few heavy industries are, however, projected for the future, and the
present need to reorganise nationalised businesses, insurance companies
and banks is recognised. In both agriculture and industry, the focus is
on generating employment opportunities and providing incentives for smaller
producers. Two deep conflicts also emerge from an examination of these
policies: between fostering cooperatives of smallholders and a large-
scale collectivised agriculture, and between the larger questions of
development from the bottom up and a tight centralised planning. The
ways in which these conflicting economic policies have been implemented
are examined in Chapters Six and Seven.

B. Subsequent Sloganeering

The Derg has periodically used aggressive language to justify its
policies. In October 1975, for example, it declared:

> It is impossible to hide from the revolution of the broad
> masses. [Those] who cannot see that the sun of truth has
> begun to rise will be . . . dealt with. [They] will be ex-
> posed by the light of Ethiopia Tikdem and eliminated by the
> sword of Ethiopia Tikdem.[70]

The intensity of this kind of slogan-mongering and the number of repetitions
increased markedly after April 1976, however. Two slogans, utilised by
Mengistu in particular, have become especially prominent. The first, "let
our revolution be transformed from a defensive to an offensive position",[71]
was subsequently rephrased to announce "the need to fight white terror
with red terror" and is directed against a militant urban underground
opposition (see _infra_ and Chapter Five). The precise content of a second
and more general slogan, "let imperialism, feudalism and bureaucratic
capitalism be crushed",[72] is even more uncertain.

The Derg's opposition to feudalism and imperialism is virtually self-
explanatory, given its overall aims and the nature of Haile Selassie's
regime, as analysed in Chapters One and Three. The Derg chooses to re-
place imperialism with, in the short run at least, a dependence on social-
ist states and the militarism that has been deemed necessary to create
integrated communities since time immemorial. As Ethiopia Tikdem increas-
ingly becomes a "collective animus of intentions, aspirations and fears",[73]

the Derg assumes the right to use coercion to force recalcitrants "to be free" by adhering to Ethiopia Tikdem.

The administration of the economy under Haile Selassie can be characterised as an example of bureaucratic capitalism only at the risk of considerable oversimplification (see Chapters One and Three). The constant repetition of this _bête_ _noire_ can, however, be taken as a realisation of the huge temptations towards a bureaucratic dictatorship - given low levels of literacy and colonial habits of administration - which would fail fully to achieve the Derg's revolutionary aims. Several astute African leaders are aware of this danger, and the Derg probably is too: some of its policies, and the creation of urban and rural coops in particular, circumvent or emasculate the bureaucracy, while other policies serve to strengthen the bureaucrats' hand. It is also likely that there is a Trotskyite element in the Derg's thinking. He argued that the proletariat, supported by the peasantry, can take power early and directly before it is in a numerical majority - under conditions of bureaucratic capitaliam.[74]

In nineteenth century Russia, Trotsky contended, the nature of the state, and of capitalism as a child of the state rather than of individuals, meant that a "revolutionary bourgeois liberalism" (as reflected in, for example, the French Revolution) was stillborn. Middle strata were firmly on the side of autocracy and reaction. Under these conditions, he maintains, it is possible to move directly from feudalism to socialism through "permanent revolution": urban revolutionaries carry socialism into the countryside, overcoming opposition with the aid of the proletariat of other countries. While space litmiations have forced us to simplify the richness of Trotsky's ideas, it is nevertheless possible to see that this would be a simplistic view to take of the Derg's Revolution; despite similarities between pre-revolutionary Russia and Ethiopia, an Ethiopian proletariat never came into existence (see Chapter One) and is therefore incapable of mounting its own revolution - even if the military serves as its proxy representative. In any event, numerous derogatory references to bureaucratic capitalism are hardly calculated to endear the Derg to the Soviet Union or to Eastern European states (where, Marxists such as Marcuse and Mao allege, a bureaucracy continues to exercise governmental functions in a manner contrary to the interests of the proletariat). While the administration of nationalised businesses in Ethiopia suggests, at best, a state socialism in which changes in property relations do not necessarily

change the ways in which bureaucrats perform their functions (see Chapter Seven), kebelles and peasant associations may represent moves towards a democratic socialism.[75]

The chanting of slogans is also stimulating a patriotic fervour - "Revolutionary Motherland or death" - which is almost wholly displacing further elaborations of Ethiopia Tikdem. We were about to write that at least some of the silliness that attends the development of other African ideologies had been avoided in Ethiopia when it was announced, in April 1978, that several books had been banned as "contradictory to the ongoing revolution", including Hamlet, Dante's Divine Comedy and the Gospel According to St. Mark.[76]

C. An Interpretation

Perhaps the best way of attempting to understand Ethiopia Tikdem is first to consider what it is not. The links between the Derg's ideology and conventional formulations of an African Socialism are so tenuous as to be non-existent. African Socialism as it is written and practised is, in our view, so vague as to be all but meaningless anyway. Basil Davidson has termed it an African middle-class solution, full of "oratorical flapdoodle",[77] with the state undertaking few responsibilities - through law or otherwise - for achieving socialism or a broadly-based development. In addition to metaphysical notions of an "African identity", it is composed of vague longings for social justice, suspicions concerning the social role of private enterprise, a mass-membership political party, and a bit of social engineering in the pursuit of a political philosophy of economic growth. Consider the view of Senegal's Senghor:

> Socialism for us is nothing but the rational organisation of human society considered in its totality, according to the most scientific, the most modern, and the most efficient methods.[78]

The assertions of Senghor and other Pan-African ideologues often sound like those of European social democrats and serve as apologies for neo-colonialism or a petty despotism; this is particularly evident in the ideas of the older Anglophonic African intellectuals who came under the influence of Harold Laski.

Senghor adds: "More than the use of the most efficient techniques, it [African Socialism] is the sense of community which is the return to African-ness."[79] Other African romantics have perceived this traditional

socialism, with a communal ownership of land by egalitarian societies which enforce an extensive network of social obligations. The evidence on this score is, for most cultures, ambiguous and hence subject to self-serving interpretations.[80] It would be absolute nonsense to characterise most Ethiopian societies in this fashion (see Chapters One and Six), especially as Ethiopians have long felt themselves in Africa but not of Africa. It is therefore impossible to base social mobilisation, effective development planning or even state stimulation of the economy on communitarian traditions in Ethiopia; longstanding stratifications and ethnic antagonisms must be dismantled before any kind of socialism can meaningfully take root. The Derg sees this process as one of class struggle and, while this is not altogether accurate (see Chapter One), it is far removed from the ideas of the older African Socialists. While we have characterised Ethiopia Tikdem as vague, it is far more concrete, socialist and less mystical — despite the visionary language often employed — than the initial variations on the theme of Socialism in Anglophonic and Francophonic Africa.

Perhaps the only truly valuable aspect of these older theories is a humanistic orientation - Nyerere's emphasis on socialism as an attitude of mind, on the need to avoid creating the lonely and ineffectual individuals found in more developed states, and on a refusal to reject all aspects of tradition out of hand. It is perhaps unfortunate that this kind of humanism finds no place in the Derg's thinking, a fact which can be explained without necessarily being justified. Like Russia's revolutionary regime, the Derg came to power without mass (peasant) support and is committed to retaining power and promoting rapid development in a hostile domestic and international environment. There has therefore been little opportunity for the 'luxury' of a socialist humanism to emerge, despite the strong humanistic strands in many of Ethiopia's cultures. Ethiopian Socialism resembles, rather, the more explicitly revolutionary ideologies evolving in Moçambique, Angola and, to a lesser extent, Somalia; these reflect a stronger emphasis on Marxism and a firmer rejection of capitalism and of an economic dependence on the West.[81]

To what extent is Ethiopia Tikdem a Marxist ideology? Although the question verges on the meaningless, the answer depending on the definition of Marxism adopted, a few observations are in order. Marxism provides scant guidance for practical decision making in Ethiopia, especially since the "bourgeoisie" and "proletariat", if they exist at all, are small and

Marx assumed the existence of a proletariat which would free the forces
of production in already-developed societies, thereby curing the ills of
a too-rapid industrialisation. Theories of praxis (Gramsci's, Mao's,
etc.) are vague and largely irrelevant to the specific problems of Ethiopian
underdevelopment (see Chapter Two and passim). Cultural differences from
country to country are so great that no uniform pattern of a Marxist
human liberation can be postulated. Too little attention is paid to the
content of superstructures by Marxists[82] - and to law in particular, a
defect we analysed in Chapter Two. It is therefore logical to conclude
that, even if Ethiopia Tikdem is a Marxist ideology, the Derg and its
supporters must of necessity invent much of its content themselves.

Many Western policy-makers, and U.S. State Department officials in
particular, have gone further to argue that most members of the Derg,
including Mengistu, are not Marxists at heart. Mengistu has fueled this
kind of speculation by stating that Ethiopia remains non-aligned, although
it must rely on the Soviet Union for military aid. The Foreign Minister,
Colonel Feleke Wolde Giorgis, adds that Ethiopia hopes to become "a kind
of Yugoslavia in this region."[83] Provided we adopt the dominant attitude
among Western diplomats - that African Marxists are "bad men" whose success
would threaten Western interests - their perceptions may well be correct.
It is difficult, however, to ignore the influence of Marxism on the
Derg's thinking - particularly on the reduction of all Ethiopian antagon-
ism into class conflicts - in light of the rhetoric adopted and the huge
floodlit pictures of Marx and Lenin in Addis Ababa (where they have acquired
distinctly Ethiopian features). At least a formal non-alignment is, in
any event, necessary to keep the strange bedfellows who are some of
Ethiopia's current allies - North and South Korea, East and West Germany,
Libya and Israel - together.

Ethiopia Tikdem is thus no simple variant of a foreign radical tradi-
tion. Its closest relatives are probably the military socialisms found
in Libya and Algeria or the ideology formulated by Castro. These mobilisa-
tion systems are used to suppress Western forms of politics yet are only
partially and belatedly communised. Two important keys to new forms of
Ethiopian law and political behaviour are the intensely-nationalistic
language of struggle employed (like that of Castro and Gaddafi), and a
chiliastic rationalism. While the Derg may adapt some foreign ideas, it
also has its own visions of a new Zion; most Ethiopians are free of the

heavy·burdens of imitation and self-doubt found elsewhere in sub-Saharan Africa. The Derg has combined the more theocratic aspects of Marx with a distinctly Ethiopian version of the Great Russian millenialism and a military discipline, in an attempt to create monastic barracks dedicated to the religion of nationalism.[84]

Given the difficulties inherent in maintaining Ethiopia's territorial integrity in the twentieth century and ensuring peasant loyalty to central Government, the Derg could hardly be other than intensely nationalistic, and perceptions of these perennial problems serve as virtually the only connection between its ideology and Ethiopia's past. Like those of Cuba, the laws used to achieve the Derg's goals echo Emile Durkheim's concept of "repressive law": they embody an organic model (of a socialist society) and are punitive, severe, and humourless, embodying a new puritanism that has progress as its faith and compulsory integration in the Ethiopian State as its endpoint. In Ethiopian business life, public law and (under the Derg) ideology, the tendency is to react to the stimulus of foreign models while elaborating, and then rigidly preserving, distinctive Ethiopian versions.[85]

Wittingly or not, the Derg is using a dialectical approach to law, to ideology and to development generally. An attempt is made to transcend contradictions by forging a new synthesis rather than to palliate conflicts through incremental adjustments, through the social engineering approach that is adopted in most Western and Third Word states (see Chapter Two). Both the Derg's laws and ideology run roughshod over tradition. They differ largely in that Ethiopia Tikdem is more flexible but less certain and, in theory at least, more amenable to public participation and under-standing. Contemporary Ethiopian law is a major link between purpose, as revealed in the Derg's ideology, and its programmes which, the Derg hopes, will serve to augment the popularity of the ideology. The problem with programmes such as rural and urban cooperatives (see Chapters Six and Seven) is that ideology is immediately and directly embodied in Ethiopian laws without any of the pragmatism or empirical testing that is reflected in, for example, Chinese practices. Also, there is no detailed authorita-tive text (Marx, Mao, the Koran, etc.) in regular use and from which rules can be derived to cover specific situations.[86] Gaps in law and ideology are thus filled solely with the preconceptions and self-interest of the individuals concerned. It is clear that the conflict rather than the

consensus model (see Chapter One) provides a more realistic explanation
of the evolution of Ethiopia Tikdem, as well as of politics within the
Derg, and that temporary victors attempt to safeguard their position
through reformulations of ideology and law.

Ethiopia Tikdem has both positive and negative implications for the
country's development prospects. On the one hand, its dogmatism and dis-
regard of tradition hardly serve to further a national integration or
even an urban consensus. The Derg's demands for unthinking obedience
help to discourage the kinds of rational behaviour needed for development.
On the other hand, Ethiopia Tikdem is developmental in essence: like
Marxism, it postulates growth and a (limited and problematic) self-
realisation over time, resisting the common Western tendency to reduce
all of development to one dimension - economic growth. As an ideology,
it has served to mobilise a fair number of people: through appeals to
patriotism, by counteracting some, but by no means all, traditional poli-
tical practices, and by providing an alternative to the social values
embedded in traditional family and community settings. The question of
"mobilisation for what" receives no precise answer, however;[87] moving
beyond a mere maintenance of loyalty to the Derg, how, if at all, are
participation and political development generally - through peasant
associations, urban cooperatives and trade unions - to be combined with
the military's politics and ideology?

IV. Urban Politics Since 1974

The Derg has come to resemble other African juntas in several signifi-
cant respects. For example, Peter Enahoro argues that:

> The military dictators in Africa think that you can shut people
> off politics at will and return them to participation as simply
> as you can turn a tap off and on. . . . They seem to think that
> it is healthy to exclude the people from political involvement
> and when they are ready simply to sound the bugle and political
> activity will resume once again, automatically throwing up new
> leaders.[88]

While frequently assuring the public that they are not seeking the politi-
cal kingdom, Derg members quarrel among themselves and seek to limit the
power and influence of their common opponents - sure signs of political
activity. The Derg monotonously insists that it is paving the way for
a "people's democratic government", but almost in the same breath it pro-
hibits any form of gathering which it feels unable to dominate completely
and which even vaguely smacks of political activity. When (and if) elections

are held, there is bound to be a dearth of able and popular leaders and
a complete absence of civilians with an extensive experience of political
power who are not tainted by past associations with Haile Selassie.
Having experienced a brief renaissance during the creeping coup, public
attitudes towards Government have pretty much lapsed into cynicism and
apathy or irresponsibility, along with fear.

Taking these factors into account, a realistic political analysis
would stress that, in the words of a Financial Times correspondent,

> it is extremely unlikely that any combination of civilian
> politicians could govern with sufficient authority to imple-
> ment the hard decisions that must be taken [in Ethiopia].[89]

The radical changes projected by the Derg require a high degree of order
to be successful, while the traditional stability of most Ethiopian
societies is so great that the forces seeking to disrupt them must be
very powerful. Any activist civilian regime would thus have to rely
so heavily on the military that, it can be argued, the soldiers might
as well rule directly. There are problems with such a view, however:
while the Derg initially displayed an ability to develop a political
autonomy and, to a lesser extent, to militarise the bureaucracy and urban
society, it has not proven particularly adept in subsequent manipulations
of political resources (see Chapter Two).[90]

Like the military in most other states, the Derg lacks a mass politi-
cal appeal, experience in or patience with bargaining with civilian groups,
and the ability to plan or coordinate large-scale civilian activities.
Political innovations are obviously called for, yet an appropriate model
is hard to find. A conventional Communist party-state, in which the
military is neutralised by a small civilian elite, is obviously irrelevant
to contemporary Ethiopia. While a single mass party dominated by the
military is obviously the direction in which Ethiopia is headed, this
format has failed significantly to promote political development in such
neighbouring countries as Egypt, Libya and, arguably, Sudan and Somalia.

As in France, Russia, Nasser's Egypt and much of Marxism in practice,
a thoroughgoing revolution was deemed necessary to destroy the social
basis of an authoritarian Ethiopian regime, only to lead to the intro-
duction of new forms of authoritarianism. Disorder and disintegration
have resulted from significant segments of the population withdrawing
allegiance to the ancien regime without actively supporting or, in some
cases, even acquiescing in the Derg's. These tendencies are probably

inherent in the intial forging of any modernising state formerly dependent
upon a single traditional rule for unity and the maintenance of order.[91]
Compared with other Third World states, Ethiopia came late to (an inter-
nal) decolonisation, in an era when fissiparious tendencies have acquired
a greater legitimacy. Mengistu's long march to a substantial power was,
perhaps, a natural byproduct of these processes, but nothing in history
is ever inevitable.

At first glance, events in Ethiopia bear out Aristide Zolberg's
assertion that "political revolutions are unlikely to succeed because
they entail prerequisites which are absent from the syncretic societies
of contemporary Africa. . . ."[92] Laying aside the obvious criticism
that what amount to revolutionary prerequisites and successes is often
extremely unclear, we would argue that Ethiopia's Revolution has already
largely succeeded, on its own terms as defined by the Derg. The major
aim, which emerges clearly from the Derg's public statements, laws and
major policy decisions of 1974 and 1975, has been carried out to the
point where the Revolution - but not Ethiopia as a territorial entity -
would survive the Derg's collapse. The removal of the Emperor, business
and land nationalisations and, more brutally, the November 1975 executions
are linked together by an overriding desire to neutralise traditional
elites and eliminate their power base in the economy, including the
support they received from the Western-oriented business community. The
Derg has, all along, aimed at something more than a mere political survival:
repudiating the formula found successful by other African elites, it has
instituted genuine land reforms and refused to compromise with other elites.
The Revolution has at least shown that the primary cause of Ethiopian
underdevelopment was not the impossibility of change, but the absence of
demands for change by the wealthy and powerful or their clients.[93] Demands
are now being asserted at such a rate that few regimes could ever manage
to keep up with them. For this reason, the Ethiopian Revolution is at
least partly out of control all of the time.

A. Urban Opposition to the Derg

The Derg's rural opponents, enumerated in Chapters One and Six,
confine their ambitions almost exclusively to separatism or to a localised
agrarian anarchism. Student groups, trade unions and, to a lesser extent,
the Orthodox Church - the only organised civilian elements under Haile
Selassie - have, however, directly challenged the Derg's proprietary

right to the State in its urban stronghold. The Derg was fairly success-
ful in repressing the demands of these groups, and urban threats to its
authority from outside of its ranks have subsequently come from political
"parties" which only came to prominence after the Revolution. Beginning
in 1976, many dissident students and union members went underground and
joined one of these parties; many were later detained and/or shot. The
Derg's attitude towards union activists is mirrored in the paternal
language periodically directed towards students:

> Those who shouted for the masses . . . in the streets must now
> help the masses to organise themselves. [A] nation can neither
> be built nor destroyed by empty noise. . . . A nation and its
> principles are not like a football game. . . . Some of them
> . [students] have been trying to imitate various foreign philoso-
> phies, including foreign cultures. , . . These students who are
> tools of reactionaries cannot be allowed to continue with their
> joke. . . .[94]

The Derg closed the University and scattered the students around the
provinces on the _zemecha_ programme (see Chapter Six). A minor, but for
our purposes significant, effect of growing student radicalisation was
that, according to James Paul, it exposed "contradictions in the whole
program of the law school."[95]

The Derg's relations with the Church hierarchy have been much more
complex than those with students and unionists, and the Church is dealt
with more gingerly. One of the crucial mistakes made by the plotters of
the 1960 coup lay in making no reference to God: loyalists relied on the
Church, which branded the rebels agents of the devil and threatened their
excommunication.[96] By way of contrast, a purely secular coup in 1974
encountered a supine Church; its mystical power had turned out to be a
myth. Contrary to the expectations of many Derg members, the central Church
hierarchy did not actively oppose Haile Selassie's removal. In return,
the Derg initially squelched attempts by young priests to depose the Abuna
(Patriarch) and introduce radical ecclesiastical reforms, while reprimand-
ing the Abuna for his criticisms of the Draft Constitution (see Chapter
Five). The reactions of rural priests, who are largely beyond centralised
Church controls, to the Derg's rural land reform have varied from tentative
support to violent opposition. The land reform Proclamation was studiously
ambiguous with regard to Church lands (see Chapter Six). In November 1975,
Derg Chairman Teferi told a Russian Orthodox bishop that the Church is

allowed to carry on with its affairs with the support of society and without being involved in politics and that it will receive assistance from the Government until it can stand on its own.[97]

The Derg's attitude towards the Church leadership changed fundamentally in February 1976, when the Abuna was arrested. Several hundred other people were arrested along with him, as a result of an alleged "reactionary plot" led by a General and a former large landowner. Seasoned Ethiopia-watchers believe that the Abuna had nothing to do with the plot, but he was also charged with the murder of several priests, misappropriating famine relief funds, non-payment of taxes and the diversion of Church funds into private accounts. The last three charges could probably be substantiated, and it is a measure of the Church's influence that the Abuna remained in office so long. By 1978, some urban priests were coming to terms with Ethiopian Socialism and even with the Red Terror, participating (along with some Muslim leaders) in ideological conferences aimed at determining the "correct position" of religious organisations in Revolutionary Ethiopia. One such "Seminar" in March 1978 was addressed by the new Abuna, Tekle Haimanot, and the Imam of the Anwar mosque.[98]

As in many other states, the urban areas and Addis Ababa in particular are the arena for intense State politics, while the peripheries (or hinterlands) are the objects rather than the intiators of policies. While Addis is thus "the wrong thermometer to take the temperature of Ethiopian affairs",[99] most of the events that have shaped an urban-based revolution took place there. A brief survey of the Derg's activist urban opposition adds to our understanding of the Revolution, despite the fact that these groups are small numerically: like Soviet or Czech dissidents, they press the kinds of demands that the existing system is not prepared to fulfill. The main bone of contention is the continuation of military rule, since most of the Derg's organised urban opponents would expand upon a "purified" version of Ethiopian Socialism. Beyond this, ideological and tactical disputes and other reasons for assassinations among rival groups (usually carried out in the name of "revolutionary progress") are "difficult to follow even for those well versed in the matter."[100] One thing is clear: many and probably most of these assassinations are called for and carried out by civilians rather than soldiers. As we have no independent sources of information on this topic, we are forced to

rely entirely on the reports of others - which are exceedingly thin.

The most accurate brief summary of Ethiopian politics was offered in December 1977 by Michael Kaufman:

> There are . . . five clandestine but legally sanctioned Marxist groupings, two illegal groups, one of them Marxist . . ., peasants and urban dwellers associations and the old ministerial bureaucracy - the nervous technocrats who once served the Emperor. Each has its supporters, often armed. Alliances and enmitites run through the whole network.[101]

Except for the peasant associations, all of these factions are urban-based. Bureaucrats are not organised as such, and the threat of assassination has caused activists - including those who have lent support to the Derg from time to time - to organise themselves into clandestine parties, with tight cell-type structures which discourage infiltration. The five quasi-official parties - Meison (infra), Seded, Malered, Etchat and the Was league in July 1978 - attack each other over abstruse ideological matters and attempt to gain individual adherents within the Derg and to dominate the Revolutionary Front that continues to recede into the future. These parties are, however, more or less united in opposition to the Derg's rallying cry of "Revolutionary Motherland or Death", contending that ideological purity and the fate of the Revolution take precedence over national unity.[102]

The Derg treats the Ethiopian Peoples Revolutionary Party (EPRP) as its most dangerous enemy - as a more significant threat to military rule than, for example, Eritrean separatists - even though the EPRP's active membership has reportedly averaged only 700 in Addis Ababa since the Revolution. The EPRP was formed by trade union militants and older students at the end of Haile Selassie's reign, although there was more noise than action initially. These groups formed the backbone of the organisation, along with bureaucratic and military "fellow-travellers", until the end of 1977. One result of the assassinations and detentions is that many of the remaining EPRP members are teenagers or even children,[103] which makes the assassinations by both sides particularly horrific.

While the EPRP has reportedly attempted to operate through the Derg on occasion, it takes the conventional Marxist-Leninist view that socialism can never be achieved in a society dominated by the military. Members of the Derg are termed "prostitutors of revolutionary ideals", and the EPRP's vague programme consists largely of calls for an immediate "provisional

people's government", to be achieved in stages if necessary. It has asked unions, teachers and women's and student's organisations to join a united front under EPRP leadership, and it reportedly organised an abortive strike in September 1976. From mid-1976 onwards, the EPRP moved away from a pamphleteering and propaganda campaign towards a programme of assassination. The Derg has also accused it of "economic sabotage" and with joining the conservative ("remnant aristocrat") Ethiopian Democratic Union (see Chapter One) in forming a "mercenary army".[104]

The EPRP compiled and in some cases published lists of persons it wished to assassinate. "Every day", noted David Ottaway in March 1977,

> a top Government official, student, union leader or some pro-
> military figure is shot by professional assassins belonging
> either to the pro-Government Marxist All-Ethiopian Socialist
> movement [infra] . . . or the extreme Left-wing . . . EPRP. .
> . .[105]

In September 1976 several hundred EPRP members were arrested. In October Fikre Merid, a personable law lecturer and one of a few individuals who might have eased a transition to civilian rule, was assassinated - alleged-ly by the EPRP. Apart from the September arrests, the Government had taken little official action against the EPRP; Mengistu had demanded harsh counter-measures on three different occasions and the Derg had refused. Mengistu went ahead on his own in Ocotber 1976, and the EPRP responded by assassinating fifty of its opponents in November. By February 1977, anti-EPRP forces went on the offensive, killing twenty EPRP members - including three secondary school students. In March, the EPRP shot two kebelle officials and the leader of the new trade union association. A member of the Derg was killed by the EPRP in August and another in November, along with a policeman and the Mayor-elect of Addis Ababa. Government announced that 68 EPRP adherents had been arrested and "are to be tried." Stricter control measures were also adopted: new identity papers (in addition to those issued by kebelles) were issued sparingly by Government, and a witchhunt for those unable to produce the new documents began. Many innocent people were killed, and notes pinned to the bodies of some of the 300 persons shot in Addis Ababa during December 1977 admitted as much, or stated that "we are tired of burying our revolutionaries." Forty EPRP members were assassinated in January 1978 and 600 were reportedly arrested. The 47 people who confessed their membership in the EPRP at a public meeting in Addis Ababa were led away

to be "rehabilitated." The Derg announced in March that the EPRP - various-
ly described as a "rightwing petty bourgeois", "the Trotskyite remnant"
and an "anarchist-fascist groups" - had been "wiped out" in Addis, and
that the Red Terror would therefore be transferred to other towns.[106]

B. Other Responses from the Derg

A great deal of violence among urban guerrillas has produced incon-
clusive political results to date. Going back to 1975, executions and
detentions had already alienated influential groups and called into being
new opponents of the Derg. It became clear that the Derg lacked the
political institutions needed to mobilise broad support, although subse-
quent appeals to patriotism under Ethiopia Tikdem partially made up for
this deficiency. Additionally, the experiences of radicals under the
Emperor's 'no party' State led them to demand that parties be legalised,
while "liberals" continued to fear that parties would serve as little
more than fuel for separatist ambitions.[107] The Derg's response to this
variety of pressures have been halting and studiously ambiguous. The for-
mation of a new party was first pledged in April 1975 and, more firmly,
in September, but such a party has not materialised as of this writing.
In September, Derg Chairman Teferi said:

> We believe that one strong party is the most useful for a
> country like Ethiopia to begin with. So we decided not to
> allow competitive political parties, which could hinder our
> development. . . . With luck, the preparations will be fin-
> ished in a short time and civilians will take charge of
> Government. . . .[108]

His statements are not very enlightening, and it is difficult to under-
stand why the Derg countenanced - or was unable to forestall - the subse-
quent proliferation of quasi-official parties, unless they are viewed as
a lesser evil than having people join the EPRP.

It was announced that "feasibility studies" concerning workers',
peasants' and youth associations were completed in November 1975. The
peasant and labour organisations which were set up differ significantly
from those recommended (see Chapters Six and Seven) and no youth associa-
tion was ever created, presumably because no firm basis for loyalty to
the Derg could be found among students. A committee of soliders, intel-
lectuals, students, peasants, workers and members of womens' organisations
was broached in December 1975, to elaborate Ethiopia Tikdem and to "study"

the formation of a party. This Politburo, as it came to be called after
the Derg's leftward shift became increasingly apparent, was regularised
under the Proclamation creating the Provisional Office for Mass Organisation
Affairs (POMOA) in July 1976 (see Chapter Five).[109]

By November 1976, nine of the original fifteen senior Politburo members
had been assassinated. The POMOA came to constitute an embryo "parallel
structure" to those of the bureaucracy and the military. It is linked to
the Derg through a Supreme Organising Committee and is said to direct some
of the operations against the EPRP. Still predicting the immanence of a
political party in March 1978, a POMOA spokesman argued that, owing to
Ethiopia's historical experiences, there were no "revolutionary cadres";
the military was thus forced to take power; and opposition to the Derg at
this stage could only constitute an invitation to counterrevolution.
While there is some truth in these reasonably pragmatic statements, we
would definitely part company with the POMOA spokesman when he extends
these arguments to justify the Red Terror and contends that the "feudal
bourgeois system" has not yet been dismantled. James MacManus saw the
POMOA as wholly loyal to an "untutored" Mengistu, who was "without . . .
a political thought in his head" prior to his rise to power. The "most
likely" reason for this apparent anomaly is that the POMOA was betting
on the strong, on those who would prosecute an "onwardgoing" Revolution.[110]

Like the POMOA, with which it shared some of its leaders, the Marxist
All Ethiopian Socialist Movement (MEISON) saw, until August 1977, a temporary
civilian/military alliance as necessary. MEISON was an outgrowth of the
Politburo and seemed destined to serve as the nucleus of the Revolutionary
Front. It took over the Yakatit Political School that has trained 5,000
illiterate peasants and workers orally since 1974, it advocated and assisted
in the arming of kebelle and peasant associations - a key Mengistu policy
- and it came to dominate some kebelles and peasant associations. The
chief ideologue of MEISON and Chairman of the POMOA, Haile Fide, was,
like Fikre Merid and many other publicly-identified civilian activists,
a French-educated Marxist. Haile was arrested when MEISON's break with
the Derg came in August 1977, and Soviet pleas for his release have fallen
on deaf ears. Underestimating the Derg's strength during the Somali in-
vasion, MEISON called for a return to civilian rule: some 200 of its
members managed to get to ground and are attempting to unite other Marxist

factions, but 70 fled the country, were killed or arrested. About one-third of MEISON remained loyal to the Derg and is now termed _Seded_ (Revolutionary Flame). Allegedly more nationalistic and less rigidly Marxist than the parent organisation, this group favours improved relations with the U.S. and has superintended the extension of the Red Terror to members of MEISON. Amnesty International was led to conclude that, by "mid-December 1977, any semblance to the rule of law had totally disappeared."[111] This assertion and the impact of the Red Terror are evaluated in Chapters Five and Eight.

V. Old Wine in New Bottles?

Contemporary Addis Ababa is certainly a brutal and brutalising place, but it would be a mistake to assume that a predisposition towards violence has only emerged since the Revolution. A few Ethiopianists claim to have found a high incidence of violent personality traits within dominant ethnic groups, traits similar to those associated with a Latin American _machismo_. We need not adopt their pseudo-psychology, but simply observe that there were some nine million pistols and rifles in civilian hands prior to the Revolution (300,000 in Addis Ababa)[112] and many more today, given the arming of kebelles, peasant associations and separatist groups. Ethiopia is thus among the most heavily armed of countries on a per capita basis, and frequent recourse to gun-play was evident long before the Revolution.

A. The Politics of Violence

Profound changes in the distribution of wealth and power are seldom accepted voluntarily in any society, and they provided an additional motive for violence in Ethiopia. Like Soviet revolutionaries, the Derg found that a systematic neutralisation and/or liquidation of traditional elites did not automatically mobilise the people for its new aims; much of the public went into militant opposition and/or tried to safeguard a traditional secrecy and family solidarity. Needless provocations were also offered: like Stalin, Mengistu is seemingly unaware of the fact that non-antagonistic contradictions, wrongly handled, become antagonistic ones. Examples are offered in the footnote and _infra_.[113] The Derg's "erratic and repressive stewardship" has created few friends for it in any strata,[114] although its more passive urban enemies are coming increasingly

to recognise that anarchy and territorial dismemberment are the only alternatives to military rule in the short run. So, while the Derg possesses little legitimacy, other groups have even less. This is one form of Jurgen Habermas's "Legitimation Crisis" (see Chapter Two), in which attempts to overcome losses in legitimacy only result in a further erosion of the Derg's position, yet the Derg remains surprisingly effective in certain spheres of activity.

Coercion is justified, within narrow limits, by the extreme fragmentation of, and low levels of discipline within many Ethiopian societies, the need to suppress <u>marginal</u> recalcitrants and vested interests opposed to a rural development beneficial to peasants, and the need to break through the economic stagnation that has caused so much suffering and injustice. The point was soon reached, however, when repression and Ethiopia Tikdem are used primarily to retain a personalised power, a step justified to the public by the existence of handy "enemies". A reliance on force blocks tenuous channels of communication running among peasants, city dwellers, bureaucrats and the military and prevents new ones from developing. People are either afraid of, or see no point in, using them. The resulting lack of information fosters additional violence: competing groups cannot accurately assess the dangers they face and overreact in safeguarding themselves. Demands escalate wildly and violence ultimately becomes the only way in which groups can communicate with each other. Coercion absorbs a disproportionate share of resources, especially of manpower, potential capital and <u>imagination</u>, and the hand of the military and police is strengthened while the bureaucracy's withers. The gap between ideological aspirations and the ability to implement them continue to grow, and new <u>raisons</u> d'etre for a repressive regime must be invented.[115]

It almost seems as though Nigel Young was thinking of Ethiopia when he wrote that the

> organisation of violence is itself undemocratic and inegalitarian. Vanguard revolutionary parties and terrorist groups, based on orders and obedience, have no room for political debate. Armies . . . are amongst the least egalitarian of institutions. . . . The exploitation of popular acquiescence by minority power becomes the accepted pattern. . . . Once the 'seizure of power' is achieved, new outrages can be justified on behalf of whatever the new elite defines as 'revolutionary'. Compulsion and uniformity become both means and ends.
> . . . The removal of an elite by coup no more guarantees real change . . . than the assassination of one member of that elite; too often the methods of the opponent are imitated. . .
> . The violent origins of any regime are reflected in its patterns

> of administration and the lifestyle of its ruling class,
> especially their intolerance of opposition. This is es-
> pecially marked in the use of inherited structures (i.e.,
> the bureaucracy, military elites, geopolitcal boundaries
> - even secret police - of the previous regime).[116]

Our view is that immense economic and social changes have occurred in

Ethiopia, but precious few specifically political changes - largely for

the reasons Young adduces. The Derg has unashamedly capitalised on the

nineteenth century conquests of the Emperor Menelik, but which government

voluntarily relinquishes territory where it is able and willing to fight

and has a 'colourable title'?

B.   Political Parties and 'Style'

Opposition and, more particularly, a political pluralism has been

consistently frowned upon among Third World politicians and by "radicals

and socialists from Robespierre to August Bebel."[117]   While many Ethiopian

University students have argued (probably correctly) that a pluralistic

State would be stronger than a poorly-integrated one theoretically committed

to a single set of norms, the extent to which Ethiopian politicians stress

a monolithic national unity is directly proportional to their proximity

to power at the centre - both before and after the Revolution. Promises

of a one-party State are a logical outcome of these attitudes, yet delays

in implementing these promises are also logical, in that they benefit the

Derg. Recognising the need to displace localised political communities

oriented around traditional elites, the Derg recklessly pressed for a

rapid political mobilisation and succeeded in politicising city dwellers

and even some of the peasants. The Derg then drew back, recognising that

it would be difficult to control and impossible to assimilate the explo-

sion of new demands that resulted.[118]

Over time, the Derg has moved towards a Leninist view of its future

party as the vanguard of class struggle. In theory, such a party leads

the Revolution from above, aids the oppressed against their exploiters,

mobilises youth for its purposes (a crucial Derg failing, as the EPRP and

zemecha demonstrate) and provides tutelage in democratic practices through

democratic centralism - the mode of decision-making adopted for the hier-

archies of Ethiopia's kebelles (see Chapter Seven). While such a party

in theory represents a good compromise between participation and the needs

for mobilisation and leadership, participation is usually neglected in

practice and mobilisation often proves extremely difficult. Integration proceeds, if at all, through class struggle and contradiction - an elusive goal in the absence of a pre-existing ethnic and cultural integration. John Hazard's study of Keita's Mali contain a useful moral for the Derg: the effectiveness of a communist party-state can only be diluted by a mass membership stemming from the desire to mobilise large numbers of people; members lose their elitist benefits, party discipline falters and the value of a vanguard disappears. The transplantation of other types of parties in the Third World has, however, recorded few successes to date. For example, Nyerere's ideal of a "two-way all-weather road by which government could reach the people" and vice versa,[119] has not been attained in substance, in Tanzania or elsewhere. Parties are slow to take root in local communities, they require a constant nurture and balancing of interests to survive - and the Derg has displayed little interest either in continuous supervision or political bargaining. The experiences of countries like Egypt and Libya demonstrate that little political development is realised when a ruling council of soldiers is simply converted into a party central committee. A party would prove no political panacea for Ethiopia and such supposed military virtues as obedience, hierarchy and the preservation of order are the antithesis of participation and the questioning of authority.[120]

A comparison of the descriptions found in this and the preceding Chapter shows that the policies pursued and some of the forms of government under the Derg differ radically from those of Haile Selassie. Nevertheless, the 'style' of politics, the manner or method of policy-making, has remained largely the same. Many Ethiopian social structures - particularly in central and northern Ethiopia (see Chapter Six) - have not yet changed fundamentally, as a result of the Revolution, and

> the social structure generates the substantive issues of politics
> and colours the style in which they are disputed. [I]f the
> people are individualistic, intolerant and arrogant then it
> is likely that their politics will be those of coercion or
> regimentation; if they are . . . quietist or deferential then
> their politics are likely to be those of manipulation. And
> always it must be admitted that harsh material conditions [and]
> glaring disparities in the distribution of wealth or status may
> set mortally low limits to mutual forbearance. . . And for-
> bearance is a human quality in very short supply.[121]

It is a measure of the complexity of Ethiopia's politics and of its ethnic groups and social strata that all of these generalisations can be

meaningfully applied, both before and after the Revolution.[122] One elite
has succeeded another, with the notion of elitism, the special claims to
govern asserted by 'enlightened' groups, being perpetuated by the military.
Political relations remain intensely personalised in a small and subsis-
tence political society, as in the feuds among Teferi, Atnafu and Mengistu.
Despite a great deal of lip service - and a substantial measure of genuine
commitment - to egalitarianism, elitism continues to characterise Ethiopian
politics because elitism inheres in the social structures of dominant
Ethiopian ethnic groups and in the traditional proprietary theory of the
state[123] (see Chapters One and Three).

Like the Derg, Haile Selassie distrusted Western-style political proc-
esses and adopted a drawn-out paternalistic tutelage as the means of marking
a lengthy transition between the charismatic leadership of previous
emperors and a future secular state. As in Russia, Ethiopian Socialism
arose in a backward country and in opposition to an autocratic regime,
leaving it with an autocratic taint. The continuation of censorship, the
repression of group expressions of anything other than adulation and the
absence of an effective machinery of criticism - such as provided by some
Parliaments - perpetuates an atmosphere of secrecy and intrigue (see
Chapter Three). One of the Derg's major criticisms of the Emperor - that
he used "divide and rule tactics" (see Chapter Three) - has also been
validly levelled against Mengistu, who is clearly less adroit than the
Emperor. Factionalism under Haile Selassie is replicated under the Derg;
only the political orientations of the groups have changed, and a pessimist
has even declared that the

> chance that the educated class of Ethiopia would mute its
> political differences and concentrate on the formidable job
> of developing the country has almost certainly gone.[124]

It is clear that the Derg is eager to reverse the consequences of the
policies it has inherited. There is, however, abundant evidence that the
Derg and its supporters - urbanised elites for the most part, as were
those who manned the Emperor's regime at the centre - have little direct
and realistic understanding of peasants and the ways in which they think
and live. This assertion is illustrated by the carelessness of the land
reforms that are discussed in Chapter Six. The Derg's unwillingness or
inability to respond to interests asserted under traditional laws, or to
convince people (particularly those in northern and central Ethiopia) of

the existence of viable alternatives, may well be its Achilles Heel from the standpoint of long term political development. Likewise, the huge roundups in Addis Ababa that netted thousands of innocent people (some of whom were killed by mistake) indicate that the Derg, the POMOA and (formerly) MEISON are out of touch with urban opposition politics.[125]

As under Haile Selassie, channels of communication are weak and few in number, and there is a consequent tendency to rely on manipulation and coercion. The Aquabe Sa'at (traditional audience with the Emperor - see Chapter Three) survives virtually unaltered: military and bureaucratic hierarchies are ignored by complainants and informers in an attempt to gain a hearing from a few Derg members. Ethiopian bureaucrats have become only a little less arrogant and indifferent; the incompetence remains. There is still a lack of reliable political institutions to implement Government policies, although the constituencies on which such institutions could be founded have, to a limited extent, been mobilised since 1975. Local government, perceived as a barrier to attaining radical goals and as loyal to opposition groups, is being circumvented and emasculated through the kebelles and peasant associations. The devolution of some localised functions seems to be the practical extent to which ethnic diversities are going to be recognised, however. Like Haile Selassie before it, the Derg argues in its April 1976 Programme that "the question of nationalities in Ethiopia has always been an artificial one, . . ."[126] The Derg's foreign affairs spokesman echoed Haile Selassie in June 1978: "Since Ethiopia's unity and territorial integrity are not negotiable, the only alternative is to crush the treacherous secessionist movements."[127]

If much remains the same, much has also changed under the Derg. Consider the ways in which Kaplan et al. characterised the Emperor's regime in 1971:

> Despite its involvement with the outside world, its formal adoption of modern governmental institutions, and its tentative approaches to economic development, the country retains its fundamental conservatism.[128]

In a couple of years, the Derg has moved towards autarchy (except for an acute dependence on foreign weaponry) in what it sees as a hostile world, repudiated superficial Western-style institutions and created what are termed transitional arrangements in an ad hoc fashion, displayed a deep commitment to a socialist path of development, and forged what is arguably

the most radically leftist regime in Africa. Virtually the only thing
the Derg consciously seeks to conserve is its own power (in this respect,
all but suicidal regimes are conservative); similarities in political
styles suggest, rather, that the Derg is as much the prisoner of Ethiopian
history and its own military foundations as it is a free agent.

C. Addis Hiwet's Hypotheses

This is the way Addis Hiwet described the Derg in 1975:

> Born out of the crisis of a new democratic revolution, wishing to
> lead it but inherently incapable of doing so; with its political
> domination uncertain and precarious, suspicious of the masses it
> . . . mobilises; completely incapable of differentiating between
> power based on bayonets and power based on the people [;] still
> rent by internal contradictions and therefore devoid of a unified
> political identity, nonetheless the military dictatorship still
> wields effective political power. But the relative autonomy the
> Dergue has enjoyed so far is fast dissipating itself and its area
> of manoeuvre is shrinking.[129]

His description retains our interest today. While noting the Derg's
shortcomings, Addis avoids falling into what might be termed the Colin
Legum trap, of biweekly predictions of the Derg's immediate demise. If
the journalist's pen is indeed mightier than the sword, the Derg would
have collapsed long ago.

It is worthwhile pausing to analyse Addis's assertion that the Derg
was incapable of leading a "new democratic revolution" and subsequently
became a "military dictatorship", if only to illustrate the slipperyness
of these terms when applied to concrete situations in the Third World.
Some years ago, Western political scientists were fascinated by a dichotomy
of democracy and dictatorship (or totalitarianism), but both the concepts
and the distinction they represent have been breaking down in recent
years - especially in the Third World. As Addis suggests, there was a
large measure of public participation in Addis Ababa during the initial
stages of the "creeping coup" and all revolutionaries claim to be the
proxy representatives of their people, yet a "democratic revolution"
approaches a contradiction in terms. It is of course true that, under
definitions commonly applied in the West, Ethiopian politics is not and
has not been democratic: most of the people vitally interested in a
particular decision have no effective voice in it; there is not even a
modest degree of freedom to compete for public support; and the virtues
associated with moderation in the West - pragmatism and a willingness to
compromise - are absent.[130] No one would therefore expect durable

constitutional norms, a meaningful separation of powers, procedural due process (or natural justice) or a general consent of the governed to emerge from our Ethiopian public law analyses in Chapters Three and Five.

Certain elements of totalitarianism - a concept more bankrupt than democracy - can be found in Ethiopia: a compulsory ideology, terrorists functioning as political police, and a projected monolothic party. Nevertheless, the Derg lacks the characteristic ability, formulated by Hanna Arendt, to dominate all spheres of each individual's life, especially in the rural areas. Limitations on the scope of Governmental power are largely the same as those faced by Haile Selassie (see Chapter Three). In particular, the Derg has no monopoly of weapons, jobs or effective channels of communication.[131] The Derg thus exists somewhere on a complex continuum between polar stereotypes of democratic and totalitarian regimes - like most other governments.

If a Western political scientist were to construct a theoretical model of political instability, it would bear a strong resemblance to post-Revolutionary Ethiopia. While all of the Derg's policies are familiar to students of comparative politics, the simultaneous pursuit of so many radical changes at what seems to be a reckless pace[132] is conducive to ever higher levels of instability. The Derg has nevertheless survived in the face of fierce opposition from all directions, and we would argue that it represents a novel form of parliamentary government. The novelty consists in the fact that the 'parliament' is not elected, Its duration is unknown and the qualifications of its members relate to their ability to handle firearms. The initial selection of Derg members by military units introduced a rudimentary democratic element when compared with Haile Selassie's regime, where only selected sycophants exercised meaningful power at the centre (see Chapter Three). The Derg is perpetuating a tradition in a revolutionary fashion: a seventeenth century Ethiopian constitution (the Ser'ata Mengest - see Chapter One) states that a new king is nominated by incumbent, with the consent of the army. As the traditional army included soldiers between the ages of twelve and sixty, its consent operated as a selective male plebiscite.

Today, the Derg could be regarded as purely oligarhic, save that it still represents an attempt to secure a minimal consensus among soldiers (many of whom are peasants in uniform), policemen and their immediate relatives.

This "core constituency" is much larger than Haile Selassie's (see Chapter Three), and about the same size as those found in many, reputedly more democratic African states. New and informal channels of communication - friendship and kinship networks running between the military and the urban public - enabled policy justifications and exchanges of information and viewpoints, until these channels were largely destroyed by the White and Red Terror. There is, however, a largely unrealised potential for broader public participation through kebelles, peasant associations and, to a lesser extent, political parties and trade unions.

In sum and as a gross generalisation, the representativeness of the Derg has evolved about as far as it had in the Parliaments of Tudor England, whose francise was extremely restricted (see Chapter Three). Future developments in Ethiopia will, however, tend towards a Rousseauian direct democracy - with all of its attendant dangers - rather than a Western-style constitutionalism. As of this writing, Mengistu seems to dominate things but, contra some newspaper reports, there is little evidence that his position is secure or that he has grasped anything like the combination of power and authority enjoyed by Haile Selassie. It seems, for example, that the Soviets and Cubans have extended aid and confort to Mengistu's enemies. Assertions of the collapse of the Derg as a collegial body during 1977 are thus premature.

A politically-neutral military is unlikely in Ethiopia in the fore-seeable future: the military still feels that it best represents the people's interest, and no civilian regime could either command military confidence or survive without it. As Derg Chairman Teferi stated back in September 1975,

> the troops, despite the problems that occur through the actions
> of certain selfish groups, will not return to their barracks
> until they have made Ethiopia one of socialism's promised
> lands. . . .[133]

Dominant Western perceptions of military regimes as either a group of apolitical technocrats or as a desirable model for maximsing both modernisation and stability thus prove false when applied in Ethiopia. Further, analyses in this Chapter and elsewhere in the study suggest that it is simply incorrect to argue, as John Spencer did in 1975, that for the Derg "the goal of economic modernisation has been replaced by the menace of political bankruptcy."[134] One reason is that the fund of

political capital held by any other potential ruling elite is much smaller
than the Derg's. Another is that the Derg recognises the interdependence
of its political success and a broadly-based development. The Derg's
economic performance, while far from perfect, is much more impressive
than its politics - an assertion which will be expanded upon in greater
detail in Chapters Six and Seven. While the statistics are muddled and
incomplete, they indicate a real annual rate of growth in production of
1.4% since the Revolution. This is a fairly impressive achievement, given
that production has declined under revolutionary regimes which attempted
less radical reforms in other countries. Certain sectors of the economy
are definitely in a state of attrition and many aspects of underdevelopment
under Haile Selassie are proving resistant to change. Real urban wages
are declining and urban unemployment is rising. On the brighter side,
the incomes of peasants - some 90% of the population - are higher, they
have more to eat, although serious famines occur in some areas, and
Government devotes a higher proportion of its resources to the rural areas.
Ethiopia's international economic position actually improved, although
world coffee price trends were largely responsible for this improvement
up to 1977. The Derg's policies have staunched the flow of foreign
economic aid from former donors while attracting huge amounts of military
aid. Since the coup, the Ethiopian military has claimed an increasingly
large share of governmental revenue, although the exact figures are un-
available. The military is being expanded to fulfill greatly increased
combat commitments and, very likely, to satisfy aspirations towards pro-
motion, in an attempt to forestall frustration, jealousy and subsequent
coups. Evidence from other Third World countries suggests, however, that
military growth need not be pursued at the expense of economic growth or
welfare expenditures.[135]

* * * * * *

"Only one thing is certain: when the Emperor dies, all of Ethiopia's
problems will live on."[136] So wrote Robert Hess in 1970; the sentiment
was updated by an Ethiopian poet in May 1974: "The dust has settled down,
leaving more dust."[137] Much has changed since then as a result of the
Revolution, yet much remains the same. While Nigel Young's general state-
ments (supra) characterise events in Ethiopia with a fair degree of accuracy,

his is not the whole story. Pushing his arguments to their conclusion, he asserts that the

> legacy of the twentieth century revolutions is ambiguous.
> . . . The connection between . . . historical events and
> the egalitarian, libertarian and humanist ideas of classi-
> cal socialist thought are tenuous indeed.[138]

This kind of pessimism deepens in the writings of Barrington Moore, Jr., who finds that revolutions begun in comaraderie end in fratricide; the brotherhood of man and the abolition of political deceit become a tyranny directed against the "little people", in whose name the revolution was begun. Maintaining yourself in power is not the criterion of a successful revolution, which Moore equates with a lasting contribution to freedom - a diminution of human misery. Revolution thus poses a more vehement form of the fundamental contradiction between politics and morality, "the effectiveness of immoral political methods" and the temptation to use them before an unscrupulous enemy mounts a counterrevolution on the one hand and, on the other, "the necessity for morality in any social order."[139]

These and many other criticisms can be levelled against participants in the Ethiopian Revolution, and some of them will be discussed in the concluding Chapter. Particularly cogent is Graham Hancock's fear that, in Ethiopia and Somalia, "death has taken priority over life; hysterical nationalism over individual survival and the hope of a better life for all the peoples of the Horn."[140] We would nevertheless adopt the less pessimistic assessment of that most competent of Ethiopia watchers, David Ottaway:

> Where all this . . . zig-zagging and bickering . . . is taking
> the country . . . is uncertain, Ethiopia . . . seems . . . en-
> tangled in a revolution as powerful as the Soviet and Chinese
> revolutions that saw years of confusion and civil war before a
> new order emerged.[141]

Our reason for adopting this as our main perspective from among so many others is that we take a longer view of Ethiopian history (see Chapter One) than many other of the Derg's critics. While a great deal has undeniably changed, much of contemporary Ethiopian politics also amounts to old wine in new bottles; there are strong threads of continuity running between the Derg and its predecessors. Consider, for example, the views advanced in Sven Rubenson's masterly study of nineteenth century Ethiopia's resourcefulness in defending her independence and maintaining

a tenuous unity - a resourcefulness which may stand her in good stead today. In the middle of the nineteenth century, Emperor

> Tewodros perceived . . . that the political anarchy, moral
> laxity, and the technological backwardness of his people
> threatened national survival,. The reforms he announced,
> the policies he tried to implement, the very single-mindedness
> and perseverance with which he tackled the problems, indicate
> that he aimed at nothing less than a national revival combined
> with the transformation of his country into a modern state.[142]

Tewodros failed, and failed spectacularly. The Derg has carried the process begun by Tewodros some way forward, and it or its successors will see the project completed, probably in a socialist fashion. Ethiopian laws will bear a heavy burden if such a broadly-based development is to be achieved. This is the subject-matter of the next three Chapters.

Chapter 5: The Revolution in Public Law

The rigid distinctions between private and public law that are stressed in Continental legal systems caused grave conceptual and practical diffi-culties when they were transplanted to Ethiopia (see Chapter Seven). Never-theless, there were sound reasons for drawing these distinctions: private laws were imported virtually wholesale in 1960 by Haile Selassie, while public (constitutional, administrative and penal) laws evolved more slowly as reflections of distinctly Ethiopian attitudes and practices, as well as adaptations of foreign models. The operative theory of Ethiopian public law, like that of many other states, is Austinian: both before and after the Revolution, law is the command of the sovereign, sometimes described (in the West) as "orders backed by threats" or "the gunman situation writ large". In Ethiopia, these orders are bolstered by large measures of political manipulation and extra-legal coercion; notions of natural rights obtain little practical recognition; and the legal "command" is usually far from precise. Like the public law of many other countries, Ethiopia's thus gave, and continues to give, free rein to "the sheer naked power to rule for the benefit of one's self-aggrandisement and of one's group."[1]

In the previous Chapter, we argued that much of Haile Selassie's personal political style has been perpetuated by the Derg; here, we note similarities in the legal styles adopted by the two regimes. The rough-and-ready formulation of perfunctory rules conferring a broad discretion continues. These rules add up to chaotic body of laws which leaves un-checked a traditional tendency towards incoherent and arbitrary decisions. Actions are constantly demanded by an administrator's superiors without a formal legal authorisation, and legally-mandated acts are often either ignored or prohibited politically, for reasons of political convenience or administrative inertia.[2] This type of public administration breeds cynicism and indifference towards law among politicians, bureaucrats and the public; many would doubt that a relevant law exists as; indeed, in practical terms, it does not.

While radically different political orientations have been introduced, the laws of Emperor and Derg alike embody the demands of a small elite. Ethiopian politics did become more than a minority pursuit in Addis Ababa during the early days of the creeping coup, but most townspeople retired from political activity in the face of the White and Red Terror and the

need to seek a livelihood. The Derg's subsequent intransigence in re-
fusing to compromise with other elites has meant that the Derg's laws
reflect - in substance but by no means always in application - only its
own demands and perceptions. As under Haile Selassie, the interests sub-
scribed to by students, trade unionists, separatist groups, the Church
and subsistence peasants find neither legal embodiment nor a legalised
means of expression except, in a limited way, through kebelles and peasant
associations (see Part III). New laws definitely benefit the poor at the
expense of middle strata and traditional elites (and aim to bolster the
Derg's claim to a right to rule). But they serve to implement the way
in which a privileged military elite would react if they lived like
peasants,[3] rather than the ways in which peasants themselves react.
Peasants do not always respond gratefully to the Derg's paternalism.
Judges and, by and large, bureaucrats have been cowed into an acceptance
of the Derg's new rules, but opposition groups are disputing most of them
by extra-legal means. The persistent failure of Ethiopian laws to encom-
pass and regulate these conflicts is an important cause and effect of high
levels of violence, both in urban and rural areas (see Chapters One, Four,
Six and Seven).

By 1974, the 1955 Constitution had outlived its usefulness, in terms of
enhancing the Emperor's international status and fostering modest increases
in administrative centralisation and rationalisation. The Derg's new laws
reject this Ethiopian constitutionalism and dispense with what amounted
to a pretense of Western-style political rights and institutions. The
substance, but not the form, of Haile Selassie's claim to broad traditional
powers has been grasped by the Derg, which now exercises no less discretion,
and probably no more, than the Emperor enjoyed. Public law passively re-
flects the changes in the political facts of Ethiopian life[4] but, as these
changes are revolutionary, the content of the laws has been changed sub-
stantially.

I.   'Constitutional' Law

Despite assurances to the contrary and deceptive legal manoeuvres
while the Emperor was being deposed, the groups that came to dominate the
Derg aimed at the overthrow of the political order rather than any lesser
blow at those in authority. By definition, a revolution is directed against
the legal order and can, on this basis, be distinguished from a rebellion

or coup d'etat, where more limited aims allow the constitutional order to
survive more or less unscathed. In this vein, J.M. Finnis argues that
a coup only affects the rules of succession to office, while a revolution
(such as Ethiopia's) also alters the powers and hierarchy of offices.
Bertrand Russell has the same idea in mind when he argues that the philoso-
phies of revolutionaries require changes greater than their own personal
success.[5] Hans Kelsen seems also to have grasped at least this point when
he contended that, from

> a juristic point of view, the decisive criterion of a revolution
> is that the order in force is overthrown and replaced by a new
> order in a way which the former had not itself anticipated,[6]

This is what happened in Ethiopia, where Heinrich Scholler characterises
the new legal order as a "non-formal constitutional law."[7] This is an
effective way to contrast Ethiopian laws with written Western constitutions,
but it could be misleading if taken to suggest that an essentially new
legal style had been adopted for Ethiopia. There was nothing particularly
formal about the promulgation of the 1931 and 1955 Constitutions, which
were simply published over the Emperor's signature. While the Derg's
enactments reflect an ad hoc experimentation, they also follow a formal-
istic logic of their own, like that (at a fairly high level of generality)
of the succession of statutes emanating from a sovereign U.K. Parliament.

A. The 1974 Draft Constitution

In Chapter Four, we noted that the Emperor convened a Constitutional
Conference in April 1974 at Prime Minister Endalkatchew's request. The
Conference supplied a Draft in August, and the Derg rejected it as in-
consistent with Ethiopia Tikdem a few days before it deposed the Emperor.
While the Draft merits a brief discussion, evaluations are difficult be-
cause: there was no opportunity to observe this law in action, the Con-
ference minutes were never made public, and there is no official English
text (the translation used here is by a research assistant).[8] The major
jural postulate of the Draft is somewhat confusing, referring both to
constitutional monarchy and to the people as the source of all Governmental
authority - see Articles 1(ii) and 5(1).

Compared with the 1955 Constitution, the most striking feature of the
Draft concerns the diminution of the Emperor's powers. While he is termed
"Head of State" and "symbol of the nation's unity and history" (Art. 7),

references to an Empire and the Judaic heritage of the monarchy are deleted and replaced by more prosaic and democratic sentiments. The Emperor's law-making functions become purely symbolic (Arts. 19-20, 61(b)). A substantial weakening of other traditional jural postulates (see Chapter Three) can also be noted. While Emperors must profess the Orthodox faith under the Draft (Art. 9), a separation of Church and State is implicitly adopted. Religious discriminations are prohibited and the largely Orthodox barriers to divorce are abolished (Arts. 22, 25(i) and 30(ii)). A vague Article 4 was thought to forecast a lessening of Amhara domination over political life: Amharic remained the official language, but "this in no way affects other provisions concerning the languages of the country."

A genuine separation of powers, with checks and balances, is also introduced. The Emperor remains Commander-in-Chief of the Armed Forces (Art. 20 - a provision which was heavily criticised) but his duties were to be limited by a future law. His other duties must be performed in accordance with the resolutions of the Council of Ministers (Art. 19(ii)). A bicameral National Assembly "shall have the final authority in all matters of legislative activity" (Art. 60(ii)), and extremely broad powers of impeachment. The right to establish political parties is guaranteed (Art. 29). The Council of Ministers "shall have the supreme authority of the Government" (Art. 92), but "shall be answerable, for all its actions, to the National Assembly" (Art. 98). The same conditions are imposed on the Prime Minister, and each Minister is additionally made responsible to the Prime Minister (Arts. 99-100). If the Council of Ministers refuses to proclaim a law, this refusal can be overridden by a two-thirds majority of the National Assembly, and emergency decrees by the Council can be nullified if they subsequently fail to gain the Assembly's approval (Arts. 76-77). The Emperor loses the right to intervene in the judicial process, and a Supreme Administrative Council under a powerful Afe Negus ('Chief Justice', literally "Mouth of the King") ensures judicial independence (Arts. 120 - 1). An ombudsman was to collect information about maladministration and report to the Prime Minister and National Assembly (Arts. 143-6).

Articles 21 to 59 of the Draft Constitution introduce a more extensive and precisely-defined catalogue of "Rights, Duties and Responsibilities", when compared to the one promulgated in 1955. "Equal protection" is expanded

to encompass the rights to vote and to equal pay (Arts. 46, 48) and
Article 22 specifically prohibits discriminations based on "birth, prop-
erty, religion, race, language or political affiliations" (but not sex).
Freedoms of speech and conscience were made more precise and broadened
expressly to include the rights to communicate, demonstrate and form
religious, occupational and political associations (Art. 24-5, 27, 29).
The rights of the criminal accused were expanded and a broad 'habeas
corpus' was elevated to the status of a constitutional right (Art. 44).
Laws cannot "hinder the effective and continuous application of rights
. . . guaranteed" (Art. 54), except upon a declaration of "defensive war",
martial law, or a state of emergency (Arts. 111-3). The recent experiences
of Ethiopia and other Third World states suggest that these provisions
could have been used to truncate significantly the rights guaranteed in
what is otherwise a detailed exposition, in the nineteenth century liberal
mould.

One of the reasons given by the Derg for rejecting the Draft Consti-
tution was its failure to ensure the "human rights of the people." Since
the Draft arguably reflects the furthermost point to which a contemporary
government would be prepared to go in the libertarian tradition, the
Derg's statement must be construed as either self-serving or as referring
to the absence of material rights included in many communist party-state
constitutions. The Draft did, however, contain the nucleus of a social
democratic state: Article 55, for example, recognises the right to
education, health care and unemployment and retirement benefits, "the
level of development and wealth of the country permitting." Parallel
provisions are similarly programmatic and adopt a French-style organic
law technique, requiring the promulgation of additional laws as a pre-
condition to their implementation. No reference is made to Ethiopia Tikdem,
but some basis for a socialist regime can be found: for example, "fair
distribution of property and uniformity in the living standard" is the aim
of the nation (Art. 5(i)), and "all land is a free commodity and a common
property of all Ethiopians" (Art. 36(iii)). There is a conspicuous omission,
when compared to Art. 44 of the 1955 Constitution, with regard to the right
of property ownership. Property is dealt with in a separate Draft Consti-
tution Chapter which is segregated (spatially at least) from provisions
dealing with rights. Ethiopia was to become "self-reliant", and property

was to be owned "within the limits of the law" and expropriated on payment of "just compensation" - Article 136, the wording typically adopted for communist party-state constitutions.

Taken as a whole, the Draft Constitution was an attempt to compromise the interests of the _ancien_ regime with those of the insurgents. Like the Commission of Enquiry and Endalkatchew's short-lived Cabinet (see Chapter Four), it was an attempt to control the pace and direction of events during 1974. This attempt failed because of a lack of political resolve among conservatives and because modernising elites had tired of symbolic constitution-making. While the Derg's Proclamation No. 1 of 1974 states that the Draft will be "put into effect after necessary improvements are made"[9] this is unlikely; and the Draft retains our interest chiefly as an indicator of the temper of the times.

B. The "Suspension" of the 1955 Constitution

Proclamation No. 1 also stated that, as of 12 September 1974, Haile Selassie's 1955 Constitution is "suspended" (Art. 5(a)), although the courts shall continue their normal functions (Art. 7 - the courts were later restructured substantially) and laws which do not conflict with the Proclamation and future laws, orders and regulations shall continue in force (Art. 10). The problem of repeals by implication, serious enough in most legal systems, is particularly acute in post-Revolutionary Ethiopia, owing to the hasty promulgation of vague statutes and the fact that regulations can apparently be used to override proclamations. The suspension rather than the repeal of the 1955 Constitution, the promised implementation of a modified Draft Constitution, and the official title of the Derg - the _Provisional_ Military Administration Council or PMAC - were all designed to create the impression that the Derg was a temporary institution - a view which many Derg members undoubtedly shared at the time.

According to the Prologue to Proclamation No. 1, the 1955 Constitution was suspended because it

> was prepared to confer on the Emperor absolute powers; . . . it did not safeguard democratic rights but merely serves as a democratic facade for the benefit of world public opinion; . . . it was not conceived to serve the interests of the Ethiopian people; . . . it was designed to give the baseless impression that fundamental natural rights are gifts from the Emperor to his people; and . . . . above all, it is inconsistent with the popular movement in progress under the motto 'Ethiopia Tikdem' and with the fostering of economic, political and social development. . . .

Taken at face value, so devastating a critique argues for repeal rather
than a suspension, yet it can also be argued that three important con-
stitutional postulates were upheld by the Derg: a monarchy was kept,
albeit in altered form and, as things turned out, temporarily; a powerless
Parliament acquired a de facto successor in the Provisional National
Advisory Commission (infra); and a concern for human rights was reiterated,
at least as a goal to be attained in the indefinite future (see infra).
The suspension of the 1955 Constitution is at least conducive to legal
coherence: new law-making processes and the revolutionary changes that
were anticipated are in direct conflict with constitutional provisions,
and the Derg does not have to face (theoretically possible) challenges
based on the constitutionality of its proclamations.

Article 3 of the Proclamation provides that the monarchy was to con-
tinue within the line of Haile Selassie, with Crown Prince Asfa Wossen
assuming the purely symbolic functions of a king (not Emperor) when he
returned from Geneva. (This was later repudiated and monarchy was abol-
ished.) The Prologue to the Proclamation refers to monarchy as a highly-
esteemed Ethiopian institution, not corrupt in itself but abused by the
deposed Emperor:

> although the people of Ethiopia look in good faith upon the Crown,
> which has persisted for a long period in Ethiopian history, as a
> symbol of unity, Haile Selassie I, who has ruled this country for
> more than fifty years ever since he assumed power as Crown Prince
> has not only left the country in its present crisis by abusing at
> various times the high and dignified authority conferred on him by
> the Ethiopian people, but also being over 82 years of age and due
> to the consequent physical and mental exhaustion, is no more able
> to shoulder the high responsibilities of leadership. . . .

The speeches of Derg Chairman Aman at the time were studiously ambiguous,
describing Ethiopia's Imperial traditions in glowing terms while predict-
ing that a "republic" would be established soon.

Parliament also came in for heavy criticism in this Prologue:

> the present system of parliamentary election is undemocratic; . . .
> Parliament heretofore has been serving not the people but its
> members and the ruling and aristocratic classes; . . . as con-
> sequence [sic] it has refrained from legislating on land reform
> which is the basic problem of the country while passing laws at
> various times intended to raise the living standard of its mem-
> bers, thereby using the high authority conferred on it by the
> people to further the personal interest of its members and aggra-
> vating the misery of the people; and . . . its existence is con-
> trary to the motto 'Ethiopia Tikdem'. . . .

The Chamber of Deputies and the Senate have been dissolved and there will be no direct elected representation of civilians ¬ whether of substance or pretense ¬ until what is termed a People's Assembly is constituted. Some of the institutions countenanced under the 1955 Constitution, such as the Crown Council and the Emperor's Chilot Court, were abolished by a public statement from the Derg rather than by a law. This was also true of such "intermediate" institutions as the Constitutional Conference and Endalkatchew's Cabinet, yet one intermediate institution bridged the immense gulf between regimes ¬ the Commission of Enquiry. Composed ¬ initially of non-influential appointees of the Emperor, the Commission was dissolved after its members resigned. Later, Parliament reorganised the Commission and elected some of the Commission members, including its Chairman, a University geography professor named Mesfin Wolde Mariam. Mesfin changed the Commission's purpose radically: it did not, as expected, investigate maladministration or abuse of authority in general, but focused on fixing the blame for concealing the Wollo drought and famine. The lengthy Commission Report was examined by a new enquiry group composed of 35 members of the Police. At about the same time, Mesfin resigned because of the Derg's interference and was replaced by a naval commander. The executions that took place on 23 November 1974, shortly after the Commission finished its investigation of the famine and two days after the publication of the Special Penal Code, showed that the Derg was prepared to circumvent the Commission, and it died a quiet death in November 1975.[10]

C. The Law of the Derg

The initial reformulation of the Ethiopian Government is found in Article 6 of Proclamation No. 1:

> The Armed Forces, the Police and Territorial Army has hereby assumed full government power until a legally constituted people's assembly approves a new constitution and a government is duly established.

The law-making process established under the suspended Constitution, encompassing proclamations (enacted by Parliament and the Emperor), decrees and orders (the Emperor acting alone), has been replaced by a new process of enactment. Proclamation No. 2, also issued on 12 September 1974, states that the Derg

> shall enact all types of laws and provide for their implementation, provided, however, that nothing herein shall affect the authority given by law to Ministers and Public Authorities to

issue regulations [Art. 6].

[A]ll treaties of peace and all treaties and international agree-
ments involving a modification of the territory of the State or
of Sovereignty or jurisdiction over any part of such territory or
laying a burden on Ethiopian subjects or modifying legislation in
existence or requiring expenditure of State funds, or involving
loans or monopolies shall, before ratification by the [Derg] . .
be deliberated upon by the Council of Ministers . . . [Art. 4].[11]

Under this new constitutional law, the Derg and its subcommittees and
regional committees (see Chapter Four) have concentrated an almost unlimited
power, with the merger of legislative and executive functions in their
hands and through a collective exercise of the functions of Head of State
— initially until the Crown Prince returned (Art. 2), but this pretense
was soon dropped. Given that it was the Derg itself which finally deposed
the Emperor, the law could hardly read otherwise, and subsequent events
such as the November 1974 executions served notice that the Derg was pre-
pared to intervene in judicial processes and investigative enquiries as well.
Few powers were conferred on the Chairman of the Derg by Proclamation No. 2:
he receives foreign emissaries, conducts meetings, introduces policy matters,
serves as a spokesman and implements decisions when directed to do so by
the Derg (Arts. 8, 10). This was to change, however.

Subsequent Proclamations gave Article 6 of Proclamation No. 2 (supra)
as the authority for their promulgation until December 1976, when No. 2
was repealed by Proclamation No. 108.[12] This abortive attempt by the Derg
to curb the power of Mengistu and Atnafu is discussed in Chapter Four. It
was, in turn, repealed by No. 110[13] in February 1977, after Mengistu asserted
himself and Teferi was executed, but before Atnafu's execution. The dif-
ferences between the two Proclamations are fairly minor. The post of Derg
Second Vice-Chairman (occupied by Atnafu) is abolished, and his powers
were transferred to the Vice-Chairman.[14] Both Proclamations provide for
three organisations within the Derg: a Congress of all members; a Central
Committee, whose membership was reduced from 40 to 32 in February; and a
Standing Committee, which acquired a few of the functions of Congress and
the Central Committee in February and whose membership decreased from 17
to 16.[15] (Subsequent references are to Proclamation No. 110). The powers
of subcommittees and regional committees of the Derg have not been explicit-
ly defined by law. While Congress is theoretically supreme, in that the
powers and responsibilities of all committees are subject to Congress

directives (see Arts. 6-7), the available evidence suggests that the political realities are often otherwise and that Congress may only meet briefly once a year.[16]

Congress "determines" military, "internal and foreign policies", "safeguards" national unity, establishes politcial parties, issues procla- mations, receives reports from the Auditor General relating to revenue, expenditures and governmental efficiency, and acts upon recommendations from the Council of Ministers concerning budgets, development plans, administrative reorganisation and declarations of war, emergency and natural disaster. The Derg Chairman, Vice-Chairman and Secretary-General are appointed and dismissed by Congress, which also acts on "recommenda- tions of the Standing Committee relating to serious measures to be taken against . . . members" (Art. 5). An identical provision in Proclamation No. 108 was violated when Chairman Teferi was executed (see Chapter Four). The Central Committee makes "high official appointments" and concerns itself with policy implementation and diplomatic and foreign aid matters (Art. 6). The Standing Committee can delegate its powers to individual members, safeguards national unity and "shall . . . direct on behalf of the Congress and the Central Committee, affairs of State on the basis of collective responsibility." Immense power can thus be delegated to one man, but there is little concrete evidence that this happens consistently. Other functions of the Central Committee include: preparing official statements, confirming death penalties, granting amnesties and pardons, mobilising the military, implementing "democratic rights", and mobilising the public in accordance with the dictates of the April 1976 Programme (Art. 7 - see Chapter Four). The Council of Ministers is collectively reponsible - presumably to Congress - for submitting policy matters to Congress, coordinating governmental activities, law enforcement, and taking "all necessary measures" to safeguard peace, order and national unity (Arts. 12, 14).

While these provisions are more detailed than the ones found in Proclamation No. 2, supra, many key clauses are hopelessly vague: for example, no indication is given as to how Ministers are to coordinate Government's activities. Two or more bodies are granted concurrent juris- diction in numerous areas, in a way which creates confusion and opportuni- ties for violent conflicts rather than a system of meaningful checks and

balances. These tendencies can also be observed in enumerations of the
rights and responsibilities of the Derg's officials. The Chairman: con-
venes the Council of Ministers and chairs all meetings; acts as Commander-
in-Chief of the military and as Head of State "on behalf of" the Derg;
initiates, supervises and implements "decisions" and "policies"; coordinates
governmental activities; safeguards peace, order and unity; and makes
"high official appointments" (Art. 9). His powers, in other words, en-
compass the important functions of all of the Derg's organisations. The
Vice-Chairman is made responsible for "political consciousness", "auxil-
iary services" and the equipping and organising of the People's Milita
and Revolutionary Defense Squads (Article 10) - the functions that Atnafu
allegedly performed so poorly. A Secretary-General handles the paperwork
and the Derg's budget (Art. 11).

Parliament was replaced in 1974 by an Advisory Body performing its
de facto functions: proferring advice, staging debates and appeasing
public demands for participation. The duties of this Body were outlined
in Article 7 of Proclamation No. 2 and spelled out in Proclamation No. 12
of 1974,[17] where it was termed the Provisional National Advisory Commission.
The Commission began to meet in October 1974, and only 58 of its 60 members
were elected to serve, as the University refused to send representatives.
Trade unionists, teachers, religious leaders, bureaucrats and businessmen
met in closed session to draft a constitution, prepare for elected govern-
ment, gather data and expert testimony, deliberate on matters referred
to them by the Derg, and propose changes in "all legislation enacted to
strengthen and maintain the feudo-bourgeois and imperialist order [Art. 7]."
If the Derg disagrees with Commission proposals - if they need "further
study or elaboration" is the euphemism adopted - the Commission had to
try again. In November 1975 another Commission was established by a
letter from the Derg to the Minister of Justice, and empowered to make
"short-term adjustments" in Ethiopia's statutes. Other Commissions have
met regularly to review particular areas of the law.[18]

In May 1976 the Derg felt that its "revolutionary duty" was to create
a People's Organizing Provisional Office (POMOA - see Chapter Four) stated
to be "independent of the control and influence of any Government office,
organization or group"[19] - but not independent of the Derg. A Supreme
Coordinating Committee links the Head of State (the Derg as a collectivity

then, the Chairman acting "on behalf of" Congress since December 1976) with
the POMOA, which is composed of four committees concerned with Political
Education, Current Affairs, Organization Affairs, and Philosophy Dissem-
ination and Information (Arts. 2(1), 4(2)). The POMOA as a whole is em-
powered to: enforce a Democratic Rights Proclamation which we have been
unable to trace; implement the April 1976 Programme - see Chapter Four;
devise and distribute "propaganda" concerning Ethiopian Socialism; oper-
ate a political training school and arrange for the training of "cadres"
abroad; devise policies designed to cope with "transitory" (transitional?)
social and economic changes; and aid in creating a "People's Democratic
Republic which guarantees the Dictatorship of the broad masses" (Art. 8).

The powers of the Advisory Commission and the POMOA to act indepen-
dently of the Derg are nil. Today, Ethiopian constitutional law attempts
to universalise the interests of particular factions within the Derg.
Membership is a precondition to attempting to secure political objectives;
the legal effect of the Proclamations is to give free play to conflicts
within the Derg while suppressing those outside of it. Such a system
works poorly because the in-group is too small and unrepresentative and
because the Derg's laws attempt to freeze politics within a set of per-
petually transitional ("provisional") arrangements, which are not respon-
sive to shifts in ideological commitments and the balance of power among
the participants. As Edmund Burke remarked, "a constitution without the
means of change is constitution without self-preservation."[20]

Haile Selassie's long reign and his Constitutions were frozen in a
perpetual transition too, and the blockage of incremental changes in law
and politics was a major cause of the Revolution (see Chapter Four). In
addition to repudiating the 1955 Constitution, the new Proclamations
amount to a declaration of autochthany, a rejection of the tenuous stand-
ards of legality applied under the Emperor. While these standards were
of dubious benefit to anyone save Haile Selassie, the new postulates that
are emerging - the overarching power of the Derg and the implementation
of Ethiopia Tikdem - are equally suspect. They must, however, be eval-
uated in the context in which the Derg uses them. Taking the, probably
correct, view that a thoroughgoing revolution was the only way in which
sudden changes in social and legal norms could be forced on an entire
population,[21] the Derg has moved step by step in that direction, ignoring
Western notions of legality almost entirely. An important facet of this

legal context - what may be termed a penal model of politics - is described in the next Section.

II. Revolutionary Justice and the Terror

The Derg is particularly keen to punish, neutralise or liquidate "enemies of the people": those who participated in the Emperor's regime and/or who oppose the Derg. After a few detentions, a Special Penal Code was promulgated a week before the executions in November 1974. Initially applied by Special Courts-Martial (infra) only this Code states that it adapts "the criminal laws relating to grave offenses to the changed situation which the new order demands."[22] Prosecutions increasingly gave way to detentions during 1975 and 1976 and these were, in turn, replaced by the streetcorner assassinations by agents of the White and Red Terror that seemed to abate by mid-1978. We will assess the overwhelmingly negative effects that these events have had on political and legal development, and begin by briefly placing them in their historical setting.

Traditional Ethiopian penal policies have a flavour of the Old Testament about them. David Mathew finds that an Ethiopian "concept of justice was of course essentially eastern in its character. It dealt at times in mercy but not in kindness; it was far too antique to be humane".[23] Reviewing the sketchy evidence carefully, Harold Marcus concludes that:

> Menelik's despotism and prejudice seem to have been accepted as inevitable in the ordering of his empire. . . . When Alfred Ilg once complained about the severity of customary law, the emperor retorted: 'You speak like a European, as if I have to govern people trained in the laws of your country. I have no prisons; I do not wish people who work to have to feed thieves. While in this manner, mutilated, wandering, abandoned, they walk to the end of their lives [as] an example of punishment.[24]

Haile Selassie formally put a stop to the cutting off of hands and feet in 1921, but a frequent recourse to self-help, an extensive discretion exercised by arbitrary and often corrupt judges, and other forms of petty despotism survive to this day. A vague Penal Code promulgated in 1930 attempted to counterbalance concepts found in the Fetha Negast (see Chapter One) with those of modern codes; it lacked a comprehensive approach to the disposition and treatment of offenders. Jean Graven's Swiss-based Penal Code draft was altered substantially by the Codification Commission (see Chapter Seven) before it was enacted in 1957: the major change was that Graven's emphasis on the rehabilitation of offenders was displaced

by expiatory punishments,[25]

A. The Special Penal Code[26]

This Code was criticised severely by the International Commission of Jurists less than a month after it was promulgated. Amnesty International subsequently expanded upon these criticisms, condemning the Code's retro-activity, the vagueness of the offenses created and numerous violations of the "principle of legality".[27] While we do not dissent from these evaluations, we would add that the Special Penal Code is largely an ex-trapolation from traditional juristic techniques and those adopted under the Penal Code of 1957.[28] The Derg is, in other words, operating within a tradition of human rights violations rather than beginning something fundamentally new and different under this Proclamation. The Special Penal Code discloses three main objectives: punishing Haile Selassie's officials for maladministration and for sycophancy, reducing administra-tive corruption and, most significantly, augmenting the Derg's legitimacy and safeguarding its membership.

Articles 7 through 11 of the Proclamation offer direct protection of Derg members, their families and their political activities. The elabor-ate nature of these provisions is telling evidence that, even in November 1974, the Derg was envisaged as something more than a temporary expedient. This protective function is also accomplished indirectly by other offenses created in 1974. Articles 1 through 5 detail offenses against the State — endangering its independence, political integrity, defensive power, etc. — the Head of State being the Derg (personified by its Chairman since December 1976). Threats to national security, including breaches of duty or secrecy and trafficing in arms or explosives, are dealt with in Articles 36-40. These threats are, in effect, threats to the Derg, and the vague catch-all definitions of the offenses provide effective weapons for the security services while limiting individual freedom of action by posing uncertain penal limits. Despite the fact that (except for defense squad members) it is formally illegal to own a pistol or rifle for example, more than nine million Ethiopians do so and face prison sentences of up to ten years under Article 39(1).

The Special Penal Code fosters an image of legal and political con-tinuity during the transition between regimes and attempts to draw upon the traditional legitimacy of the Emperor by substituting the Derg's

institutions for those protected under the 1957 Penal Code. For example,
Article 3 of the 1974 Code, concerning armed risings and civil war, is
identical to Article 252 of the 1957 Code, except that "Government" re-
places Emperor, State and the other constitutional authorities against
which the offense can be committed. Similarly, the Derg displaces con-
stitutional, legislative, judicial, public and executive organs as insti-
tutions against which "outrages" or "offenses" can be committed (Arts. 9,
11). In Article 30, which penalises false testimony and translations, the
Special Court-Martial (infra) is specifically named in place of a "judicial
or quasi-judicial proceeding." Soldiers are added to the definition of
"public servant" in the offense of compelling breaches of duty (Art. 36)
and public servants join soldiers in the definition of persons who can
violate the breach of secrecy provision (Art. 38). This is an attempt
firmly to equate administrators and the military as servants of the people
and to point the way towards the participation of the soldiers in civilian.
administration.

Several new crimes are also created under the Special Penal Code.
The most prominent of these, and the offense most often charged in Special
Courts-Martial, is found in Article 35:

> Whosoever fails to comply with Proclamations, [etc.] . . .
> promulgated to implement the popular motto 'Ethiopia Tikdem'
> or hinders compliance therewith by publicly inciting or
> instigating by ... . any . . . means is punishable with
> rigorous imprisonment from one to ten years.

This provision is obviously designed to safeguard the ideology (see
Chapter Four), which is so closely identified with the Derg in the minds
of the public and judges that any criticism of the Derg or its policies
can be, and is punished under it. The offense is treated as one of
strict liability as, indeed, it is on its face; judges refuse to read
into it the intention requirements found in 1957 Penal Code, Article 58
(infra). Article 35 (and Articles 10(5), 11, and 37, which parallel
offenses created in 1957, except that the Derg is substituted and penal-
ties are increased) significantly truncates the freedom to assemble or
to discuss current events.

Under Special Penal Code Article 10(5), a person who, with premedi-
tation and with the object of supporting or (passively) permitting broadly-
defined offenses against Government and the Derg, speaks, writes, etc.
"inaccurate or subversive information or insinuations calculated to

demoralize the public or undermine its confidence" can be imprisoned for ten years (emphasis supplied). None of the key words in this proviso are defined, and the resulting vagueness can be used to punish virtually any criticism of the Government. The offense of obstructing or attempting to obstruct the activities of the Derg "by any other unlawful means" (Art. 11) leads to the same result. Article 37 punishes the dissemination of tendentious information <u>known</u> to be false, with <u>intent</u> to incite the military or foment military-civilian unrest. Again, virtually any criticism of the military could fall within the ambit of this provision, and the Special Courts-Martial seems to ignore the requisite mental state. Article 346 of the 1957 Penal Code, from which this Article 37 has been adapted, had hitherto restricted the offense to situations in which the military is mobilised or on active duty. We saw in Chapter Three that freedoms of speech and assembly were accorded little practical protection under Haile Selassie; matters have not improved under the Derg.

A large number of Haile Selassie's officials, including some of those investigated by the Commission of Enquiry, were tried by Special Courts-Martial under Special Penal Code Article 27:

> (1) Whosoever intentionally by commission or omission directly or indirectly or with culpable negligence commits any prejudicial act leading to the consequence of weakening the defensive power of the State or being aware of such fact fails to do whatever within his capacity or creates within the country a grave state of misery, want or famine . . . especially by improperly hiding or hoarding . . . foodstuffs . . . is punishable with rigorous imprisonment from ten years to life, and where the offense was intentional and where death has occurred . . . the penalty may be death.
> (2) Whosoever, in time of such distress fails to carry out, . . . except in cases of force majeure, the obligations or liabilities incumbent upon him, whether as purveyor, middleman, sub-contractor, carrier or agent, or in any other capacity, . . . is liable to the same punishments.
> (3) . . .

Article 27 largely restates Article 509 of the 1957 Penal Code, except for the insertion of "omission" amounting to "culpable negligence" and "any prejudicial act" in 27(1), and the huge increase in the punishment that may be imposed. Culpable negligence is not defined, yet it is treated in practice as a lower and less blameworthy standard than the ordinary negligence defined by the 1957 Penal Code.[29] Liability under Article 27 (2) is very broad: there is no express reference to a state of mind, and the

Special Courts-Martial could impose a heavy criminal penalty upon what could, in the West, be a liability sounding in contract or tort, requiring the accused to show the existence of force majeure in order to escape punishment. Both (1) and (2) of Article 27 are single sentences and, despite the substantial editing dictated by space limitations, the extracts supra give a feeling for the convoluted drafting style adopted in the Penal and Special Penal Codes.

There have been few amendments to the Special Penal Code since it was enacted, but important offenses were added in July 1976, concerning "economic sabotage" - an expansion of offenses described in Article 27 - and "counter-Revolutionary" activities.[30] The new Article 17A permits the death penalty to be imposed for: hoarding, or destroying grain or "other articles of commerce", "directly or indirectly" causing work stoppages or machinery malfunctions, counterfeiting, disrupting transport, damaging public property, or "any other similar act". Anyone who attempts to leave the country without authority to do so, "directly or indirectly encourages workers or farmers or any other sectors" to resist joining new associations (see Chapters Six and Seven), or "in whatever way supports the cause of any counter-revolutionary or anti-people organisation" can also be sentenced to death (Art. 17B). The breadth of the term "anti-people organisation" stands out, even in an extremely vague proviso.

Corruption in Ethiopian public life prior to the Revolution is discussed in Chapter Three. The enormity of the problem led the Derg to attempt a harsh solution. Under Article 22 of the Special Penal Code, for example, a public servant who, with intent to obtain unlawful advantage or injure another, misuses his authority to the prejudice of the public interest, or exceeds his authority due to incompetence, etc, is punishable by imprisonment from three to fifteen years. An administrative paralysis already exists in Ethiopia, with public servants afraid to take even the smallest decision without a firm authorisation from the military (see infra). Article 22 only aggravates this situation, particularly as Special Courts-Martial can ignore the requisite mental state and impose a severe penalty upon an 'ultra vires' decision made in good faith, under Ethiopia's vague administrative laws. Article 20, as amended,[31] punishes those who intend to solicit corrupt practices with imprisonment from five to 25 years.

These Special Penal Code Articles dealing with corruption are virtual restatements of Penal Code provisions with, however, radically increased penalties. In the past, the likelihood of conviction under these vague provisions was slight, and there was little political interest in prosecuting corruption cases. Evidence from other African jurisdictions indicates that a mere increase in penalties will not stem a rising tide of corruption, and that the underlying motivations toward corruption must themselves be changed.[32] In order to be effective, increased penalties must be combined with well-drafted penal laws, as well as the political will to prosecute offenders vigourously, a new ideology of public service, and changes in vague administrative rules which create the large measure of discretion that encourages corruption.

It is difficult to know how Special Courts-Martial interpret the new Code: no written opinions are published, apart from brief newspaper reports. Although it is unlikely that Special Courts-Martial judges refer to the 1957 Penal Code, they ought to do so. Article 3 provides that, although the Code does not affect "special laws of a penal nature", "the general principles embodied in this Code are applicable to those regulations and laws except as otherwise expressly provided therein."[33] The Special Penal Code does not expressly exclude the 1957 Code and, while the phrase "special laws of a penal nature" is far from precise, the Special Penal Code arguably falls into this category. Courts have, however, often ignored the 1957 Code when dealing with offenses under other, arguably "special" laws dealing with currency, tariffs, taxes, transport and public health.[34]

One reason for exploring the applicability of the 1957 Code is to determine whether any of the overarching principles of legality found in it ought to be applied when offenses under the Special Penal Code are heard. The rubric nullem crimen, nulla poena, sine lege is emphasised by the 1957 Code.[35] Article 2(1) states that: "The Court may not treat as a breach of the law and punish any act or omission which is not prohibited by law." Article 23(2) expands upon this principle: "A criminal offense is only completed when all its legal, material and moral ingredients are present." Article 55 of the "suspended" 1955 Constitution prohibited 'ex post facto' laws, a prohibition which survives today in 1957 Penal Code Article 5(2):

> An act not declared to be an offense and committed prior to the
> coming into force of this Code is not punishable. Nor may a
> punishment not prescribed at the time of the commission of the
> offense be imposed.

The second sentence is more relevant for our purposes, since few genuinely
new offenses were created by the Special Penal Code, apart from offenses
against Ethiopia Tikdem. Additionally, many of the officials who are
charged under the Special Penal Code are guilty (if proof is forthcoming)
of some crime under the 1957 Penal Code and thus received a warning that
they were engaging in criminal activity. The Special Penal Code is there-
fore, in most instances, only ex post facto as to the breadth of the
offense (rather than the conduct punished in fact) and the severity of
the penalty. There can be little sympathy for officials who are genuinely
guilty of offenses, as they cynically gambled on retraining political
favour under Haile Selassie to escape punishment and lost. The Derg's
changes in penal laws and procedures make it more difficult to separate
the guilty from the innocent, however.

The Derg attempts to justify the retroactivity of some of the Special
Penal Code provisions in the Prologue:

> most of the offenses . . . have previously been defined in
> the criminal laws and the rest have long been recognized by
> natural law, custom and the practice of the professions and
> as such have a solid basis in the law. [T]he retroactive
> application of this Special Penal Code is not repugnant to
> natural law and basic legal philosophy. . . .

This statement is patently nonsensical and a revealing indication of the
Derg's attitude towards law. Even if many of the offenses are found in
the 1957 Code, the new and increased penalties are not. The notion that
new offenses such as those against the newly-created Ethiopia Tikdem have
long been recognised by "natural law, custom" and "basic legal philosophy"
(whatever that means) is absurd. Commenting on the Special Penal Code,
Peter Schwab asserts that an "ex post facto law may be a necessity if a
socialist state is to be created."[36] This is a dubious proposition, and
we analyse it and others like it infra; in any event, its truth or falsity
(as qualified) depends on how Schwab defines "a socialist state" - some-
thing he doesn't tell us. Absurd or not, the new penal laws are applied
retroactively, contra Article 11(2) of the Universal Declaration of Human
Rights, which was subscribed to by Haile Selassie's regime in 1948 and is
arguably a statement of "basic legal philosophy".

Special Penal Code provisions are often so vague as to make it impossible to determine what the prosecutor must prove to secure a conviction and, therefore, how the accused may defend himself successfully. Many provisions create strict liability offenses on their face or posit vague and undefined states of mind. Provisions in the 1957 Penal Code are similarly vague but are, in theory, made more specific by general principles, such as the prosecutor's duty to prove: an act or omission (Art. 23(1)), all required "legal, material and moral ingredients" (Art. 23(2)) and either intention or negligence (Art. 57(1); see Art. 58). Intention must be read into every offense where negligence is not an express element (Art. 59(2)). It is clear that special Courts-Martial ignore these provisions, but then Haile Selassie's judges often did too, concentrating only on the particular Code article under which the accused was charged.

B. Detention

The vagueness of Special Penal Code provisions positively pales in comparison with Ethiopia's detention laws, which create an unlimited number of offenses existing only in the mind of a Minister of Interior (taking orders from the Derg, lest he himself be detained). Writing early in 1976, we found this prior restraint in anticipation of unlawful conduct to be indefensible, arguing that Ethiopian penal laws "are amply supplied with the means of dealing quickly and effectively with persons perceived to be threats to public security. . . ."[37] Our view is based on the arguments supporting Ronald Dworkin's assertion that rights ought not to be annihilated through speculation. An American judge, Learned Hand, expressed this view best when he decided that the gravity of an evil had to be discounted by its likelihood.[38] This 'discount rate' decreased markedly in Ethiopia from the end of 1976 onwards, when Government seemed powerless in the face of the EPRP's assassination programme. Rather than order additional detentions, however, the Derg and its supporters embarked on an assassination-programme of its own (see Chapter Four and infra).

Non-traditional Ethiopian detention laws have their origin in a perceived emergency - the desire to intern those who collaborated with the Italians. The Public Security Proclamation of 1942 was supported and probably drafted by British "advisors", reminiscent as it is of laws adopted for Anglophonic Africa. The long-term detention of suspected collaborators, rivals to the Throne and plotters of abortive coups and

peasant rebellions was fairly common under Haile Selassie, and more than 2,000 students joined these detainees in the late 1960s and early 1970s. While the number of those detained under the Emperor will presumably never be ascertained, it is all but conclusively presumed that the Derg uses detention more expansively. Figures of 4,400 detainees in October 1975 and 8,000 by March 1977 are thought to be reliable, although it is difficult to tell - particularly as detainees were being executed during 1977.[39]

The Public Order and Safety Proclamation,[49] promulgated by the Derg in November 1974, is justified, in the Prologue, as a "temporary" measure against persons attempting to disrupt the "peaceful change" that Ethiopia is experiencing. (The Proclamation repeals Haile Selassie's Public Safety and Welfare Order of 1969,[41] on which it is patterned). If the Minister "has reasonable grounds to believe that a person is a threat to public order, safety or welfare or the peaceful change in progress", he can require that person, on pain of detention, to give a surety of up to Eth. $3,000 to keep the peace (Art. 3).

Alternately, on the same grounds of belief, he can detain a person for a period of three months and for "further periods of three months each", not exceeding six months (Art. 4). Presumably, only one three-month period should be allowed after the initial period, and the reference to "periods" is the result of an erroneous adaptation of the repealed Order, which permitted detentions to continue so long as the Order remained in force. Initially, the Derg largely adhered to a limitation of six months on detentions, but this was tacitly dispensed with late in 1975, except for those few people who are released under periodic amnesties.[42] On "reasonable grounds," the Minister can also prohibit the use of "any place" in "a manner prejudicial to the interests or safety of the public" (Art. 5). Persons who disobey his order can be detained under Article 4.

A major change made by the 1974 detention Proclamation is the repeal of Article 6 of the 1969 Order, a modified version of the Civil Procedure Code 'habeas corpus' proceeding,[43] under which the High Court could determine if the detention was in strict compliance with the Order. This is interesting for two reasons. First, the language of Article 6 of the 1969 Order shows a fear that, but for the rewording, in effect, of Civil Procedure Code Article 177(1), habeas corpus could have been granted in spite of there being lawful authority to order a detention (i.e., despite the

fact that the 1969 Order had been followed strictly). Second, the repeal could be construed as reflecting the Derg's desire to make habeas corpus available to detainees and to those awaiting trial under the Special Penal Code. This view is reinforced by the fact that habeas corpus was expressly "suspended" during the State of Emergency declared in Addis Ababa in September 1975, which was rescinded in December[44] (see Chapter Four). Diligent research has, however, failed to uncover a successful habeas corpus challenge. Since the Revolution, there have been at least two unsuccessful ones. Habeas corpus applications occasionally succeeded in Haile Selassie's High Court, but Government usually ignored the Court - see Tewfik Sherif in Chapter Three, supra.[45]

C. New Courts and Procedures

Changes in the structures of Ethiopia's courts and stripped down criminal procedures introduced by the Derg have made the courts a more explicit instrument of social control and political repression: an administrative rather than a judicial approach to law is being follows.[46] Haile Selassie's Criminal Procedure Code[47] and Judicial Administration Proclamation[48] (modified in 1975 - see infra) reflect a (largely formalistic) concern with the independence of the judiciary and 'due process' for the accused. The Special Courts-Martial Establishment Proclamation[49] and Special Criminal Procedure Code Proclamation[50] are, on the other hand, justified in the Prologue of the former by a bureaucratic desire to "provide for an efficient, speedy and decisive machinery of justice . . . to implement the motto Ethiopia Tikdem. . . ."[51]

Conclusions reached by Kevin Boyle et al., in their able survey of the sorry legal history of Northern Ireland, can also be applied in Ethiopia; the administrative response to the outbreak of violence is more efficient than the judicial approach in the short run, but it results in a long-term loss of confidence in the legal system and may even foster violence.[51] At a fairly high level of generality, the same techniques are used in Northern Ireland and by the Derg - detention, special offenses and tribunals and, we would add, torture - with the same lack of success; both regimes feel unable to risk slow and uncertain proceedings against "enemies of the people." Additionally, the Derg has established peasant association and kebelle tribunals (which can now impose the death penalty - see Chapter

Six and Seven) to decentralise the administration of justice, to displace local courts and customary tribunals which were dominated by traditional elites, and to foster localised organs of social control which, the Derg hopes, will be more amenable to its dictates.

The temptation to establish special courts for special purposes is a recurrent one in Ethiopia. Over time, they either die out or, as is the case with the Derg's new courts, are gradually assimilated by the pre-existing court system. One precedent for setting up the Special Courts-Martial is a special Security Court set up in 1947 and used only once, although the enabling law was never rescinded.[52] Ordinary Courts-Martial have functioned regularly since they were created under the Army Proclamation of 1944,[53] but they can only try those subject to martial law. Most offenses created under the Army Proclamation do not even specify ɛ maximum penalty, unlike the military offenses triable by ordinary courts under 1957 Penal Code Articles 303 through 320.[54] Special Courts-Martial were created in 1974 to hear charges brought against any person under the Special Penal Code and all other criminal laws. Since October 1975, the ordinary courts may hear many of the Special Penal Code offenses, at the election of the Prosecutor. The jurisdictions of the various Ethiopian courts are described in the footnote.[55]

Article 12(1) of the Special Courts-Martial Proclamation restates Article 11 of Haile Selassie's Judicial Administration Proclamation:

> Judges shall be completely independent in the exercise of their functions, and in the administration of justice they shall submit to no other authority than that of the law.

The creation of new courts and changes in the structures and functions of the old ones presumably motivated the Derg to re-establish the Judicial Administration Commission[56] under a new Administration of Justice Proclamation[57] which extends Article 12(1) (above) for the benefit of judges in Woreda (district), Awraja (sub-provincial), High and Supreme Courts. Does this proviso guarantee a judicial independence in Ethiopia's courts? In the Soviet Union, virtually identical language is not intended to insulate judges from general Party politics, campaigns against specific crimes and executive influence over the severity of the penalties imposed.[58]

A delicate balance must obviously be struck between judicial protection of human rights and judicial sensitivity towards state policy and the needs of the people in a developing society. It is, however, difficult

to maintain such a balance when an <u>ad hoc</u> tribunal, virtually a Nuremberg Court, is established to consider the criminality of previous conduct in a politically-charged atmosphere. The independence of the Special Courts-Martial judges is further tempered by the fact that, as military officers, they are subject to military discipline and hold no tenure of judicial office.[59] Numerous violations of the standards of fairness and impartiality proposed by Article 10 of the Universal Declaration of Human Rights are therefore possible. Special Courts-Martial trials, for example, need not be public where this "might endanger public order or affect public morals. . . ."[60]

The Judicial Administration Commission, re-established by Proclamation 53 of 1975, recommends the appointment and promotion of certain judges, prosecutors and registrars, regulates their transfer, devises a code of ethics, ensures that standards of good behaviour are maintaned, and imposes disciplinary penalties, including dismissal. The Derg appoints Judges of the High and Supreme Courts and the Attorney-General, while the Commission appoints registrars, "public prosecutors" (as opposed, presumably, to Special Courts-Martial prosecutors) and Awraja and Woreda Court Judges (Art. 8). An appointee must be "of the highest character and reputation and . . . experienced and skilled in the laws which he may be called upon to apply" (Art. 9(1)). Any judge, public prosecutor or registrar may be dismissed by the Commission if he is found "to be incapable of exercising his office" (Art. 12(1)). It is at least arguable that there was a greater measure of judicial independence under the traditional <u>Fetha Negast</u> (see Chapter One): judges could not be dismissed in the absence of "justifiable cause" (nor could they resign without the consent of the person who appointed them).[61] Taken as a whole, Proclamation 53 of 1975 simply re-states provisos found in Haile Selassie's Proclamation, with one significant addition: the Commission is now to regulate the careers of public prosecutors and registrars, in addition to those of judges. Proclamation 53 thus helps to formalise the bureaucratisation of the judiciary that was begun under Menelik II and Haile Selassie. In Ethiopia and most other countries, ordinary prosecutors are not expected to act independent of governmental policies, and no one would expect a judicial independence where government treats judges and prosecutors alike.

Paradoxically, the Prosecutor in the Special Courts-Martial has perhaps

the greatest legal capacity to exercise an independent judgement within the court system. Many of the decisions on whether to prosecute and in which court, hitherto reserved for "Government", have been delegated to this Prosecutor. His decision is final and based on "convenience and other causes", except where Government expressly directs him to prosecute. He is given investigatory powers roughly analogous to those of a French magistrate, and he may refer cases which cannot be heard properly by Special Courts-Martial to "other military courts" or the Awraja and High Courts.[62] This choice of courts amounts, in effect, to choice of law and creates serious equal protection problems that are contrary to the spirit of Article 7 of the Universal Declaration of Human Rights.

The Special Criminal Procedure Code Proclamation applies only in Special Courts-Martial, and renders inapplicable the Criminal Procedure Code provisions concerning bail (Arts. 63-79), preliminary inquiries (Arts. 80-93) and appeals (Arts. 181-96).[63] Since the Criminal Procedure Code was designed to function as a 'system', the resulting gaps disadvantage the accused and hamper the Courts' determination of facts and correction of legal errors. Under the Criminal Procedure Code, the granting of bail is discretionary, although grounds for the mandatory refusal of bail exist (Art. 67). Any court could properly refuse bail where strong reasons were advanced by the State (so long as judicial discretion is not abused). The abolition of preliminary inquiries can only have diminished the efficiency of Special Courts-Martial trials, as cases in which there is no _prima facie_ evidence of a crime are not weeded out in advance. When the Special Courts-Martial were first established, a fair number of cases were dismissed for a lack of evidence, and this may have been the reason for expanding the Prosecutor's investigatory powers.

Along with objections to a process through which civilians are tried by soldiers with no legal training, in the absence of clear definitions of when the death penalty is mandatory, the major criticism levelled by Amnesty International against the Special Courts-Martial concerns the absence of a right of appeal.[64] "No appeal shall lie from decisions of any Special Courts-Martial," but offenses punishable by death or imprisonment from ten years to life "shall be reviewable by the Head of State"[65] which, since December 1976, is the Chairman acting "on behalf of" the Derg. Although the proliferation of specious appeals and petitions has

been a problem in the past in Ethiopia, the curing of wrongful convictions and the correction of legal errors requires that a post-conviction remedy be exercisable before legally-trained officials.[66] This is particularly true in Ethiopia, where it is doubtful that Special Courts-Martial judges apply or even understand the resumption of innocence.

Initially, the Special Courts-Martial gave grounds for the hope that elementary standards of fairness would be applied. In particular, the first Prosecutor, a Major with an American legal education, refused to bow to political pressures where the evidence was insufficient to secure conviction. Inevitably, he was replaced and standards began to slide; the Courts' decisions became pro forma implementations of Derg policies. While most trials were held in camera, the public was admitted to a few proceedings early in 1976, and legal aid was even granted. Prominent decisions allegedly taken by Special Courts-Martial - it is impossible to be certain - include imposing the death penalty on 21 EPRP members in January 1976, on some of the "plotters" executed along with Brigadier Getachew in July 1976 (see Chapter Four), and on seven Addis Ababa grain merchants charged with hoarding ("economic sabotage") in July 1976 (see Chapter Six). In several other cases, Derg Chairman Teferi substituted the death penalty for prison sentences ordered by the Courts. This fate befell several students, two alleged Oromo (Galla) nationalists (General Tadesse Biru and Colonel Haile Regassa) and four others who were charged with opposing land reform and Ethiopia Tikdem in March 1975. Defending the latter decision, Teferi remarked that a judgement "meted out to the enemies of the broad masses of the people cannot be changed into forgiveness."[67] This is not too far removed from a prevalent Soviet view, expressed here by Anashkin:

> Socialist humanism has nothing in common with Christian 'all-forgiveness'. Genuine humanism excludes a sentimentally pitying, indulgent attitude towards human weakness, shortcoming and vices.[68]

The machinery of trying cases in Special Courts-Martial and then having the Derg Chairman review the decisions further truncates meagre human rights in Ethiopia without increasing the speed and efficiency of fact finding and rule application. The new Proclamations envisage, in effect, a permanent state of judicial emergency. Ordinary courts and procedures could be used to implement "revolutionary justice" but, as there is no meaningful independence of the judiciary in Ethiopia, the effect of their

decisions would differ but little from the executions and detentions
ordered by the Derg.

D. <u>The Terror</u>

Mengistu Haile Mariam (see Chapter Four) voiced the opinion that
formal trials are both soft and dangerous as early as November 1974.
His rise to power has been marked by the substitution of street-corner
assassinations for Special Courts-Martial trials. One form of legalised
terror has, in other words, supplanted another - the secret and arbitrary
administrative trial. There are currently very few cases heard by Special
Courts-Martial and, for that matter, few civil matters are heard in the
ordinary courts. Reports of "revolutionary measures" taken by kebelle
courts or "military tribunals" are now taken to refer to executions with-
out trial. The best estimates suggest that some 32,000 people were killed
in the urban areas as a result of urban opposition (not including sepa-
ratist) political activity from November 1974 to April 1978. 1977 was
the worst year, and by mid-1978 there were hopeful signs that assassina-
tions - and the Derg's anti-EPRP campaign in particular - were tapering
off. Warfare with the separatists continues, however: the number of
casualties cannot ever be guessed at, but various conflicts have produced
at least 400,000 refugees. It has, for example, been reported that ten
lorry loads of military prisoners were executed in Asmara in December
1977.[69] We outlined the course of the Red and White Terror in Chapter
Four, and shall round out a horrifying picture at this juncture.

At least twenty top military leaders have been killed for political
reasons since the Derg assumed power. Large numbers of demonstrators -
mostly students - have been killed: on May Day in 1975, 1976 and 1977 -
when 500 died; in July and on 22 September 1976; and on 29 April 1977,
when 500 to 1,000 students were killed. Some 35 demonstrators died in
December 1976 in Gondar. Many residents were killed during house-to-house
searches in Addis Ababa by soldiers, police and kebelle guards in April
and September 1976, on 23 to 27 March 1977 and from 7 to 9 May 1977. It
has been reported that these "security forces" regarded hidden sums of
money as "proof" of the fact that family members were paid agents of the
EPRP. In March 1977, seven Government Printing Press employees were led
from their offices and shot as suspected EPRP members. The Secretary-
General of the Swedish Save the Children Fund alleged, in May 1977, that

100 to 500 children aged eleven to thirteen were being slaughtered nightly; their bodies - like so many others - were ravaged by the hyenas that prowl the streets of Addis.[70]

Hospitals often refuse to treat the wounded, who are automatically branded "anarchists" or "reactionaries." Morgues often impose a £ 30 'tax' on the return of bodies to relatives. Other bodies are simply left on the street for a time; sometimes they are shown on television - a revealing indication of the brutalising effect intended by the Derg. Those arrested are often victims of malicious denunciations - special telephone numbers are provided for this - and subsequent executions are often purely arbitrary. Detainees are sometimes tortured to coerce them into naming three people whom they know to be disloyal. Those named, who are often as innocent as their accuser, are arrested and, in turn, forced to name other "enemies of the people." Addis Ababa "diaries", like the one by Hans Eerik published in The Times, while not always accurate in detail, convey the deep and agonising uncertainty of city dwellers: the Terror is often beyond comprehension yet it has life-or-death consequences. It is perhaps unsurprising that many Addis Ababans report that they have been able to adjust - in a limited way - to a daily carnage, just as they adjusted to squalor in the past. People are simply too busy, preoccupied as they are with finding food and protecting their relatives.[71]

Mengistu justified the Terror to an American Congressman on the basis that the ordinary rules do not apply during a revolution. Other officials add that the Terror is a manifestation of a larger and necessary class struggle, serving notice that individuals can no longer act as they please.[72] Amnesty International's allegation of a collapse of the Rule of Law in Ethiopia - presumably what Mengistu means by the "ordinary rules" - is certainly a reality to most Addis Ababans, provided there was something there to be collapsed in the first place.

E. A Brief Interpretation

Along with the penal provisions discussed in subsequent Chapters, the application of the Special Penal Code by Special Courts-Martial supports an English jurist's general assertion:

> criminal offenses are the creation of the criminal policy adopted
> from time to time by those sections of the community who are
> powerful or astute enough to safeguard their own security
> and comfort by causing the sovereign power in the state to repress
> conditions which they feel may endanger their position.[73]

In Ethiopia today, "security and comfort" amount to punishing enemies, consolidating power and attempting to foster legitimacy, having assumed direct control of the "sovereign power" and ensured that tribunals continue to be a pliant instrument of Government policy. As in the Soviet Union, penal policies became the growth point of law in post-Revolutionary Ethiopia - a phenomenon unfamiliar to Western jurists, whose law evolved largely through the media of property and contract. Ethiopia's judicial hierarchy was substantially restructured, only to be totally circumvented by torture, extra-judicial repression and mass executions - a re-enactment of Stalin's "intensification of the class struggle" during the 1930s,[74] as well as a gross extrapolation of Haile Selassie's policies.

The agonies we outline have been, for the most part, unnecessary: while the Derg's desire to neutralise traditional elites is understandable and even defensible from the standpoint of promoting development, many 'little' people have also become deviants solely because a small but victorious elite has forced through changes in the definitions of right conduct and applied them arbitrarily. Stigmatised and manipulated, these deviants' reactions range from "putting their heads under their wings" to a violent opposition, provoking harsh countermeasures in an inflationary spiral of violence. An intense injustice is felt when people are condemned without fault, by assassins or under strict liability provisions in the Special Penal Code, and such law as is left falls further into disrepute. A prime goal of penal policy, ensuring a secure life in society, is far from being attained; the Derg's preoccupation with "political" crimes makes urban society the prey both of disorder and delinquency from below, which is neglected and even encouraged by the Derg, and of lawlessness from above[75] including, in the eyes of many, land and business nationalisations.

Only a Pyrrhic victory is gained over opponents by assassinating them. The Derg's remedy has become more painful and more inimical to development than the disease originally identified by the soldiers, and nothing like a dynamic realignment of order and justice or a "revolutionary" law and order can be identified.[76] We therefore conclude that Peter Schwab's interpretation of the Ethiopian Revolution ceased to be accurate soon after it was published in 1975:

> Was it not to be expected that the former aristocratic class of Ethiopia would attempt to stymie the decision to build new social, economic and political institutions? . . . If a national

> leadership finds it necessary to worry about and concern
> itself over elites who represent a former social system,
> then it may only be able to deal intermittently with the
> human conditions of the bulk of the population, and will
> have to concentrate on securing its own political future,
> . . . If reactionary forces exist, unrepresentative and
> small in number, and if they oppose radical social change,
> then they must be dealt with decisively. . . .[77]

The Derg's initial ambitions were pretty much as Schwab suggests. These were, however, rapidly swamped by incompetence, intentions which were not altogether apparent in 1975, and an increasing reliance on repressive techniques which endanger the most basic of human rights. We will return to this theme infra and in the concluding chapter.

III. Administration

Despite declarations of the need for new and enforceable obligations running in favour of peasant and the urban poor, the Derg has not fundamentally reformed administrative laws to take account of this goal. Its proclamations usually adopt the terminology and the adaptations of an Anglo-American legal style utilised by Haile Selassie, adding only Marxist-sounding prologues. It is therefore unsurprising that many of the traditional practices of central administration described in Chapter Three are perpetuated under the Derg. Such changes as have occurred in central Government are primarily the result of a sporadic political supervision by the Derg, increasingly supplemented by the same arbitrary Terror which is applied to other city dwellers. The Derg's policies with regard to local and municipal administration are more complex; rather than reform these foci of political opposition, the Derg is allowing them to wither and is gradually replacing them with higher-level kebelles and peasant associations. Fuller discussions of these policies are postponed to Chapters Six and Seven.

A. Legal Changes

When compared to the Derg's radical changes in constitutional and penal laws, alterations in administrative laws of general applicability are very few in number. New agencies of central Government have been created and old ones abolished since the Revolution (see Chapters Six and Seven) but, as under Haile Selassie, a great deal of shifting people about has done little to attack the primary causes of administrative underdevelopment. A Ministry of National Resources Development was created in February

1975 to manage nationalised business[78] and was, in turn, reportedly re-organised in August 1976. While this reorganisation is not recorded in the Negarit Gazeta (legislative journal), it apparently included a redistribution of public enterprises among several Ministries, a merger of the Ministries of Agriculture and Land Reform, and a hiving off of the commercial activities of the Ministry of Commerce and Industry. These kinds of changes were also fairly common under the Emperor.

As we saw, the legal functions of Ministers and of the Council of Ministers were altered by Proclamation 110 of 1977. There have been few changes de facto, however, as the Derg merely acquired Haile Selassie's powers over the bureaucracy and modified the law to reflect more realistically the real locus of power. The only significant innovation with regard to bureaucratic organisation in Proclamation 110 is an expansion of the Auditor General's powers of inquiry into budgetary processes and the efficiency of governmental units (Art. 5). Finally, a formal pension scheme was introduced for employees of public interprises,[79] and minor changes were made in arrangements for retaining the services of civil servants after retirement age.[80] These regulations were then extended to judges and prosecutors,[81] after the 1975 Judicial Administration Proclamation went further in the direction of turning them into ordinary bureaucrats. The careers of civil servants other than judges and prosecutors continued, in theory, to be regulated by the Central Personnel Agency under the Public Service Regulations.[82] The Derg did, however, adopt the Emperor's legal power over senior appointments and continued a selective and extra-legal interference at all levels of staffing, including major administrative reshuffles in Feburary and October 1976.[83]

The inescapable conclusion is that the Derg felt the bureaucracy could be made to serve new purposes without changing its overall structure. We would argue the contrary position, that administrative institutions, procedures and attitudes – defined only in part by law – are themselves a fundamental cause of Ethiopian underdevelopment and operate as a significant constraint on radical change. Most of Haile Selassie's administrative laws continue in force and, while not expressly inconsistent with some of the Derg's goals, they require no high degree of bureaucratic commitment to new and development-oriented aims. The parroting of revolutionary slogans is being required politically, but military supervision has not been extended so as to ensure consistent changes in bureaucratic orientations.

B. Military-Bureaucratic Relations

The Francophonic African tradition of a military involvement in administration and development projects was ignored by Haile Selassie's military, which was trained in the Anglo-American tradition of a strictly military professionalism (see Chapter Three). As in Ghana and Nigeria, however, these attitudes were only skin-deep and disappeared quickly during the creeping coup. Like other fairly-permanent military regimes, the Derg has aimed for an ad hoc and extra-legal militarisation of the bureaucracy. At first glance, such a policy seems likely of success, as the Ethiopian military and bureaucracy have much in common. Both are, for example, more purposive than other social organisations. Modernising officers and officials (as opposed to those who derived much personal profit from a wholehearted support of the status quo); share similar educational and socio-economic backgrounds; became accustomed to function-ing within a rigid hierarchy and to the frustrations of systems which allow little scope for initiative; and perceive the need for a tutelage or "popular guidance" which does not extend to a political bargaining with the public or a free play among organised interest groups.[84]

Ernest Lefever may have had these kinds of similarities in mind when he suggested, in 1970, that much would be gained, but at a high financial cost, from a direct transfer of military skills to the bureaucracy:

> In Ethiopia the armed services have contributed to econ-
> omic modernisation by their example of what is technically
> possible where resources are rationally marshalled to achieve
> specific state-wide objectives. [This example] cannot be easily
> duplicated in the less disciplined civilian sector. [Admittedly,
> a] soldier probably costs from three to five times as much as
> a civilian to do the same job because of the considerable mili-
> tary overhead.[85]

So crude a cost-benefit analysis has little relevance and, for a variety of reasons, Lefever's arguments have not been borne out in post-Revolutionary Ethiopia. There has been no general military management of civilian affairs, which is arguably a good thing: the Army occupying the American sector of Germany after World War II found that it had to hire many civilian specialists - in economics, public works, health, welfare, trans-port, communications and public relations - and, even then, it achieved little more than the repair of physical damage and putting the economy on a care-and-maintenance basis. Like most other armies, Ethiopia's has never produced anything tangible. It acts, rather, as a consumer - the same can,

alas, be said of the bureaucracy - and few soldiers in the lower ranks have been trained for peacetime activities. There is a vast difference between the kind of discipline required to depose the Emperor and that needed to create a disciplined instrument of national policy. The military would have been unable to participate in transport, sanitation and other infrastructural projects which make fewer demands on administrative expertise, as it had its hands full with the Somali invasion, the separatists and localised rural rebellions. For the same reasons, its refined technical and communications skills have not been made available to the civilian sector. Immune from day-to-day tests of its efficiency prior to the Revolution, the military has also evidenced many shortcomings recently, especially in battle situations.[86]

It is therefore easy to see why the Derg, wishing to rule but incapable of doing so directly and refusing to countenance popular political control, was driven into the arms of a bureaucracy whose competence and political loyalty were doubted. The classic statement of this dilemma is attributed to a scholar who challenged China's first Han emperor: "You conquered this country in a chariot - can you rule it from a chariot?"[87] Like many other revolutionary regimes, the Derg is aware of this challenge and seeks to purge and transform the bureaucracy through political means, to the virutal exclusion of law.

The Derg's initial approach to administration involved the assignment of a soldier - usually young, inexperienced and, often, poorly-educated - to supervise each senior administrator. As under the Greek junta, these soliders often take pleasure in countermanding the decisions of senior bureaucrats, or lack the self-confidence to approve any course of action.[88] Later, when the Politburo emerged as a political force (see Chapter Four), its members also began to supervise administrators. In theory, members of a 'troika' - a senior civil servant, a Politburo representative and a Derg appointee - function as equals in each agency, but the Derg's man usually dominates.

Inefficiency and lethargy continue to dominate the bureaucracy, as they did under Haile Selassie; while individuals are goaded periodically, they feel that special efforts go unrewarded. As under the Emperor, the Derg agrees to a programme but the Ministry of Finance refuses to release funds for it because the Derg had no real intention of authorising funding,

forgot to do so, or because the demands for funds exceed the supply.
Budgeting is chaotic for the most part. The Planning Commission was
closed in June 1974. Frequent reorganisations since then, plus a short-
age of staff and funds have meant that planning has advanced but little
since the Revolution. It still amounts to ad hoc shopping lists from
various agencies. From early 1976 onwards, attacks on "reactionary"
bureaucrats have become increasingly strident in the media. Many of the
officials dismissed during two major shakeups in 1976 were also arrested,
but a purge of the bureaucracy did not begin in earnest until February
1978. A POMOA spokesman (see Chapter Four) justified this "intensive
programme" on the basis that the "feudal bourgeois" state structure had
not yet been broken. In April, there was a mass meeting of 2,000 Ministry
of Agriculture employees, in which the "guilty" were given a chance to
denounce themselves; 200 were detained. An undisclosed number of Finance
Ministry employees had been similarly denounced and arrested in February.
There has, however, been no inclination to mobilise a civilian 'Red Guard'
against the bureaucracy.[89]

Policy statements by the Derg concerning administration are fairly
thin on the ground. The most important one was delivered by Chairman
Teferi in September 1975:

> Unless the zig zag of poor administration is avoided, our
> Revolution will not achieve its goal. Since administrative
> employees support productive forces, there will be no effec-
> tive economic structure unless the administration is straight-
> ened out. . . . Some unnecessary organisations have been
> closed - new organizations . . . have been opened. . . .
> Various seminars have been held to carefully select the ad-
> ministrators and assign them to various places. Since the
> aim . . . is to decentralise administration, the administra-
> tive structure is being rearranged. . . . The administrators
> of Socialist Ethiopia are selected on the basis of their so-
> cialism, ability, the way they protect the broad masses and
> their good work.[90]

Most of these policies have yet to be implemented fully, and there
was an apparent change in the Derg's thinking about bureaucracy, symbolised
by a chanting of opposition to "bureaucratic capitalism" (see Chapter Four),
which coincided with Mengistu's rise to power. The precise goal of this
campaign is unclear, but it probably relates to Marx's view that bureau-
crats serve as representatives of the bourgeoisie, and remain in its socio-
economic ambit after a revolution. Oscar Lange (and others) adds that the
bureaucratisation of economic life is a greater danger to socialism than

the largely technical problems of resource allocation; bureaucratic capitalism can never be overcome so long as a commitment to centralised bureaucratic organisations remains - a sentiment echoed by A.R. Michaels's "iron law of oligraphy." The Derg is seemingly aware of these dangers, but it has adopted rather equivocal responses. In the rural areas, an almost Maoist approach to administration has been adopted:

> His solution was to minimise bureaucratic responsibilities - to limit taxation and procurement in order to leave most of the profits of increased production in the hands of the collectives so that they could take responsibility themselves. . . .[91]

There has, on the other hand, been little attempt to devolve the responsibilities of central administration. The division of authority within a few new agencies does not serve to conceal the perpetuation of the administrative practices we noted in Chapter Three, and some of the pre-existing social stratifications are maintained through the privileges of bureaucratic employement. Something more creative than a simple compromise of policies of centralisation and decentralisation is obviously required. Careful administrative laws and policies are needed to ensure that the bureaucracy comes to act in the interests of peasants and the urban poor, and to defend the Derg's main economic goal - which can still be validly characterised as a market socialism, despite the rhetoric adopted - against a backsliding towards the controlled capitalism favoured in most African countries.[92]

C. Corruption

One noticeable change since the Revolution is a marked decline in the amount of bribery within the bureaucracy; it has now become risky openly to treat the public as ripe for plucking. Many of the conditions that gave rise to corruption in the past have not been eliminated, however. So long as cumbersome administrative procedures remain (see Chapters Six and Seven), so too does the temptation to shortcircuit them with a bribe. This is particularly so when, as in Ethiopia, the struggle between the individual and the state continues to be grossly unequal, bureaucratic secrecy prevails, decisions need not be justified under concrete legal criteria, and there is no legitimate political opposition which serves to expose public corruption. Where bureaucratic employment remains so insecure, in the sense that an administrator can be dismissed, detained and/or executed for

reasons wholly unrelated to job performance, he feels at the mercy of new-found and, he hopes, powerful friends. He must also be tempted to get rich quick, if only to provide for relatives, and these temptations cannot be removed by salary increases. They require, rather, long-term changes in administrative practices and in social values – particularly the elimination of the traiditional tillick sew (big man) role that so many bureaucrats sought to emulate.[93]

Since the Revolution, there has been a modest shift in public opinion away from an automatic expectation of official corruption. The Derg has also eliminated many of the patron-client relations that were so productive of corruption in the past. There is, however, every indication that Derg members and other favoured officials are becoming patrons in a tradtional fashion. Increases in the benefits associated with being a soldier since the Revolution have been only minor, when compared to, for example, regimes in Ghana and Nigeria. Even so, individuals can, for example, claim expenses of up to Eth. $100 (£ 25) a day while on the Derg's business. Early in 1976, six Derg members were arrested and charged with soliciting gifts, seizing goods and finding "jobs for the boys." Conventional forms of high-level corruption have disappeared since then, at least on an obvious scale. There have, however, been huge increases in what may be termed the corruptions of power, associated with the license to assassinate, to detain, to rob houses during searches, and so forth.[94]

D. Control of the Bureaucracy

The Derg's policies with regard to the bureaucracy have led to a situation somewhat similar to the ones described by Fritz Moorstein Marx:

> Both Mussolini and Hitler showed the world that moral fortitude does not live long in a bureaucracy if a sword is suspended on a silk thread above it. Courage vanishes when each civil servant discovers how little stock he can safely take in fraternal solidarity and how easily he can advance his personal fortunes by blackening the record of his colleague. Within days, the corrupting influence of an environment of fear envelops the entire administrative system. [In the Soviet Union,] everybody is in part the ideological overseer of everybody else, and successful performance as ideological overseer brings personal advantages.[95]

This "moral fortitude" and "fraternal solidarity" have always been in short supply within the Ethiopian bureaucracy (see Chapter Three), but a "corrupting influence" of the Terror and its "ideological overseers" can be

readily identified. Ethiopia is, as we have argued, one of Myrdal's "soft states"; there may be a need to soften it up further before it can be remolded, but the Derg does not seem inclined to give the bureaucracy fundamentally new and development-oriented tasks to perform. An adminis- rative insurgency manipulated by the new incumbents seems concerned only with a narrow political loyalty: much else is simply not inquired into, probably because limited powers of a direct supervision by the military are already stretched to the utmost.[96]

Too many decisions are still made at the top or not made at all in Ethiopia. Meaningful channels for the regulation of lower-level conflicts must be created, so that the upper reaches of Government can coordinate policies and engage in forward planning. These are the functions performed, more or less adequately, by a British Prime Minister and Cabinet. The absence of these kinds of arrangements or, for that matter, a workable politburo and central committee, has meant that the Derg neglects vital planning and coordinating activities (see Chapters Six and Seven). Direct military supervision has only added to bureaucratic confusion and, until fundamental questions of administrative law are resolved, techniques of development administration cannot be applied by what remains an essentially "guardian" bureaucracy.[97]

The Ethiopian bureaucracy continues to lack legitimacy because the public perceives few payoffs to be gained from dealing with it. New special interests have moved into a power vacuum within the bureaucracy uncontrolled by the public, by itself or, for the most part, by the Derg. At the end of the next Section, we will deal with the questions of how the bureaucracy can be brought under control and made over into an effec- tive participant in development activities. Briefly, the answer lies neither in the Derg's political terrorism nor in the dominant Western theories of a development administration. The latter have been criticised for

> the irrelevance (or worse) or a rigid distinction between politics
> and administration, the questionable utility of the doctrine of
> civil service neutrality under new or changed conditions, [and]
> the frequently misguided emphasis upon "instrumental efficiency."
> . . .[98]

The basic problem posed by military-bureaucratic relations is that the Derg must either civilianise itself or relinquish its administrative functions rather quickly, if these soldier-revolutionaries are to accomplish

their stated goals:

> the more complex the civilian society, the more dependent the
> military is on civilians who possess central managerial and
> technical skills. Thus, the more successful the army in modern-
> izing, the more it modernizes itself out of its role as ruler.[99]

IV. Law and Revolution

An intentional destabilisation of Ethiopian social systems, through
revolution, has produced abundant evidence of what Lon Fuller has termed
the eight elements of legal failure: "excessive specificity, incommunica-
tiveness, retroactivity, incomprehensibility, contradictoriness, unfulfill-
able demands, capricious change, and irrelevant administration."[100] By
definition, revolutions are anti-legal because law is regarded as a bulwark
of the status quo that a revolutionary is seeking to overthrow. Ethiopia's
legal system collapsed because it was incapable of either restructuring
rapid change (through, e.g., the Draft Constitution or Prime Minister
Endalkatchew's legislative programme) or adapting successfully to it,
through the Derg's vague and incomplete constitutional laws. This kind of
legal collapse is usually temporary, as most revolutionary regimes soon
recognise the need for an administrative continuity and for an elaborate
system of alternate rules designed to foster legitimacy and stability.
This realisation has dawned on the Derg only to a limited extent: while
the major means of production have been nationalised and kebelles and
peasant associations created, relations among elites and between Govern-
ment and the public have not been spelled out and stabilised through law.
As a result, no one knows what to expect from anyone else; the Revolution
is being kept in a state of flux, probably because the Derg as a collectiv-
ity has not reached a consensus over what it wishes to achieve in the
political arena. A nebulous ideology has proved a vague and fragile alter-
native to legal rules, and the Derg has largely missed the chance to use
law actively to educate and mobilise the public.[101] As an instrument of
"class struggle", Ethiopian law has been almost wholly penal in effect,
providing few incentives for the poor to develop themselves - see supra
and Chapters Six and Seven.

It is doubtful that the Derg's new laws and extra-legal acts accord
with the notions of justice and morality subscribed to by the majority of
Ethiopians. As in many other Third World states, three sets of demands
struggled for legal recognition in the Ethiopia of the 1960s and early

1970s. To generalise a bit, peasants and traditional elites predicated
their demands on localised traditional laws and political practices (see
Chapter One); a tiny, urbane, state-supporting elite looked to an emerging
state capitalism and to imported Western private laws to satisfy their
material desires (see Chapter Seven); and an equally small modernising
elite demanded that public law be used vigourously to achieve a national
development and socio-economic equalisation. Haile Selassie ignored the
demands of the latter group and accommodated the others through a legal
system which operated at two distinct levels of political reality - the
social order of divergent local laws and the bureaucratic order of a
colonial-style state, in which individuals were free to enrich themselves,
provided they demonstrated a loyalty to the Throne.[102] The emerging
dichotomy of Ethiopian law after the Revolution is that, while the Derg
has repressed Western-oriented elites and pursues development through a
revolutionary socialist approach to law, the vast majority of the people
continue to subscribe to the values embedded in traditional laws, chief
among which is the non-interference of Government in the daily lives of
the people. The Derg's inability to convince the vast majority of peasants
of the validity of its vision may well constitute its Achilles Heel, in
terms of acquiring legitimacy in the long run (see Chapter Six).

A. Western Legal Perspectives on Revolution

Western theories of law and society are overwhelmingly static and
do not, therefore, provide adequate explanations of radical or extra-legal
social change. The perspectives adopted by many social scientists towards
events in the Third World are nevertheless subtley but pervasively coloured
by these legal theories, and we therefore explore them briefly in an
Ethiopian context. In its ordinary Western sense, all of law is adjudged
the product of a sovereign state (which is why customary and religious
laws cause great confusion among Western legal philosophers - see Chapter
One). Varying theories of sovereignty are used to determine which rules
are, in Austin's terminology, laws "properly so called." This cornerstone
of constitutional analysis is basically an inquiry into efficacy - the
locus of <u>power</u> to make rules - and validity - the <u>authority</u> to make them.[103]
Western jurisprudence, particularly Hans Kelsen's, has so muddled these
concepts as to become incapable of accounting for more than incremental
legal change in the West. Admittedly, the issues involved are extremely

complex and have been debated over the centuries: for example, when, if ever, does might (power) make right (authority)? In the concluding Chapter, alternative criteria of validity are proposed which, we argue, help to circumvent the defects inherent in conventional theories of positivism and natural law. For the present, we restrict ourselves to an examination of several Western theories.

It is ironic that the most esoteric analytical positivism (see Chapter Two), Hans Kelsen's, has proved the most popular explanation of the connection between law and revolution in the West. Kelsen's ideas are too well known to require more than a brief recapitulation here, and receive extensive discussion elsewhere.[104] The criteria of validity he expounds are formalistic and purportedly scientific, value-neutral and "pure". They are used to expel what Kelsen terms ideology and morality from legal analyses. His theory is another example of what we have termed the analytically immature positivist attempt to segregate the "is" from the "ought" (see Chapter Two). Legal argumentation acquires an otherwordly atmosphere when, as Kelsen requires, the social, political and economic facts of life in the country under discussion are ignored. To take but one example of the irrelevance of this distinction in the Third World, development planning involves the pursuit of an "ought" (a desirable future state of affairs), which takes into account the "is" of existing markets, political preferences, etc. and the "can" of the available resources. How can the role of law in planning even be discussed if "is" and "ought" are rigidly segregated? Further Kelsen's theory contains several grand value judgements which remain implicit, for the most part. For example, his Grundnorm, the basic norm on which the entire legal system rests, presupposes that a parliament, a monarch, etc. ought to be obeyed. Why this should be so is never inquired into,[105] despite the fact that such obedience favours whichever regime happens to be in power — a value-laden premise if ever there was one. A statement to the effect that an incumbent government can compel some degree of obedience because it temporarily wields more political and economic resources than the strongest of its opponents would presumably be rejected as unscientific.

For Kelsen, the first hallmark of the acceptability of a new Grundnorm introduced after a revolution is the existence of a de jure authority to convert revolutionary norms and acts into law. Despite the many distinctions

drawn by Kelsen and others who claim to be elaborating his theory, this
can only mean the acceptance of the new norms by bureaucrats and judges.
Inquiries into how this acceptance is procured are excluded from his
"pure" theory. There is also a circularity in his reasoning: the legal-
ity of a new de facto regime is ascertained by people who must draw their
authority (their right to exercise power), their pay and, often, their
right to life or liberty from that regime. Viewed in this light, Kelsen
has done little more than apply a convenient legal gloss to a hoary maxim:
"Treason doth never prosper: What's the reason? For if it prosper, none
dare call it treason."[106] As Geoffrey Marshall maintains:

> Revolutions do not acquire validity or legality. What happens
> is that administrators or citizens who transfer their allegiance
> to a new constitutional system accept different criteria of
> validity or legality.[107]

We therefore inquired into who transferred their allegiances in
Ethiopia, and when and how, viewing answers to these questions as more
important to an understanding of the Derg's constitutional laws and prac-
tices than the vague and incomplete Proclamations 1, 2 and 110. Kelsen
recognised the importance of these inquiries, not in his "pure" theory
but in a critique of Golunski and Strogovich's definition of the law of
the state as a "centralised coercive order". Kelsen argues that their
reference to the state is superfluous: the state manifest itself only
through human beings who, as organs of the legal order, create and apply
that order.[108] Aside from the obvious criticism that it may be more
realistic to treat the legal order as the organ of those who man it, this
is a useful way to flesh out an arid conceptualism; the institutional
breakdown, assembly and reassembly that is revolution should be viewed as
a product of individual and group decisions, rather than as an exercise
in legal logic.

Kelsen's critique of Golunski and Strogovich's definition also cir-
cumvents some of the difficulties raised by the second of his hallmarks
of a Grundnorm shift:

> The laws which, in the ordinary inaccurate parlance, continue
> to be valid are, from a juristic standpoint, new laws whose
> import coincides with that of the old laws.[109]

This is an unnecessary mystification of an observable fact, that a legal
order is more permanent than the particular governments that manipulate
it. J.M. Finnis clarifies the matter:

> A law once validly brought into being, in accordance with
> criteria of validity <u>then in force</u>, remains valid until <u>either</u>
> it expires . . . <u>or it is repealed in accordance with condi-</u>
> tions of repeal in force <u>at the time of its repeal</u>.

> [The problem] for the jurist is the same as for the his-
> torian or for the good man wondering where his allegiance and
> his duty lie. From neither perspective is the thesis of dis-
> continuity, as expressed by Kelsen, persuasive or acceptable.
> A revolution is neither a necessary nor a sufficient condition
> for anything that should be described as a change in the identi-
> ty of the state or the legal system.[110]

No one puzzled over <u>Grundnorm</u> shifts or the validity of prior laws when
the Emperor's 1931 Constitution was repealed and replaced (by the 1955
Constitution), rather than being amended in accordance with its provisions.
There is enough legal instability in Ethiopia today without exaggerating
the impact of the Revolution. The legal past and present can be linked
to each other on the basis that the rules of the moment exist because of a
<u>continuing</u> willingness to recognise them as standards for action. Where
such recognition is withdrawn, Government's most recent act prevails.
These are the criteria applied <u>de facto</u> in all states where a written
constitution does not serve as a significant constraint on governmental
power; in Ethiopia, the U.S.S.R. and the U.K., for example, the courts
are exceedingly reluctant to inquire into how a power regarded as legiti-
mate is actually exercised.[111]

The third of Kelsen's ballmarks of the domestic or internal legality
of a regime (whether established or insurgent) is that the "entire legal
system" remain or become "by and large" effective. This test is essential
to Kelsen's theory, despite its being rather crude and unscientific. Like
all positivists, he assumes a unified legal system which grows out of a
territory-wide monopoly over law making. Given a superficiality of legal
and political penetration, and the vigour of customary laws (see Chapters
One and Two), such a monopoly simply does not exist in many Third World
states, including Ethiopia under Emperor or Derg. Do Third World judges,
then, regularly decree the illegality of the legally-ineffective regimes
they serve? Of course not, although the law reports are rich in condemna-
tions of regimes which have been overthrown. Lord Lloyd argues that,

> if it can be shown that the basic norm is a positive guide to
> countries torn by revolution or other upheaval, then it may
> prove a valuable construct after all.[112]

This hope has not been fulfilled by cases which apply Kelsen's theory to

fact situations arising out of coups and revolutions, unless Lloyd's "positive guide" is equated with a mere bolstering of the status quo.

No matter how judges in Uganda, Pakistan, Rhodesia and Ghana find their way through the wilderness of Kelsen's theory, their decisions manage somehow to uphold the constitutional validity of the regime they serve at the moment of decision.[113] The inarticulae major premise of these decisions is, we argue, nothing more than the desire of judges to save their own skins and/or remain in office. The only apparent exception is a Privy Council decision concerning Rhodesia's Unilateral Declaration of Independence;[114] in that case, however, the judges must have known from the outset that their opinions, delivered in London, would have no practical impact either in Rhodesia or on their own personal safety.

As might be expected, Ethiopian judges did not engage in tortuous analyses of Kelsen. That they did not do so may reflect a lack of formal elegance and the small measure of influence exerted by Western juripru- dence. Their simple acceptance of the Derg and its laws does, however, achieve precisely the same effect as exhausting interpretations of Kelsen, while displaying what we would term a greater intellectual honesty. A de facto regime usually has abundant means to ensure a judicial accept- ance of itself, its programme and even of its petty prejudices: propa- ganda, coercion, packing the courts and creating special courts. There is seldom a need to exercise all of these powers to the fullest extent, as most judges fall into line automatically — like the bureaucrats they resemble in all but name. High-sounding statements to the contrary not- withstanding, judicial independence in most countries is no greater than in Ethiopia, except where it is based on a venerable tradition. No dis- cussion of the age-old dilemma of a judge's responsibilities to a non- libertarian state has proposed a practical solution to these kinds of problems.

Perhaps we are being a bit unfair to Kelsen, but he does claim that his theory is applicable in all times and to all places. Socialist jurists in particular would reject this assertion, viewing any theory of law which ignores ideology and economic relations as irrelevant. The purported universality of Kelsen's theory stems in part from his assumption of the primacy of international law, particularly the rule that a revolution or coup results in a change of government which does not affect the legal identity of the state. This is all well and good, so long as the countries

concerned recognise their "obligations" under international law.[115]
There is, however, a growing tendency among communist party-states and
in the Third World to be more selective when incorporating principles
of international law, especially those nineteenth century rules which
form the backbone of Western theories of sovereignty. In Ethiopia,
little practical recognition is accorded to "obligations" under multi-
lateral treaties or to "world public opinion" (the main international
law "sanction"), although the territorial claims of the Empire are rigor-
ously asserted by the Derg.

Ethiopian legal processes are becoming increasingly autarkic, and
many other Western perspectives on law and revolution are thus proving as
irrelevant as Kelsen's. For example, a justification for the use of
extraordinary legal powers based on an analogy with the private law doc-
trine of civil necessity, has been considered by courts in Cyprus and
Nigeria.[116] While these cases involve less legal legerdemain than analy-
ses of _Grundnorm_ shifts, and while necessity has a firm grounding in the
civil law that forms the basis of Ethiopian private law (see Chapter
Seven), the radical extension of a doctrine meant to serve a narrow
purpose is a dubious judicial tactic, in Ethiopia or elsewhere. J.M.
Eekelar has proposed other criteria, based on natural law, for ascertain-
ing when a regime (revolutionary or otherwise) is illegal. These include:
where authority is exercised for improper purposes; the abrogation of a
constitution without a subsequent election (a breach of faith with the
electorate, an idea based on Grotius's _pacta sunt servanda_); government
without consent, however this is ascertained; and a violation of an inter-
national law "right to self-determination."[117] While these criteria
might be cited by scholars or activists as grounds for civil disobedience,
the likelihood that a domestic court would invoke any of them against a
regime in power approaches the vanishing point: the aims of the Baader-
Meinhof Gang are not recognised as legitimate in Germany, and Israeli
courts ignore any Palestinian rights to self-determination.

We offer a final example of the irrelevance of Western perspectives
on revolution, based on the ethnocentric legal philosophy of H.L.A. Hart.
The elaborate distinctions he draws between primary and secondary rules
are singularly inappropriate for the Third World:

> The definition of a legal system used by Professor Hart seems
> to imply that the development of secondary rules, the rules
> that govern how primary rules are to be employed, is the work

of those who are privileged to run the state apparatus.
Such definitions are difficult to use in the African con-
text, primarily because all privileges seem to stem from
government, and access to privilege is the chief bone of
political contention.[118]

Hart's static analysis of a legal status quo is irrelevant where, as in
Ethiopia, both the basic form and content of the legal system are still
very much in dispute. It is clear, however, that if the Derg is to permit
a wider access to privilege, an equivalent widening of the legal system
must take place. The State and its legal order must be regarded as a
vehicle for whoever is in a position to control it. In any event, pro-
cedural rules are rarely as clear as Hart (or Kelsen) suggests - a point
we will expand upon later. It is usually reasonable to accept (and eval-
uate) the new rules of successful revolutionaries: they have made them-
selves masters of society and are therefore responsible for meeting future
contingencies.[119]

B. Ethiopian Revolutionary Law

Having obtained so little guidance from Western jurisprudence, we
will proceed to assemble our own analyses. They are less elegant but,
we argue, more faithful to what has been happening in Ethiopia. Proclam-
ations 1 and 2 of 1974 and 110 of 1977 amount to redefinitions of Ethiopian
Government and assertions of new political preferences by an elite come
to power. They constitute constitutional changes, even in the positivist
sense, being commands of the new sovereign under a 'Grundnorm' of the all
but unlimited and undifferentiated power of the Derg, committed to imple-
menting Ethiopia Tikdem. The Proclamations attempt to set the stamp of
legality on the Derg's programme, but they are not a "living" constitu-
tional law since power struggles are not meant to take place solely within
their framework.[120] Factions sprang up within the Derg, and violent con-
flicts have occurred and are likely to continue into the future; it is
unlikely, however, that law could have contained many of these tendencies.
Unlike many Third World constitutions drafted by lawyers for lawyers,
Ethiopia's new laws are not purely formalistic or ends in themselves. The
Derg uses law in a much less symbolic fashion than did Haile Selassie (see
Chapter Three); there are strenuous attempts to enforce such laws as are
made (see Chapters Six and Seven). Proclamations are enacted by "tough-
minded" soldiers guided by the facts of their own power and perceptions of

Ethiopia's underdevelopment, rather than by "tender-hearted" rationalists
(a category encompassing many Western legal philosophers) who are pre-
occupied with systems and principles, ignoring the relation between de-
cision and power.[121] Arguably, an 'ideal' constitutional law would be
devised by those with tough-minds and tender hearts; the Derg's laws have
resulted in a wilderness of isolated decisions and operated to truncate
human rights while ineffectively marshalling the resources needed to push
back the limitations on political processes.

Legally, the Derg represents a fusion of legislative, executive and
ceremonial Head of State functions, along with a predisposition to inter-
vene directly in judicial processes. As in the Soviet Union and under
Haile Selassie, a rudimentary division of labour is maintained through law,
at the lower levels of bureaucratic (including judicial) activity, but
often ignored in practice. There is no public control over political
processes and sketchy provisions concerning due process of enactment, but
there is supposed to be a due process of adjudication, even in the Special
Courts-Martial - basically a Soviet model of public law. Viewing itself
as represenative of toilers and tillers, the Derg refuses to bargain over
political preferences voiced outside of certain military circles. The
Derg thus sees no need for a constitutional apparatus to aggregate or
adjust conflicting interests. The absence of a meaningful separation of
powers plus an intolerance towards opposition mean that the Derg sees no
need to limit Government's powers through law. At so low a level of
political development, little more is needed in the way of constitutional
law than swift decrees emphasising the administrator's rather than the
jurist's approach to law and resembling military orders, from superiors
to subordinates.[122]

Ethiopia's could, in fact, be termed a constitutional martial law
without risking a contradiction in terms:

> 'Martial law' describes the exercise of military force to preserve
> order and insure the public safety in domestic territory in a time
> of emergency, when the civilian authorities are unable to deal with
> the situation.[123]

The Derg is styled a "provisional" Government, to be replaced by a new
civilian regime once the necessary foundations are laid. Ordinary courts
and administrative agencies were intially to continue to function normally
- a theoretical limitation on the Derg's freedom of action which was pro-
gressively eliminated through legal changes, a political supervision and

the Terror. Where the Derg sees its political interests at stake, law becomes irrelevant. It is nevertheless interesting to note that the Derg felt it necessary to declare a State of Emergency in Addis Ababa in September 1975 (see Chapter Four), as if there were some vestiges of restraint which had to be removed before new threats could be dealt with.[124] From the end of 1976 onwards, however, the Derg dispensed with both this legal nicety and the one represented by Special Courts-Martial, when dealing with the EPRP.

Elements of the traditional powers of Ethiopian rulers (see Chapters One and Three), shorn of the traditional restraints on the exercise of power represented by the Church and nobility, have been utilised since the Revolution. Unrestrained and particularised commands of the sovereign seem to suffice for the Derg's purposes, which mostly revolve around an exercise of eminent domain over persons and property. Open-ended standards do exist but are not used widely in any meaningful sense, as they point the way towards a delegation of power which does not exist in reality. These traditional forms, the legal style adopted by Haile Selassie, a socialist jurisprudence and an ad hoc experimentation can all be found in Ethiopia's constitutional laws. This mélange blends surprisingly well with the progressively Marxist interpretations of Ethiopia Tikdem discussed in Chapter Four. The preservation of a monopoly of political leadership through a spontaneous opportunism rather than the application of abstract principles continues to be the major task of constitutional law, as it is in the Soviet Union and was under Haile Selassie. This monopoly is now justified on the basis that the Derg expresses the will of two metaphysical entities - the "toiling masses" and a straightforwardly-nationalistic "Revolutionary Motherland" - whose interests are pursued through the entire coercive force of a socialist state. As a consequence, the Derg is now tacitly treated as more permanent and having more substance. While this kind of regime is contrary to coventional conceptions of a communist party-state, it bears some resemblance to the ideas of Regis Debray.[125] There are, in fact, numerous parallels[126] in the evolution of the public laws of Revolutionary Ethiopia and Cuba.

C. Some Western Models of Law and Administration

As we argued in Chapters One and Two, legal positivism is the jural analogue of an equally formalistic sociological positivism. In both, the

forms of social relations are examined to the virtual exclusion of their function or meaningful content. The most elaborate, systematised and "pure" of these theories have been devised by Hans Kelsen (supra) and Talcott Parsons (see Chapter One). Both men assume a consensus over the most general, abstract and slowly-changing of social norms (the Grundnorm ought to be obeyed), and that bureaucratic processes can largely be explained in terms of two social relations: a rigid hierarchy of control and a process of differentiation, with concomitant forms of reintegration. While stasis and change are equally likely in bureaucratic structures, these theories - devised in and for overwhelmingly stable societies - contain a strong bias towards equilibrium or what is called "pattern maintenance".[127]

As Kelsen and Parsons would lead us to expect, the Ethiopian bureaucracy is rigidly hierarchical, although ad hoc interventions by Haile Selassie, the Derg and the POMOA have disrupted this hierarchy to no apparent good purpose. As we move down this hierarchy and towards the increasingly specific and concrete applications of rules, however, many serious legal gaps or weak points are disclosed which are not taken into account by Kelsen or Parsons. Proclamations and the acts of individuals may (at least in theory, until 1974) be unconstitutional; regulations may exceed the authority granted in a proclamation; and politicians, administrators and judges may misunderstand, ignore or be unaware of the existence of regulations and proclamations. The channels of communication (or reintegration) which move upwards through the Ethiopean bureaucracy, seldom guaranteed by law, are always weak and usually blocked. The integration of bureaucratic activities and viewpoints and the adjustment of law and administration to social reality through a bureaucratic 'feedback' are thus inhibited.[128] These legal gaps and weak points are merely institutional ones viewed from a different perspective, and in Ethiopia, they are numerous at the centre, between central and provincial levels of administration, and at the local level - see Chpaters Three, Six and Seven.

For positivists, the logic of decision-making moves smoothly from setting general goals to formulating particular policies, and then to prescribing specific tasks. In Ethiopia (and to some extent everywhere else) however, bureaucratic institutions and tasks do not fit together so coherently. Each level of decision making occupies a distinct universe of discourse in Ethiopia, distinguished from others by, for example,

differences in the statuses and allegiances of administrators concerned.
There is little consensus, either within or between levels of administra-
tion. Ethiopian administrative law ignores these discontinuities and
focuses on formal hierarchies rather than the actual making of decisions
or, what is more relevant, their purpose. The result is, of course,
many uncoordinated policies, ineffective ones, or none at all. Bureau-
cratic modernisers occasionally took advantage of this jumble under Haile
Selassie, while engaging in an uncoordinated and ad hoc gap-filling and
bypassing of bottlenecks.[129] Had this been done in any regular and con-
certed fashion, it would have been viewed as a threat to traditional
authority and dealt with accordingly. The Derg is, if anything more
intolerant of this kind of bureaucratic assertiveness.

Kelsen's theory supposes a degree of precision unattainable through
administrative law in the real world. Procedural rules are rarely clear
enough to settle beyond doubt what is an adequately authorised act. A
higher norm regulates the creation, content and application of a lower
one only to a limited extent. This indeterminacy of administrative rules
means that they inevitably take on a political character through the
exercise of discretion and choice. Gunnar Myrdal could have been writing
of Ethiopia when he argues that:

> Partly out of necessity, but partly by predilection and choice,
> general policies become implemented less by general rules than
> detailed, individualized, discretionary, administrative choices.
> . . . The wholesale resort to discretionary administrative con-
> trols . . . increased the demands on administration. Such con-
> trols breed corruption; the spread of corruption in turn gives
> corrupt politicians and dishonest officials a vest interest in
> retaining and increasing controls of this type.[130]

Ethiopian administrators have never had reason to master any internally
coherent hierarchy of laws. We thus return to the notion of each rule as
a military command, as a specific action taken in reaction to a particular
situation. Under the loose discipline that prevails within Ethiopian
administration from day to day, laws are applied or not as circumstances
require, and they are occasionally reconciled with others according to
the predilections of each bureaucrat.[131]

There would, of course, be little point in using Kelsen and Parsons
merely as whipping boys. It is our contention, however, that many theories
of development administration amount to an uncritical transplantation of
the concerns of these and other positivists. In particular, theorists

are so preoccupied with the dysfunctions identified by Max Weber that
they neglect the benefits to be gained from establishing, for the first
time in Ethiopia, something like his legal-rational legitimacy. While
there are many differences between Weber's "ideal" state and the "pure"
theories of Kelsen and Parsons, they are nevertheless genera of positivism
which fit together well; they assume a societal consensus and emphasise
a rational bureaucratic control in defense of the status quo, achieved
through a continuous but hierarchical organisation of functions bounded
by secular, modern, precise and impersonal rules.[132] Theories which act
upon or react against these kinds of assumptions have little relevance in
Ethiopia, where they simply do not obtain – as we saw supra and in Chapter
Three.

Modern theories of administration replicate the divergences between
theories of societal conflict and consensus that were outlined in Chapter
One. Theorists of a consensus, who emphasise the managerial aspects of
administration, have the upper hand over those of their colleagues who
stress the bureaucrat's political role.[133] When compared to those of the
sociologists, however, theories of administration are rather crude and in-
complete. As "a subject matter in search of a discipline",[134] they are
"predominantly ethnocentric, nonhistorical and microscopic"[135] and offer
only partial explanations which often fly in the face of observable be-
haviour. The fragmentary nature of these theories makes it possible to
pick and choose among them carefully, without encountering inevitable
contradictions.[136] We will therefore proceed to discard irrelevant
Western assumptions of a bureaucratic consensus before assembling a theo-
retical perspective which is more relevant both to Ethiopia and to the
issues raised by development in other Third World states. Specific prob-
lems of Ethiopian administration are then dealt with in Chapters Six and
Seven.

Bureaucracy has been defined as a "career service under a merit
system",[137] characterised by "hierarchy, jurisdiction, specialization,
professional training, fixed compensation and permanence",[138] and by a
set of self-maintaining institutions which achieve a state of equilibrium.[139]
Far from maintaining themselves, the anarchic structures of Ethiopian ad-
ministration are acutely dependent on the wider society, in the sense that
they consume far more than they produce. The "merit" displayed by Ethiopia's
civil servants is primarily a narrow political loyalty rather than a

demonstrated competence in performing bureaucratic tasks. Each administrative agency is virtually a separate career, as there are extremely wide variations in bureaucratic structures, pay scales and role expectations. There was, and is, little professional training for the bureaucracy as a whole and almost none of the professionalism that, in the West, enables bureaucrats to resist some of the cruder forms of political pressure. A rigid hierarchy is prescribed by Ethiopian law and sanctioned by a tradition of minute status differentiations, but it is often circumvented in practice - particularly by young and low-ranking soldiers today. As under Haile Selassie, there is little security of tenure for officials - the Central Personnel Agency and Public Service Regulations have little practical influence over staffing - and officials are transferred from post to post for reasons unrelated to job performance or the overall efficiency of administration. This combination of blurred hierarchies, vague job descriptions, low levels of training and little sustained experience in a particular post mean that there is little of the efficiency associated with a bureaucratic specialisation in narrowly-defined tasks. Prior to the Revolution, it was difficult to describe bureaucratic incomes as fixed, since a large portion of the benefits of office under Haile Selassie depended upon bribes and "favours" rendered by clients (less the payments and services needed to secure a post and to please one's patrons).[140]

While the political context of administration often remains implicit in Western theories, it is usually a distinctly Western governmental process which the theorist has in mind. Many of these political assumptions are unduly simplistic, even when applied to particular Western bureaucracies. For example, many Western theories state or assume that the powers of government are limited: discretion is controlled through the Rule of Law; a knowledgeable public is willing to negotiate with administrators to obtain benefits; the services demanded by the public are well within the capacity of the bureaucracy to deliver; and private organisations display large measures of competence, which serve to decrease the burdens thrown on public administration. The spheres of competence of Ethiopian administration are narrowly limited, but certainly not for these reasons (see Chapter Three). An even more naive theoretical perspective is that, while politicans engage in power struggles to define the ends of government, the bureaucracy impassively supplies politicians with the means: information, expertise and an impartial obedience. This political neutrality

simply does not exist in Ethiopia or elsewhere. Under the Emperor,
much political power at the centre could only be exercised by virtue
of occupying a nominally administrative office. Under the Derg, enthu-
siastic commitment to new political goals must be displayed by civil
servants. The demand for governmental posts is particularly strong in
Ethiopia, where private sector occupations bring comparatively fewer
rewards than in the West. As a result, managerial, entrepreneurial and
professional skills are in extremely short supply within private organi-
zations. The secure and stable political foundations of administration
that are taken for granted in the West have never been created in
Ethiopia.[141]

While bureaucratisation in twentieth century Ethiopia served to
diminish the power of traditional elites and, initially at least, cen-
tripedal tendencies, increases in bureaucratic efficiency and regularity
have not been forthcoming as rapidly as Western theorists might expect.
Their emphasis on written rules, precedent, predictability, consistency,
equity and routine is almost the direct antithesis of Ethiopian practices.
Consensus theories have the effect of minimising the importance of bureau-
cratic policy intitiatives and programmatic innovations by groups - a
reflection of laissez faire attitudes and an inappropriate perspective
on development administration. Perhaps the most misleading of assumptions
commonly adopted, one that is related to notions of a political neutrality,
is that the bureaucracy has no interests of its own, apart from increased
efficiency. If this were true, all problems could be treated as technical
questions and dealt with accordingly. This is the approach adopted by
most official American advisers, in Ethiopia and elsewhere; at best, it
accomplishes little more than to mystify its opponents with jargon and to
maintain the status quo.[142]

Needless to say, individuals and groups employed by Ethiopian agencies
have distinct interests of their own, which revolve around maximising the
the return, in terms of personal wealth and power, from a minimum of effort.
Sometimes these interests coincide with those of the organisation - result-
ing in empire-building, buck-passing and refusals to cooperate with other
agencies - but shum-shir (rapid-fire appointments, demotions and transfers)
is designed to minimise this kind or organisational loyalty in Ethiopia.
One result of shum-shir is that cliques and patron-client relations often
span several agencies: the activities of the group are coordinated across

institutional boundaries, but usually for reasons which are unrelated
to official policies. Bureaucratic competitions thus shade over into
bureaucratic conflicts – the kinds of conflict that reinforce traditional
practices rather than promoting change. Far from being automatic, com-
pliance with the rules of administrative law is always problematic and
unpredictable in Ethiopia. It is precisely at those points where bureau-
cratic competition and conflict are greatest – where the need for regula-
tion most clearly manifests itself – that the application of rules is
most uncertain and arbitrary.[143] If even a small fraction of the energies
absorbed by these conflicts could be harnessed for development purposes,
the gains would be great indeed.

D. A Development Administration for Ethiopia?

Western consensus models of administration form part of an ideology
of satisfaction and conservation,[144] and are thus inappropriate for
countries like Ethiopia. The Ethiopian bureaucracy satisfies none except,
perhaps, itself; it is certainly not worth conserving, since it is clearly
unable to cope with the demands of development. The Derg has adopted a
change-oriented ideology and repeatedly expressed dissatisfaction with
the bureaucracy. Political preferences thus combine with development needs
in a call for a more change-oriented perspective on Ethiopian administra-
tion, but one which diverges radically from the Derg's recent policies and
involves a careful and intensive use of law. Development requires a reason-
ably stable legal environment, particularly as planning requires that
future governmental actions be currently predictable. Predictability need
not be so absolute as to lead to a static public administration. However,
in a dynamic modernising situation, predictability requires only that
power be exercised pursuant to a rule (legality) so that policy moves
towards carefully-defined but programmatic goals. In the Ethiopian con-
text, this means that many careful decisions would have to be made for the
first time, that definite tasks and the power needed to perform them must
be assigned to each bureaucrat. Some range of discretion is obviously
necessary, yet every grant of discretion to an Ethiopian administrator is
clearly a calculated or uncalculated risk. The fact that law does not
tell each Ethopian administrator what, precisely, he is expected to do
creates a certain amount of insecurity among bureaucrats, but this insecur-
ity is more than counterbalanced by the traditional attitude that

administration is an exercise of privilege rather than a matter of skill, ability and training.[145]

To a rather large extent, the dilemma posed by the amount of discretion to be granted can be resolved by requiring a certain 'output' from each administrator and ensuring that he receives the necessary 'inputs' - leaving him free to choose the ways in which his task will be carried out. The success of such arrangements then depends on choosing optimal outputs, devising thoughtful definitions of qualitative outputs - a difficult but not impossible task - and effectively coordinating the ways in which various outputs are used. Planning and day-to-day administration are thus integrated in single process.[146] Once this is achieved, the rigid and counterproductive Ethiopian bureaucratic hierarchies could be relaxed. While definitions of bureaucratic tasks are too loose in Ethiopia, the organisational structure - the network of tasks - is too tight.[147] Law should be used to shift the emphasis from who and where you are to what you do as an administrator. Many of the present problems of coordinating the activities of Government could then be eliminated by organising administrative activities around development tasks in a decentralised fashion, rather than within the ad hoc and isolated bureaucratic subdivisions that have grown up in Addis Ababa over the years. Coordination within the bureaucracy and cooperation with the public would improve simply because they are now instrumental to the performance of mandated tasks. Competitions would be directed against objective criteria rather than against persons or organisations.

Each bureaucratic role should encompass definite criteria for the evaluation of job performance, criteria that are linked to a hierarchy of policy goals rather than offices. A strict pass/fail test should be adopted, similar to the one employed (imperfectly) in the Soviet Union: administrators who perform their tasks successfully should receive salary increases and, over time, promotions; all others should receive demotions and salary reductions. These performance criteria should be periodically revised if they prove too easy or difficult to achieve, or inconsistent with new policies. While it would be nice if the bureaucracy could be turned into an unselfish and innovative organisation working solely for the public benefit, this would be a highly impractical goal in Ethiopia for the foreseeable future (see Chapter Three). The best that can be done is to appeal to selfishness, to make pay and promotions depend upon

implementing Government's policies. Other controls would be needed too, but the emphasis should be on securing compliance rather than on limiting bureaucratic power.[148]

Having outlined our approach, we will proceed to justify it in greater detail. Development administration must come to grips with the particularly intractable combination of "extensive needs, low capacities, [and] severe obstacles."[149] In Ethiopian administration, people do not do what rules and institutions say they are doing, organisations create the conditions of their own ineffectuality, and many agencies are "operating most of the time in failure mode." From the administrative law standpoint, "nothing works the way it's supposed to."[150] Since these tendencies inhere in most large-scale organisations, their prevalence in Ethiopia is a matter of degree rather than kind and, to a large extent, of political preference. The Ethiopian bureaucracy is not "a mindless, accidental concatenation of roles and statuses."[151] It was consciously created and can be re-created along funamentally different lines:

> It is the existence of state power which makes possible rational,
> directed social [including bureaucratic] change. Given that
> potential, the state must be charged with responsibility for
> whatever institutions exist if there are resources in the state
> sufficient to change them.[152]

Given that the Derg has the power totally to reorient administration, the failure to do so must rank as a major shortcoming of its development programme. In particular, administrative law has not been used as a transmission belt for conveying politics to society and the economy; little use has been made of this potentially powerful technique for marshalling and allocating resources for purposes related to development. Compared to private law, which rather passively facilitates the implementation of self-interest (see Chapter Seven), administrative law permits a more direct and active enforcement of norms and a more explicit statement of government's policies. The person to whom a rule is addressed, the administrator (initially at least), is more directly under governmental control, although in Ethiopia the extent of this control is still fairly limited. The instruments used to enforce administrative laws are also more flexible than those employed under penal law. In addition to preventing or limiting activities through bullying, administrative rules can offer rewards and incentives to encourage or even force a complex set of behavioural changes.[153]

Roberto Unger identifies two preconditions to the effectiveness of administrative law which are related to its positive and public character. A genuinely public law requires a firm differentiation of the state from its social context. The State must, in other words, dominate other social groups and limit their interactions. The positive character of administrative law – the fact that it is consciously formulated rather than merely accepted as traditional – presupposes the disintegration of traditional communities,[154] plus the erosion of traditional bureaucratic practices. Judged on these criteria, Ethiopia's administrative law is but imperfectly public and positive and in transit from a traditional to a modern system of rules. Non-traditional rules have not found wide acceptance within the bureaucracy, and these rules are forced to compete with local traditional laws in the rural areas (see Chapter One). Under such conditions, law reform is essential, yet the difficulties of legal and institutional transplantation which were discussed in Chapter Two are particularly acute.

It should be borne in mind that, like Weber's theories, administrative law is an "ideal type", a picture of how a particular bureaucracy "ought" to operate rather than the "is" described by more empirical models. When we come to consider the law-in-action, the ideal of administrative legality becomes little more than a keeping of the inevitable deviations within tolerable bounds – an important but necessarily imperfect attempt to align the "is" with the "ought." A failure to establish this minimal legality in Ethiopia will mean the perpetuation of bureaucratic arbitrariness and abuse, and the Derg's attempts at a political control will continue to brutalise the bureaucracy. A vague and ill-digested ideology cannot serve as a guide to rational decision-making while, on the other hand, the adoption of an Anglo-American administrative legality would stifle innovation and permit only a sluggish adaptation to radical changes. For reasons expressed in Chapter Two and _infra_, we reject Anglo-American notions in favour of a more pragnatic and programmatic definition of administrative legality: a channeling and focusing of bureaucratic power (rather than overall limitations on it), through which each administrator is nevertheless compelled to act within the constraints of rules he did not make and subjected to an authoritative determination of the adequacy of his performance.[155]

Attempts to attain an administrative legality would obviously re-
quire more rational and restrained law-making processes than those used
by the Derg - an issue which is ignored by Ethiopia's new constitutional
laws. The usefulness of law as a development resource depends to a large
extent upon its legitimacy. In the absence of the respect accorded to
custom or a charismatic authority, this legitimacy grows out of long-term
perceptions of law as a coherent series of rational decisions. Poorly-
conceived laws often intensify the problems they are designed to solve.[156]
This tendency can be detected in many of the Derg's laws and extra-legal
actions.[157]

Reacting against the dysfunctions ascribed to Western bureaucracies
by Max Weber, many Western theorists advocate an "open" framework of ad-
ministration for the Third World. Broad grants of discretion and the
freedom to choose organisational means and ends are essential ¬ so it is
argued - to the establishment of an "innovative atmosphere" and the in-
formal relations and unofficial practices that are conducive to organisa-
tional rationality.[158] In Chapter Three we saw that, in Ethiopia, broad
discretion, informal relations and unofficial practices were conducive
only to the perpetuation of an administrative underdevelopment. In any event,
these theorists seem to misunderstand the nature of innovativeness:

> As with painting, poetry, and music, individual achievement may
> reach creativity and high peak [sic] when operating within the
> constraints of given rules. Creative individualism is usually
> found not so much in wanton nonconformity as in the fruitful
> exploitation of existing rules.[159]

While the intensive use of administrative law inevitably involves the
sacrifice of some initiative in an attempt to secure discipline, the rela-
tion between discretion and innovation is a complex one: von Mises's
assertion that no one can be both an innovator and a correct bureaucrat[160]
is simply untrue. Through law, innovation can be prescribed as the appro-
priate form of bureaucratic behaviour and directed towards the progressive
realisation of an orderly hierarchy of goals defined through comprehensive
planning. Discretionary rules are never explicit or final, and planning
is a meaningless exercise where there are too many of them: policies re-
main unformulated or unenforced, as in Myrdal's "soft state." Lucian Pye
argues that:

> The more precisely we can define the appropriate role relation-
> ships, the more effectively we feel we can define the standards

of individual performance which should exist if the institution
is to realize its ideal level of collective performance.[161]
Most broad grants of discretion are the result of the laziness or incom-
petence of policy makers rather than a need for flexibility. It is un-
realisitc to hope that the recipients of this discretion will consistently
improve upon the handiwork of their superiors.

The requisite standard of legal draftsmanship is easy to state but
difficult to achieve: each definition of a bureaucratic role should in-
clude a statement of purpose and the standards on which decisions are to
be made. The "legal command should be precise, its boundaries defined,
its exceptions clear, the possibilities of its abuse anticipated and --
blocked."[162] This judgement is that of a revenue lawyer and, indeed, the
care devoted to, for example, the U.S. Internal Revenue Code should be
lavished on administrative laws generally in the Third World. Inevita-
bly, some range of legimate discretion must be provided for; no rule can
define correct performance in exhaustive detail. There is, however, a
vast difference in the amount of discretion required by, for example,
postal clerks and doctors in Ethiopia, where the tasks of most adminis-
trators resemble those of postal clerks rather than doctors. Bureaucratic
tasks are, in other words, specialised, subdivided, standardised and even
interchangeable for the most part; little more is required than a routine
and predictable job performance, yet law has never deigned to spell out
these tasks. Major reductions in discretion could also be achieved by
decreasing the traditional secrecy of Ethiopian bureaucratic processes
(see Chapter Three), if for no other reasons than each administrator could
then know the reach of authority possessed by his colleagues. Where a
greater measure of discretion is required, law can go beyond strict defin-
itions of tasks to enumerate what is desired (although not required) and
allowed (although not necessarily desired).[163] Law could take account
of the traditional reluctance to delegate authority in Ethiopia (see Chapter
Three) by prohibiting delegation and assigning specific tasks to each
administrator. This would have the effect of empowering the lower levels
of the bureaucracy and requiring - for the first time in many instances -
that they accomplish something besides the endless shuffling of papers.
If this cannot be done for existing offices, they are probably superfluous
and can be abolished or restructured accordingly.

The functions that we propose to assign to Ethiopian administrative

law are very much the Weberian ones of ensuring that the right person
makes the right decision at the right time. Such a scheme assumes, of
course, that all of these "rights" are known - that many careful decisions
have been made in advance and that rules and concepts are both internally
consistent and conform to changing social, political and economic values.
Our scheme might be seen as old fashioned, authoritarian and mechanistic
by Western theorists, but it at least tries to deal with factors which
are important in Ethiopia but have largely ceased to be of theoretical
interest: clarification of duties, an explicit coordination of complex
systems, and attempts to secure rational behaviour through bureaurcratic
discipline. Our proposals are admittedly authoritarian but, as such, they
might appeal to a military regime and, in any event, democratic administra-
tion at the centre is unrealistic in Ethiopia's present circumstance. The
psychological aspects of bureaucratic theory, emphasised by many contempo-
rary Western social scientists, relate primarily to Western rather than
Third World cultural values. In any case, we are far less concerned about
the alienation of bureaucrats (provided they can be compelled to do their
jobs) than about the preventable starvation of peasants. A more serious
objection to our scheme is that it exceeds the capacities of the Derg and
of the bureaucracy: many specialists would have to devote a great deal
of time to devising performance criteria, in collaboration with lawyers
who would embody these criteria in workable rules. We would, however,
argue that this represents a more efficient use of scarce technical man-
power than does the present practice of utilising specialists in a middle-
level supervision of general administration. It would also help to ensure
that, through rules, rationality flows downwards from the higher reaches
of Government - a cardinal assumption made by Max Weber and many other
theorists[164] which does not obtain under the Derg's arbitrary and sporadic
supervision.

In Weberian terms, it is the substantive rather than the formal ration-
ality of the Ethiopian bureaucracy that should concern us: for purposes
of development, bureaucratic effectiveness is more important than effi-
ciency. Service to the public (particularly the much-neglected peasants)
should form the basis for allocating resources, rather than self-serving
definitions of the seemingly infinite problems and needs of various agen-
cies. Once it is accepted that administrative products are more important
than processes, the structures of administration can be allowed to grow

out of the tasks to be performed rather than - as hitherto in Ethiopia - the other way around.[165]. While there was a certain <u>political</u> logic to the growth in bureaucratic institutions prior to the Revolution (see Chapter Three), their present-day structures could serve as a case study in administrative irrationality.

The ever-changing political needs of the moment dictated constant shifts in bureaucratic power in Haile Selassie's Ethiopia; a great deal of motion has, however, led to the perpetuation of traditional practices rather than meaningful and non-reversible changes. The first Ministries were modelled on traditional forms and dominated by courtiers who dealt with revenue matters and the maintenance of order in a cumbersome fashion. Subsequent Ministries were automatically starved for funds and accorded a lower status, regardless of the importance of the functions they performed. Elderly and untrained officials became suspicious of and hostile towards their increasingly well-educated underlings; they sought to retain control by reinforcing bureaucratic hierarchies and through arbitrary interventions in the programmes advocated by lower-level modernisers. Many institutions, offices and officials became increasingly anachronistic as administration grew more specialised and technical. Few positions or organisations were dispensed with however, since they provided a convenient means by which to reward political loyalty. When old organisations got bogged down, new ones were created to circumvent them and, towards the end of Haile Selassie's reign, it became fashionable to characterise these new agencies "autonomous." The proliferation of organisations led to acute budgeting and coordination difficulties which, in turn, stimulated periodic reorganisations. These reforms were so modest and poorly thought out, however, that they only served to foster additional complexities and confusion.[166] Paricularly pernicious devices were adopted to coordinate administrative activities - boards composed of large numbers of unqualified bureaucrats, who proceeded to ignore such ill-considered decisions as were made.

As we shall see in Chapters Six and Seven, the Derg has done little more than pick up where Haile Selassie had left off, from the standpoint of bureaucratic organisation. The need for radical reorganisation manifests itself at every stage of our analysis. There is little bureaucratic efficiency to be lost during such a reorganisation, provided that the tasks of individual administrators were carefully defined and enforced.

All of Milton Esman's policy prescriptions could sensibly be adopted by
the Derg:

> Experimentation with new organisational forms which flatten out
> hierarchical controls, integrate services at the level of clients,
> increase relative regards for service in the field, and organize
> by project or multi-project task force are needed to loosen the
> rigidities of the functionally specialized hierarchical struc-
> tures which dominate administration in developing countries.[167]

Since all methods of organisation have their disadvantages and reflect the
compromise of conflicting aims, Esman's experimentation is necessary in
order to identify a workable organisational 'mix' for Ethiopian develop-
ment administration. While a certain amount of clarity and orderliness
in organisation is required if anything is to be accomplished,[168] most
Third World bureaucracies are, for development purposes, too tightly
structured. In Ethiopia, bureaucratic change requires, above all, break-
ing through the established order. The Derg has done this on a political
level only, leaving the structures of Imperial bureaucracy largely intact
at the centre.

Bureaucratic hierarchies are, of course, potentially important con-
trol devises, but these controls usually functioned imperfectly in Ethiopia
and were seldom exercised for development purposes. The effectiveness of
hierarchical control can be increased by making promotion depend upon
implementing a hierarchy of governmental policies[169] and, paradoxically,
through an administrative decentralisation. The larger an organisation,
the more obvious and inescapable the need for maintaining order; the size
and complexity of Ethiopian Ministries have made them all but immune to
an overall supervision and control. This lack of control was most obvious
with regard to administrative activities in the rural areas prior to the
Revolution (see Chapters Three and Six). As resources are so limited and
seldom penetrate into the rural areas, it makes sense to restrict their
application to deconcentrated agencies at the centre, relying on the public
for the day-to-day supervision of local administrative units in the rural
areas. Myrdal terms this kind of decentralisation a "democratic planning",
in which bureaucrats and the public influence and participate in each
other's decisions. If bureaucrats are able to confer real benefits, they
may succeed in persuading or inducing peasants to change their behaviour,
while gaining an awareness of the realities of rural life. Ideally, this
kind of decentralisation would go a long way towards humanising Ethiopian
administration, decreasing social distances in the rural areas and

stimulating public loyalty towards local government.[170] As we will see in Chapter Six, the peasant associations created by the Derg represent a first step in this direction.

Taken together, job evaluations, hierarchical controls and local participation would still be inadequate to bring Ethiopian administration firmly under control for development purposes. This is because maladministration is so widespread and complex a phenomenon. It encompasses – in the words of an English jurist –

> administrative action (or inaction) based on or influenced by improper considerations or conduct. Arbitrariness, malice or bias, including discriminations, are examples of improper considerations. Neglect, unjustifiable delay, failure to observe relevant rules and procedures, failure to take relevant considerations into account, failure to establish or review procedures where there is a duty or obligation on a body to do so, are examples of improper conduct.[171]

All of these improprieties operate so as to diminish the effectiveness of Ethiopian administration, but Ghai and McAuslan's simpler formulation is arguably more relevant to Ethiopia: administration should not cause avoidable inconvenience to the public, and the benefits conferred must be publicly known and defensible.[172] The remedies applied to various kinds of maladministration in different legal systems are many and varied, but few genuine successes have been recorded – especially in the Third World.

In the West, important controls over the bureaucracy are exercised by private citizens through the courts. These controls were introduced, in an attenuated form, into the Third World during the colonial era, but their popularity is declining steadily. Even in their countries of origin, these controls are less efficient (but sometimes more effective) than a bureaucratic self-discipline, dependent as they are on private initiatives. In the Third World, an overall absence of genuinely democratic processes and independent courts makes these controls all but worthless. Where no reliance can be placed in an equal protection of persons who challenge governmental activities, the ability of individuals and groups to influence administrative processes depends solely on their political and economic importance and organisational cohesion. The motivation to intervene in administrative processes is most often supplied by threats to property interests,[173] and Western-style controls in Ethiopia would only help to limit Government's power on behalf of the propertied strata that

the Derg are trying to eliminate - an unrealistic proposition. While peasant associations, kebelles and, possibly, trade unions may one day acquire a measure of influence over Government and the motivation to exercise it (see Chapters Six and Seven), they are unable to ensure an administrative legality at present.

Judicial control of administration never worked in Ethiopia prior to the Revolution (see Chapter Three) and, even in the West, it is a slow, complex and expensive process which often leads to anomalous results. Anglo-American courts, for example, tend to go to extremes by, on the one hand, displaying a reluctance to probe the factual foundations of bureaucratic decisions and, on the other, by superimposing uninformed judicial preferences on administration. Fritz Marx concludes that, in the United States, the "resulting string of court decisions has left the administrative process tattered and torn without any suggestion of better alternatives for serving the general interest."[174] Further, Anglo-American interpretations of the Rule of Law emphasise a literal conformity to regulations for the protection of private individuals, rather than evaluations of initiative and overall bureaucratic performance - a formal rather than a substantive rationality. By way of contrast, Continental administrative law provides the basis for a more technically-informed assessment of administrative legality and, occasionally, for inquiries into substantive rationality under the rubrics of excés de purvoir and détournément de pouvoir. It has proved extremely difficult, however, to transplant these Continental traditions in the Third World; they are probably as culture-specific as the probity and conventions that constitute the basis of the Whitehall Model.[175]

The shortcomings of a judicial control over administration have led many countries to experiment with ombudsmen. There is, however, little likelihood that any such independent control would be accepted by the Derg. It is therefore more practical to anticipate an administrative control by a Soviet-style Procuracy, which would undertake bureaucratic supervision and ensure an overall efficiency and effectiveness on behalf of the state, rather than pursuing violations of individual rights. The germ of such an institution can be found in the Derg's reform of the Office of the Auditor General (supra). Other controls exercised in the Soviet Union - ideological pronouncements, planning directives, censures in the media, supervision by

financial institutions and workers' committees, and direct intervention by a political police - have also been adopted, in a rudimentary fashion, in Ethiopia. The problems in both countries are the same; the controls are erratic and confusing in operation and serve only to achieve a minimal rationality at the lower levels of administration, since the top leadership is immune to control.[176]

Our call for an administrative legality in Ethiopia is not so far-fetched as it may seem. It stems from the Derg's desire to bring the bureaucracy under firm control and to then use it to foster development, rather than from a reliance on the Derg's goodwill: "Every government which is concerned with survival and efficiency needs organs of critical evaluations of its accomplishments and intentions."[177] The fact that a state is avowedly socialist does not lessen the need for administrative legality, but it does alter its focus somewhat:

> The identity of the socially collective and individual interests constitutes the essential driving force in the development of socialist society, ... But identity of interests is not a spontaneous occurence. It must be constantly created and secured and its effectiveness fostered. Herein lies a decisive function of socialist law . . .: it provides such forms of organisation and rules of conduct as can from the very beginning render the community of interests highly effective, and it regulates the solution of conflicts of interests.[178]

At first glance this reads a lot like Roscoe Pound, until it is remembered that the bureaucracy under discussion is viewed as engaging in a class struggle; while Western theorists are bedevilled by observable disintegrations in a societal consensus, socialists refuse to doubt that a new harmony of interests can be created through political and bureaucratic means.[167]

Finally, we should mention the obvious, that "the best laws cannot surmount bad administration."[180] The Ethiopian bureaucracy must also be subjected to many non-legal reforms, particularly in the areas of training, retraining and the gentler forms of resocialisation - rather than the Derg's massive application of terrorist tactics.

E. Human Rights

There is a long and sad tradition of human rights violations in Ethiopia. The suffering of peasants, who were treated in a traditional fashion under feudal land tenures right up to 1974, was immense (see Chapter Six). Long-term political detention, without trial or on the basis of a

manifestly unfair trial, was widespread under Haile Selassie - a fact
which was ignored by many journalists and academics at the time. Clandes-
tine enemies were dealt with clandestinely, while publically-identified
opponents who retained a measure of political power rarely paid a heavy
penalty. The Derg's political violence is both more open and subjected
to a more intensive international scrutiny. Under the Emperor, prison
conditions were harsh and torture was widely used. Potential rivals to
the Throne, Eritrean Parliamentarians (prior to Federation), Ethiopian
journalists, members of Oromo (Galla) self-help associations and, gener-
ally, anyone considered dangerous were detained freely. Alleged partici-
pants in the 1960 coup attempt were still being arrested in the mid-1960s.
The late 1960s and early 1970s saw the wholesale detention of students,
although there were limited amnesties, too.[181] The Derg is therefore
operating within a well-worn tradition while, at the same time, intro-
ducing city-dwellers to a wholly different magnitude of suffering.

Having heard testimony from conservative Ethiopianists with a limited
knowledge of events occurring after the Revolution, several Committees of
the United State Congress labelled the Derg one of the regimes most prone
to violating human rights in the world today. In September 1977, a sub-
commission of the U.N. Human Rights Commission classed the Derg with
such unsavoury Governments as those of Uruguay, Paraguay, Chile, Indonesia
and Uganda, finding that "a consistent pattern of gross violations of human
rights has developed" since the Derg came to power.[182] A careful study by
Amnesty International reached a similar conclusion one month earlier:

> Persistent gross violations of human rights as instanced in
> Ethiopia, are not justified by the situation faced by the
> government. Amnesty International does not believe that an
> atmosphere of terror can establish security or the rule of
> law, or protect the human rights of the citizens of any
> country.[183]

In outline, Amnesty International cites numerous instances of politi-
cal and judicial murder by military tribunals and kebelle courts taking
"revolutionary measures"; since this report was published, the Red Terror
(supra) has escalated and then died down. Prison conditions are described
by Amnesty as "very poor": torture continues at the same high level as
for the last twenty years, and detainees live in daily fear of being tor-
tured and killed for newly-discovered "offenses" or invented infractions
of prison rules. Clothing and bedding are never supplied to prisoners
and food is sometimes not provided. Interestingly, social stratifications

are perpetuated in detention; prominent prisoners are given better quarters, are less likely to be beaten, and receive food from relatives and medical treatment.[184]

When the Derg first deposed Haile Selassie, extensive assurances were given with regard to human rights. To the extent that "fundamental" human rights were reflected in the 1955 Constitution, these rights were not suspended along with the Constitution — according to the Prologue of the subsequently-repealed Proclamation No. 1 of 1974. Article 5(b) of that Proclamation gave the inadequcy of the protection accorded to human rights as one of the reasons for rejecting the Draft Constitution. In December 1974, Chairman Teferi emphasised that the Rule of Law is a major guideline followed by the Derg and that "the laws existing in the country" would be applied during trials of detained officials. He also promised U.N. Secretary-General Waldheim that "justice based on the rule of law will prevail."[185] The Prologue to the Special Penal Code states that "fundamental human rights and natural justice" will be preserved and restored after having been perverted for so long. It will be recalled, however, that this Prologue also justifies the new offenses as consistent with "natural law" and "basic legal philosophy", giving rise to the suspicion that the Derg's notion of human rights is vague and highly abstract — a goal for the indefinite future.

As we noted, the Special Penal Code is a revealing instance of the Derg's legal thinking at the time. Under the Terror that coincided with Mengistu's rise to power, even these niceties have been dispensed with. One example of the cynicism that now prevails in official circles was provided by the Mayor of Addis Ababa in February 1978:

> You can say what you want in Ethiopia. ... . The question is whether what you say corresponds with the aspirations of the broad masses. If it does not, you will be kicked out — no doubt about it. If it does, you can go on saying it. And the broad masses will embrace you.[186]

A more serious attempt to justify Ethiopian policies was offered by Mengistu himself during the 1977 OAU Summit conference in Libreville:

> When countries begin the revolutionary process all the West starts talking about violation of human rights, whereas actually they should talk about the restoration of human rights.[187]

The idea conveyed is similar to Barrington Moore, Jr.'s analysis of the French Revolutionary Terror: instead of merely recoiling in the face of political violence, we should examine the causes of that violence —

degradation, oppression and preventable starvation and injustice - and recognise that rebellions acquire the character of the societies against which they are directed,[188]

Elsewhere,[189] we have compared the Ethiopian concept of revolutionary justice with those obtaining during the French and Chinese Revolutions. If an official justification of the Derg's human rights policies were to be elaborated, it would probably revolve around the notion that sins of commission are needed to reverse the consequences of centuries of sins of omission. Revolutionary justice would be described as a reaction to the earlier tyranny of class law and class injustice. The Terror might be defended as a legitimation of populism, of "voluntary" attempts by kebelles and peasant associations to eliminate "enemies of the people." As Marx said: "Right can never be higher than the economic structure of society and its cultural development conditioned thereby,"[190] Some socialists would argue that, in order to promote material human rights by changing the economic structure of Ethiopian society radically and rapidly, dissent must be treated as treason and error as sabotage. In the eyes of the Derg, its policies create few hardships: in the past, the liberty of a small minority was purchased at the expense of the welfare of the majority, who have few freedoms to lose anyway.[191] It might even be possible to justify this approach under Western notions of constitutionalism, For example, the Eire Supreme Court argues that rights are guaranteed to citizens as a whole, rather than to individuals or groups, and that

> the duty of determining the extent to which the rights of any particular citizen, or class of citizens, can properly be harmonised with the rights of the citizens as a whole seems to us to be a matter peculiarly within the province of the Oireachtas [Eire's Parliament], . . .[192]

The validity of such a justification turns on the extent to which decision makers represent the interests of the public and on the amount of coercion used while rights are being "harmonised."

Beginning with Franz Fanon, the threshold of violence acceptable to many of the people writing about Third World problems has increased radically. The ideas of Enver Carim are representative of this trend:

> To be accepted as an instrument of moral development as well as a means to social change, violence has to satisfy only one requirement. [It] must pierce the dykes of repression and release the creative energy within people that has dammed up over centuries.
>
> [This is what] makes revolutionary violence – as opposed

> to criminal and self-indulgent forms of violence - not only
> desirable but morally necessary. . . . It encourages the dis-
> possessed and the down-trodden increasingly to bring into
> play the powers that lie dormant within themselves.
>   . . . The institutionalised violence embodied in high
> rates of child mortality and high levels of disease and mal-
> nutrition is a measure of the degeneracy of those concerned
> only with maintaining "law and order."[193]

On this basis, it can be argued that, as in the Soviet Union, law, politi-

cal action and a sanctioned violence are being used in concert in Ethiopia,

in an attempt to foster the cognitive and emotional growth associated with

the creation of the "new socialist man." But, as Kiralfy notes,

> interests may be secured in more than one way; the justification
> of public welfare may be used to cloak the tyranny of those who
> know better than the public, a danger from which no country is
> exempt. . . .[194]

We would argue that the burden of proof is on those who use violence in

Ethiopia - the Derg, and its opponents who must bear the responsibility

for much of the violence - to demonstrate that is is in fact conducive

to development and socio-economic equalisation, rather than to the acqui-

sition of a merely personal political power. We believe that this burden

has not been satisfied, that alternate means to the Derg's ends would

have been more effective (see infra). Further, we suspect that what

Ethiopians have been doing to Ethiopians since 1974 stems in large mea-

sure from their being Ethiopians - from a far greater historical depth

than the tenets of a day-before-yesterday revolution.[195]

It may nevertheless be argued that, in a socialist state, the major

task of law and politics is to preserve the monopoly of political lead-

ership. The class newly come to power has the right to use the coercive

power of the state to suppress its opponents and deprive them of their

rights. Applied to Ethiopia, such an argument rests, of course, on the

congruence of interests of "the people" (who are mostly peasants) and

the Derg. Our analyses at several junctures, supra and in Chapters Four

and Six, indicate that there are numerous divergences of interest (unless

Marx's problematic "false consciousness" is incorporated into the argu-

ment). A Lenin might argue that repression and restrictions on human

rights in Ethiopia are necessitated by war, economic dislocation, the

immaturity of socialism, the overriding need to stabilise power in a

country where political institutions are fragile and lack a traditional

legitimacy, the desirability of eliminating feudal attitudes, and the

need to improve social discipline. A Trotsky could, however, reply that all of these explanations taken together are still an inadequate justification for the increasingly oppressive character of the State, and that a true Ethiopian socialism awaits a second revolution.[196]

Western jurists would approach the human rights situation in Ethiopia from a radically different perspective, citing numerous violations of the values they prize, such as the Rule of Law and the related principle of legality. The retroactive validation of executive and administrative action, the vagueness and retroactivity of Special Penal Code provisions, the abolition of minimal procedural protections in Special Courts-Martial and kebelle tribunal proceedings, the evils inherent in the detention laws and, finally, the licensing of an ad hoc and arbitrary Terror would all be roundly condemned. The principle of legality is generally taken to mean that punishment can only be imposed in accordance with fixed, predetermined rules interpreted in a narrow, restrictive manner by independent courts. These criteria are certainly not compiled with in Ethiopia, and most of those which Jerome Hall equates with a "transnational criminal law theory" are ignored repeatedly:

> the widest concepts are seven in number and concern mens rea,
> act (manifested effort), the concurrence or fusion of mens rea
> and act to form conduct, harm, causation (connecting conduct
> and harm), the punitive sanction and, finally, legality.
> [Intermediate] propositions . . . concern infancy, insanity,
> mistake of fact or law, coercion, necessity, and attempt,
> solicitation and conspiracy. . . .[197]

In Ethiopian tribunals, only the vaguest standards of proof are applied to numerous strict liability offenses; in the streets, assassinations are carried out on the vaguest of rumours and, in particular, the youth of a suspected offender is ignored.

The underlying purpose of the principle of legality is the avoidance of "purposeless cruelty" or "arbitrary acts of violence":

> the principle is not satisfied merely by the fact that the
> punishment inflicted is technically legal. The Star Chamber
> was a legal tribunal, but it does not exemplify the rule of
> law in Dicey's philosophy.[198]

The Rule of Law, as Dicey formulated it, prohibits arbitrariness or even wide discretionary authority. This formulation is no longer accepted widely, especially in the Third World where the need to overcome hunger, poverty and unemployment are commonly held to render it impossible fully

to implement the Rule of Law. Many Western jurists - and the International
Commission of Jurists in particular - have attempted to modernise the Rule
of Law and would, for example, permit the Derg broad executive powers to
discharge its public welfare functions efficiently. The ICJ would never-
theless argue that power should be exercised within the narrowest possi-
ble limits, subject to judicial review, so as to avoid human rights vio-
lations.[199] This is, of course, not the situation in Ethiopia, where no
separation of powers or other legal limits on the Derg's powers can be
found. A legal and extra-legal overkill is employed, in what amounts to
a permanent state of emergency which is largely of the Derg's own making.

Unfortunately, the Rule of Law remains a vague set of standards for
evaluating the behaviour of particular regimes. Consider the following
statement by the International Commission of Jurists:

> a democratic state, no matter how far its planning and socializa-
> tion extends, should ensure that it does not put itself above
> the law and that the private sector is not unjustly discrimin-
> ated against or destroyed. . . . The right to own property is
> a fundamental human right.[200]

Do land and business nationalisations in Ethiopia (see Chapters Six and
Seven) amount to "unjust" discriminations when, as can be convincingly
argued, these measures promote the achievement of social justice and the
elimination of exploitation? Property and ownership exist only in forms
defined by law, and if these definitions are changed by the Derg, can
Government be said to be setting itself above the law? Finally, the Rule
of Law has different meaning in different legal systems; in its narrowest
sense, the Rule of Law is little more than an admonition to follow the
law, and human rights depend upon the nature and content of the rules
being applied.[201]

If Western jurists were ever to convince Ethiopia's leaders of the
merits of the Rule of Law, more tightly-drawn guidelines and justifications
are needed. At present, the Rule of Law is often viewed as a Western
ideology or ethnocentric value judgement in the Third World; perhaps
Western jurists should regard it in the same light and attempt to reform-
ulate its precepts. Consider Hartley and Griffith's analysis of public
law in the United Kingdom:

> A rule of lawsand not men is impossible in our society. Laws
> there must be to confer powers on men who rule and to limit
> their activity within the bounds of the law. But those laws
> also give them some freedom of action and of choice, some

> flexibility. Yet those who rule must be subject to the law.
> [This principle] is crucial to the preservation of any measure
> of liberty and to the control of governments.[202]

This definition, applied in Ethopia, focuses on some of the relevant
issues, but also neglects several important ones. Laws are so broadly
drafted as to preclude limitations of governmental power, and no con-
trolling institutions have been created in any meaningful sense. In the
absence of popular political participation and control over government,
legal limitations and controls cannot function effectively. Finally, we
must recognise that all regimes are prepared to suspend human rights
when their perceived basic interests are threatened - Korematsu in the
U.S., Liversidge v. Anderson in the U.K. and Canal in France serve as
examples of this - and many Third World states simply have a lower
threshold beyond which the Rule of Law becomes irrelevant. We cannot
resist the temptation to add Lord Denning's views on the subject:

> When the state itself is in danger, our cherished freedoms
> may have to take second place and even natural justice it-
> self may have to suffer a setback.[203]

The threshold we mentioned must be fairly low in the U.K. of Lord Denning,
for these words were spoken in the Agee-Hosenball case.

The Universal Declaration of Human Rights provides yet another basis
for assessing the Derg's performance. While Ethiopia has never acceded
to the broader Covenants on Policital, Civil, Economic, Social and Cul-
tural Rights, she did unconditionally subscribe to the Declaration in
1948, (as well as numerous International Labour Organisation conventions[204])
and Article 4 of Proclamation No. 1 of 1974 stated that international
agreements will continue to be observed by the Derg. In Ethiopia, the
imposition of the death penalty for minor political offenses and the
official encouragement of political assassination amount to a denial of
the right to life (Art. 3 of the Declaration); arbitrary arrest and de-
tention without trial violate Article 12; freedom of movement within and
outside Ethiopia has been greatly restricted, contra Article 13; and the
rights to freedom of expression, association and assembly are denied
(Arts. 19-20). Additionally, Amnesty International argues that the use
of torture violates the 1975 U.N. Declaration on Cruel and Inhuman
Punishment, conditions in detention "fall very far short" of the U.N.
Standard Minimum Rules for the Treatment of Prisoners, attempts to enforce
the involuntary repatriation of refugees violate Article 31 of the 1951
U.N. Convention on Refugees and its 1967 Protocol, and the common practice

of taking hostages and murdering civilians in areas of armed conflict is contrary to Article 3 of the Geneva Conventions of 1949.[205]

The Derg has shown itself markedly insensitive to the application of these international law criteria and to adverse international opinion. Despite the criticisms of the International Commission of Jurists (see supra), the Derg has not even deigned to refer to the Rule of Law since 1974. The Rule of Law may be an irrelevant Western ideology, yet a socialist justification for truncations of human rights in Ethiopia is rather threadbare. We would therefore propose more pragmatic grounds for disapproving of the Derg's penal policies, based on Kiralfy's assertion, supra. The application of police powers is always essentially arbitrary - even in liberal states - but, beyond that, the

> extent to which the legal system is involved in the process of eliminating opponents is a matter for political judgement. In some situations it may be convenient for the government to give an air of legitimacy to operations of this kind. In others the risk of an adverse decision at the hands of a system which may not share the objectives of the government may be too great to be risked. Whatever means are used, two things are certain: that those in control are likely to use the legal system in whatever way they think will best serve their purpose, and that the eventual outcome is uncertain. General acquiescence in extreme measures . . . cannot be taken for granted.[206]

A Marxist, Alan Hunt, uses similar language to analyse a more general issue:

> The lurch to legal authoritarianism is checked by an equally strong need on the part of the ruling class to maintain the legitimacy of their class rule. This contradiction is not an interaction between two equal forces which smoothly balance each other out; hence there are periods in which there are major shifts towards authoritarianism, but equally there are periods of movement towards more liberal and less coercive forms. The particular result at any point in time is a complex result of the level of the class struggle itself.[207]

A further "lurch" towards authoritarianism has been observed under the Derg, but it rarely assumes Western legal forms and proceeds wholly regardless of the Derg's legitimacy. As traditional and Western-oriented elites have already been neutralised fairly effectively, the state of the Ethiopian "class struggle" does not necessitate massive doses of terror. We can, at the very least, accuse the Derg of exercising poor political judgement over the most basic issue of penal policy - how and when the varying forms of violence are to be used.[208]

A crude and short-term cost-effectiveness may dictate the killing

rather than the detention or trial and imprisonment of enemies, but there are other considerations which a wise politician takes into account. In addition to the obvious humanitarian concerns, the fact is that the use of force leads only to a temporary result. As Edmund Burke noted, a state ruled by force is perpetually to be reconquered. It is comparatively easy to defeat a tyranny which makes all aspects of life permanently dependent on caprice; the clever tyrant conceals the use of terror (political and ideological discipline) by clothing it in law and justice (moral and social discipline) and does not antagonise segments of the populace which are larger than the security forces can control. Perhaps no injustice antagonises Ethiopians more than the arbitrary imposition of a severe penalty in the percevied absence of guilt.[209]

Further, crimes committed in the name of authority adversely affect the quality of life for everyone they touch, thereby slowing the pace at which the qualitative dimensions of development can be attained. In Chapter Two we argued that, while the strategic use of coercion is justified in Ethiopia, the continued use of excessive force postpones further reforms; the 'profits' obtained from exploiting a position of power are consumed by the costs of maintaining ever higher levels of coercion. For example, the development administration reforms we proposed <u>supra</u> could not be implemented so long as an over-criminalisation of the legal system and a political violence claims so large a share of Government's resources and serve only to further paralyse the bureaucracy. Other agencies of social control which have a potentially significant role in development activities – kebelles, peasant associations, voluntary associations, religious organisations, trade unions, schools and the media – are similarly paralysed and starved for resources, while becoming politicised in ways which pose additional threats to human rights in the future.[210] The reduction of violence requires that the Derg bargain with its opponents and negotiate a series of settlements – something it is seemingly incapable of doing.

F. <u>Summary</u>

In this Chapter, we analysed many of the changes in Ethiopian public law since the Revolution and assessed the extent to which Western and socialist legal theories explain and account for these changes. The Derg's approach to law and politics is reminiscent of Stalin's: active use is

made of legal machinery in certain areas while, in others, politically-
sanctioned acts occur without reference to the formal legal system. The
functions of Government in the legislative, executive, judicial and penal
spheres have been radically altered in ways which are only partly
accounted for by the new laws, while administrative law remains unchanged
for the most part and the elaborate system of "lawyer's law" set up under
Haile Selassie has been largely ignored rather than repudiated (see
Chapter Seven). The apparent lack of tension within the resulting legal
system reflects the fact that the Derg refuses to countenance legal
challenges to its actions. Its policies are being disputed by violent
and extra-legal means which call forth bloody repression. The Derg thus
faces a familiar Third World dilemma: the need to balance the immediate
desirability of eliminating a regime's enemies against the long-term
problem of winning support for good government.[211] Ambiguities in the
Derg's use of law are the outcome of an interaction of many factors:
traditional Ethiopian attitudes about law and the exercise of political
power which reflect a militant chauvinism, the continued use of Haile
Selassie's legal style, deep conflicts in Marxist theory concerning the
usefulness of law, an ad hoc experimentation and, above all, poor politi-
cal judgement.

The Derg radically transformed Ethiopian constitutional law but
missed the chance to turn this transformation into "the ideal dialectic
act",[212] through which the moral and ideological values of a new social
order are expressed, the relations among political elites are stabilised,
and political economic and social resources are marshalled and allocated
for development purposes. Needless to say, such a criticism is far re-
moved from the nineteenth century preoccupations of Western constitutional
theories: in the Third World, constitutions should be accelerators of
development rather than brakes on governmental action.[213] Ethiopian ad-
ministration continues much as before, and meaningful mechanisms of
administrative legality (propery defined) and accountability have yet to
be created. As leading Western theories of law and administration prove
irrelevant when applied in Ethiopia, we propose a more appropriate and
development-oriented framework for analysis. The Derg's penal policies,
including the Terror, have failed to achieve the Derg's stated goals, at
an immense cost in human suffering. Since the Derg has remained unmoved

by criticisms based on the Rule of Law and its obligations under inter-
national law, pragmatic justifications of more humane policies are
offered.

We return to these issues in the final Chapter, after examining
other laws and policies in Chapter Six and Seven. Theories of natural
law are rejected in all countries, and the relativistic and positivistic
legal concepts dominant in the West make it impossible effectively to
criticise the unprincipled exercise of power. Individuals and groups
are left with an unenviable choice among blind faith, blind obedience
or an extremely uncivil disobedience in the face of an ebb and flow of
threats. Western jurisprudence provides few answers when, as in Ethiopia,
the interests of groups are not compatible to any appreciable degree.
The best that can be hoped for is that the interests reflected by law,
politics and administration are consistent with the interests of some of
the groups affected, and that others are not dealt with too harshly.[214]
Unfortunately, a legalised brutality disappears only when a government
is convinced that changes in policies serve its best interests.

PART III: Peripheries and Centres

Having seen the least attractive of the Derg's legal changes in the previous Chapter, we will examine several important instances of the creative use of law in the next two Chapters.

Ethiopian underdevelopment, we argued in Chapter Two, is primarily the outcome of transactions which took place within subsistence and small-scale political and economic markets. The progressive accumulation and smooth flow of resources which we defined as ongoing processes of development necessitate a broadening of these markets – the forging of links between centres (urban areas, particularly Addis Ababa, and enclaves of commerical agriculture) and peripheries, as well as among the rural areas.

This kind of approach to an integrated development has been grossly neglected, by many development theorists and certainly by Haile Selassie; the emergence of centres began relatively late in Ethiopia and, while the power of provincial elites was being eroded, only a few narrow and inflexible channels of communication and commerce were extended outwards from the centres. Channels running in the opposite direction, among rural areas and from peripheries towards centres, were consistently suppressed; policies of divide et imperia were pursued nationwide, so that the mutual suspicions of city dweller and peasant and among urbanites and peasant groups would forestall the emergence of a broadly-based opposition to the Throne. An arbitrary exercise of powers emanating from the centres, unrestrained by law or politics, caused resentment and, periodically, the onset of isolated guerrilla-type rebellions within the peripheries. Where agents of the centres managed to penetrate into the rural areas, the economic and political colonialism they brought with them prompted the decay of the traditional socio-economic structures that were discussed in Chapter One. Viable alternatives to these traditional arrangements were never introduced prior to the Revolution, although the impact of authoritarian policies was occasionally softened by the half-hearted paternalism of the more change-oriented ministries and agencies.[1]

The effect of this colonialism was to enrich the wealthy living in the centres at the expense of the peasant, although the overall lack of penetration of central Government and the absence of a national integration imposed a low ceiling on the extent of this enrichment and on the numbers of people who benefitted from it. If larger segments of the public are to be drawn into national development efforts, the effects of

traditional Ethiopian politics have to be reversed through a redistribution of wealth and power, both within centres and peripheries and between them. In the first and second Chapters, we argues that the ways in which people behave in ethnically-fragmented and highly-stratified societies is a fundamental cause of Ethiopian underdevelopment, and that this behaviour must change in certain ways if development prospects are to be enhanced. For the individual, the incentive to develop is ultimately supplied by the perception that he or she can begin to assert a measure of control over life's circumstances. More equitable distributions of wealth and power increase each person's capacity to take control, improving his bargaining power and, through him, that of his group.

Contrary to the views of many economists, a more equitable distribution of resources is not antithetical to a rapid economic growth: the resulting expansion of internal demand for agricultural and industrial goods can encourage domestic production, provide more incentives to innovate and reduce the propensity to import, to indulge in conspicuous consumption and to invest capital abroad or in urban realty. Government would also benefit from an expanded tax base, from a reduction in the opportunities for tax evasion and from a greater measure of public support for its policies. Law's role with regard to these redistributions is, <u>inter alia</u>, "to cease coddling the rich quite so much at the expense of the poor"[2], and to intervene on behalf of the poor and powerless. Laws concerned with the control and use of resources (the 'property' and 'contract' laws which were discussed in Chapter Two) must therefore be reformulated in Ethiopia, if socio-economic equalisation is to proceed.

In the next Chapter, we will focus on the development potential of the rural areas for, as John Cohen and Sileshi Sisaye note,

> the rural social system [of Ethiopia] constitutes, in most cases, the largest population segment and potential reservoir of most of the central society's wealth and power. The task of development, in its most primary form, is the transformation of the rural social system, for change in this system constitutes a basic element and condition of the process of nation building and considerably influences the nature of that process.[3]

This task can only be accomplished, we argue, through a development strategy which is integrated in two distinct senses: Government's rural policies must encompass a coherent and consistent package of all of the inputs needed to fuel rural development; and rural development must, in turn, provide the basis for developing the centres - a topic dealt with

in Chapter Seven. In the absence of these kinds of integration, Ethiopia's centres would, over time, come to resemble the enclaves in, for example, Brazil, where development (as opposed to a purely economic growth) is neither self-generating nor self-perpetuating. In addition to creating additional produce, capital and employment opportunities in the rural areas, an integrated development would foster the growth of the regular agricultural surpluses that are essential to trade and manufacture. If an effective commercial and political linkage of the centres and peripheries were achieved, agricultural surpluses could be exchanged for manufactured goods and used as exports, as the basis for creating industrial capital, for the financing of urban services through the tax system and, last but by no means least, for feeding a burgeoning urban population and as a hedge against rural famine.[4]

As far as can be ascertained from policy pronouncements and programmes which are often vague or even contradictory, it is the integrated and redistributive development strategy we outlined that the Derg has in mind. Those who now hold political power in the centres are prepared to countenance and even consciously to foster large measures of agrarian change; significant quantities of scarce resources have been devoted to appropriate rural reforms, at least prior to the Ethio-Somali War of 1977. These reforms were broadly welcomed in many rural areas, particularly in the South, but other policies of the Derg - and attempts to stimulate "revolutionary consciousness" among peasant in particular - attract far less support. Pragmatic peasants are basically waiting to see whether benefits will materialise, while middle-income groups in the centres (including unionised workers) bear the costs of the new development policies, in terms of increased tax burdens and a decline in living standards and socio-economic expectations.[5] There is some doubt as to whether future conflicts of interest between peasants and city dwellers or between Government and separatist groups will force the Derg to abandon these policies; at the very least, it will be politically necessary to ensure a continuity in the supply of grain to the urban areas. Be that as it may, it seems that the Derg's more development-oriented policies are moving in the right direction although, as Chapter Seven demonstrates, many of its urban policies have been less than successful.

CHAPTER 6: The Peripheries

The overview presented in Chapter One lends support to the proposition that economic development and rural development are virtually synonymous in Ethiopia: 90% of the population are engaged in agricultural pursuits, and they generated 97% of exports and 54% of Gross Domestic Product (GDP) in 1970-71. The latter figure includes the 45% of GDP that was imputed to subsistence agriculture. This degree of national dependence upon subsistence agriculture is extremely high, even when compared to neighbouring East African countries, and leads Gerard Gill to conclude that, for Ethiopia, agricultural development "is not an alternative to industrial development; it is a precondition without which industrial development cannot take place."[1]

The level of productivity within the traditional sector of Ethiopian agriculture is extremely low, and agricultural technology and methods of cultivation are archaic. The total yield from an average farm of 1.5 hectares (3.8 acres, consisting typically of four or five isolated plots) is only 1,000 to 1,200 kg. of grain. This average encompasses wide variations, particularly since the distribution of land, prior to 1974, was considerably more unequal than the distribution of other assets in the rural areas. In the twentieth century, rapid population increases have been accompanied by a growing imbalance in agricultural ecology: pastures and forests have been converted into cropland and erosion has become a major problem in many areas. It is likely that, five to ten years from now, Ethiopia's ecological decline – spurred by the Ethio-Somali War and various insurrections – will be irreversible or reversible only by methods too costly for a poor country. Crop yields on unfertilised land have fallen, despite a more intensive cultivation by an underfed and rapidly-growing peasantry. Since rural capital is a relatively direct embodiment of family labour, the rate of return on capital has been driven down to the low levels realised from other applications of labour. Dispersed settlement patterns and the paucity of towns isolate peasants from low-cost credit, supplies, information, incentives and markets. The manifest inadequacy of road networks and marketing and storage arrangements raise the costs of handling and transport to the point where it is impossible to export the produce of many areas or even to market it in the major urban areas. While a nationwide calorie deficit of 10% makes it imperative that agricultural production be expanded radically, peasants must, of

necessity, aim for little more than self-sufficiency in the face of
drought, floods, pests such as locusts and disease, particularly malaria
in the lowlands and tuberculosis at higher altitudes.[2]

These are some of the major obstacles faced by any kind of community-
level development programme in the rural areas, and Haile Selassie's in-
terest in altering these parameters of rural underdevelopment was, as we
shall see, minimal. There was a marked preference for policies aiming
at an economic growth in the centres, and famine and severe agricultural
lags resulted. The few so-called rural development projects established
by foreign aid donors failed to spread their benefits widely, either
geographically or among local peasants in the lower strata (see infra).
The half-hearted attempts by Government to create an agricultural research
and extension network failed to reach a large percentage of the population.
Local government was unwilling and unable to initiate rural change, given
the fact that the interests of provincial elites were supported tacitly,
and sometimes actively, by the policies pursued by elites in the centres
(see Chapter Three). As a result, the "Grain Basket of Africa", as
Ethiopia has been termed, never achieved anything like its full potential.
Comparing Ethiopia to eight other East African countries in 1974, Gill
found that, with minor exceptions, Ethiopia ranked lowest in grain yields
and fertilizer consumption per hectare, carcass weight of slaughtered
animals, availability of extension workers and the level of agricultural
investment, particularly public sector investment.[3]

We argue that it is the constraints we have outlined in the previous
paragraphs - and the effects of the traditional land tenures that were
outlawed in 1975 - that are the ones relevant to a study of rural Ethiopia,
rejecting the thesis of an Ethiopian peasant fatalism, irrationality and
resistance to change that dominated the analyses of Ethiopianists until
late in the 1960s (see Chapter One). The risks faced by peasant are
large and profitability, in terms of the return received by labour, is
small. Transactions in goods and services are few in number and tend to
be localised episodes in continuing relationships, in which social rather
than economic considerations dominate. The few transactions that pass
through markets are often between, rather than within, social strata and
ethnic groups. In this context, peasants are nevertheless alert to
opportunities and act in a rational manner, but they are weighed down by

the tyranny of heavy agricultural labour. Give the constraints, they strike a balance between maximising the return from available resources and minimising the risk of starvation and of a loss of freedom of action. Once basic needs are assured, it would be irrational for peasants to extend the drudgery of self-exploitation unless new opportunities appeared to be clearly profitable. Under Haile Selassie, elites from the centres and the 'opportunities' they offered appeared to be (and often were) wholly negative quantities to Ethiopian peasants who, like most other peasants, are predisposed towards an agrarian anarchism.[4]

A purposive linking of the peripheries with the centres therefore necessitates a demonstration of benefits flowing towards a peasantry. To succeed, the Derg's policies of stimulating "revolutionary consciousness" (legitimating the new regime) in rural areas must persuade peasants that old injustices have been ameliorated and that new definitions of rural justice are the appropriate ones. If the circumstances under which the struggle for dignity and a livelihood take place are changed (including a more equitable distribution of resources), many traditional social values will also change - slowly but automatically - as would rural social relations (see Chapter One).

I. Man and Land under Haile Selassie

A novelist gave us this portrait of rural Ethiopia on the eve of the Derg's revolutionary declaration of land reform:

> The land is rich . . . but the people poor. The land and the landlords; the land and the church; the land and its rulers are rich. Let the students shout their slogans. Land to the tiller. Collectivize. Let the Americans whisper their advice. Land to the tractor. Commercialize. Whatever the system, the peasant would always be another man's slave.[5]

This fundamental rural poverty is grounded in traditional tenure rules, which were the basis of rural patron-client relations and the organisation of state power, as well as the pivotal points of all other political, ethnic, social and economic relations. Until very recently, the limits of Ethiopian power corresponded with the limits of the collection of land-based tribute payments. For most Ethiopians, land is central to life: "to be landless deprives one of his humanity" runs the Amhara proverb. Ethiopia had one of the world's most complex system of land tenures: it has been estimated that there are 110 distinct tenures in Wollo Province alone. The situation is roughly analogous to that in early

medieval England, except that there is no Domesday Book to assist in
unravelling the mysteries. The underlying institutions and processes
that generated these complexities can, however, be meaningfully general-
ised, and they remained constant for many centuries.[6] An elitest atti-
tude that was often voiced by politicians under Haile Selassie was first
attributed by a Jesuit, Baradas, to a provincial governor in the 1630s:
"Father, these villeins are like camels, they cry and groan when they
are loaded, but in the end they carry the load. . . ."[7] Graham's mid-
nineteenth century observation still held true in 1973: "The prosperity
or adverse condition of a village depends almost entirely upon the
rapacity or moderation of its immediate chief."[8]

Statistics concerning traditional tenures[9] indicate that much
arable land is not utilised, an extreme inequality of land distribution
existed, and the vast majority of peasants cultivated economically un-
viable and fragmented plots. Peasants supported three layers of govern-
ment: local large landowners, the Church, and the central government
that maintained political loyalty through grants of land. These land
grants conferred the power to command the labour of the peasants occupy-
ing it. It was not uncommon for a colonel in Haile Selassie's army to
retire on a 'pension' of 16,000 hectares of government land. The most
extreme instances of large landownership were Ras Mesfin Sileshi's two
million hectares (plus a large chunk of Addis Ababa), and one member of
the royal family's ownership of 900,000 hectares in Hararghe Province.
A more typical example, documented by Patrick Gilkes, is that of an in-
dividual who seized 20,000 hectares in Sidamo Province and used a private
army to force land sales.[10] Viewed from the centre, these and other
land tenure relations were regulated in an extra-legal fashion for, as
Christopher Clapham observed, "there can be few parts of the world where
the daily life of the people is so little affected by written law."[11]

A. Traditional Tenures

All of the major categories of Ethiopian peasant tenures – the
northern and central kinship tenures (rest and rist), the village tenures
found in the North (desa), and the Southern or private tenures – operated
as constraints on rural development, with private tenures constituting
the most significant constraint from the perspective of a national economy
centred on Addis Ababa. In Southern and South-central Ethiopia, where

some 60% of Ethiopia's peasants live, more than 50% of the peasants farmed part or all of their holdings as tenants (see infra), compared with 25% of the peasants in central Ethiopia and about 5% in the North. Most people in the South owned at least some of the land they farmed under the rough equivalent of an Anglo-American freehold, except for the minority group craftsmen (such as blacksmiths and tanners) for whom landowning was prohibited. In an agrarian system that is fairly uncommon in Africa,[12] these tenures formed the base for an extended hierarchy of claimants to the peasant's output which is termed, by consensus, feudal (see Chapter One). Although most of the characteristics of European feudalism were to be found in Ethiopia, the tenant was not legally bound to the land, although population pressure, a poor bargaining position and a lowly status did, in practice, tie the peasant firmly. Further, this feudal pattern of social relations was somewhat fluid and competitive; as a result of ambilineal succession rules, ambiguous land rights, frequent divorces and a judicial willingness to trace succession from exceedingly remote ancestors, peasants in Central Ethiopia cherished extensive claims to land. Upward mobility was perceived as the result of success in an endless chain of litigation over land rights. In reality, the costs of land litigation placed it beyond the reach of most Ethiopians and control over land was based on political power rather than vice versa. The perception of a social mobility did, however, encourage peasants to identify with landlords and decreased the level of tension in relations between strata (see Chapter One). This tendency is reinforced by the absence of great cultural or geographic distances between peasants and traditional elites.[13]

> Gilkes is therefore not altogether correct when he concludes that
>
> the basic contradiction within most of the Ethiopian Empire has been between the landless tenants, small peasant landowners and a growing rural proletariat, and the landowning aristocracy as a whole.[14]

We can, however, unreservedly accept another of his assertions:

> Democratization remains impossible while the conjunction of land and power remains as the fundamental basis of control in the country, and while the system is geared to perpetuating the rights of the landowners.[15]

This statement is equally valid if any form of modernisation is substituted for "Democratization", provided we realise that land reform is a necessary but not sufficient condition for a genuine rural modernisation.

Ethiopia's landed gentry evolved from a military class to a taxation and administrative authority and symbolised a feudal fragmentation of political power resulting from grants of 'service tenements' or 'fiefs' (gult) in lieu of payment and under the ultimate, but often purely theoretical, authority of an emperor. Gult was thus the traditional basis of administration in many parts of the country. The nature of the landlord's privileges varied widely according to the types of service they performed, but the obligations of tenants (or the means of extracting the peasant's agricultural surplus) were largely the same: the tenant gave one-third, one-half or more of his produce to the landlord and performed such services as were required including, in the recent past, bearing arms. The tenant had little incentive to expand production beyond subsistence or utilize modern inputs, since his tenure was insecure and the landlord would claim a large share of any additional produce. The tenant's position was thus defined by custom, law and naked coercion acting in concert and, given asymmetrical social, economic and political relations, a landlord could shift any obligations (including legal obligations) onto his tenants' shoulders. Landlords tended to seek income levels sufficient to live a relatively sumptuous rural life and to maintain their status with a minimum of investment and personal effort - conditions that are not conducive to efficiency and high productivity. The Ethiopian Orthodox Church was the landlord over about 28% of the cultivated land under semon-type tenures, and it had no particular scruples about exploiting peasants. Its authority stemmed as much from landed wealth as from the Orthodox ethic. (Major gult and semon tenures are described in greater detail in the footnote[16]).

The Amharic negressa means both "to rule" and "to collect tribute" and, as this usage suggests, the Amhara, particularly those from Shoa Province, 'colonised' other ethnic groups (see Chapters One and Three). Although patterns of an internal colonialism could be found throughout the country, they were most in evidence in the southern Provinces conquered by Emperor Menelik II late in the nineteenth century. There are few limitations on an authority based upon rapid personal conquest, and Menelik confiscated two-thirds of the land and granted much of it to the Church and, as gult, to his soldiers, particularly the Shoan ones. While the new tenures bore some resemblance to those adopted by other emperors in northern and central Ethiopia, they more clearly reflected the need for a direct and

uncomplicated pattern of government, which would attract colons, reward
soliders, and oppress the conquered peoples in an attempt to maintain
order. Local rulers who allowed themselves to be coopted by Menelik
(ballabats) administered the remaining third of the land. Under their
authority, many customary rules survived including, in some areas, the
sale of land and transfers 'in causa mortis'. Many farmers suddenly
found themselves to be tenants on what they regarded as their own land.
Although some of the worst features of the new tenures have been aban-
doned during the last thirty years, a variety of personal services are
still performed (at least until 1975) and the tenants still feel the
loss of their rights in land keenly. A popular Wolamo proverb says that
"the Amhara and the wolf count sheep they haven't raised.[17] As in other
colonial situations, domination by what is regarded as a foreign power
did little to stimulate loyalty towards a central government.

The further north we move in central Ethiopia (the heartland of
the Amhara), the more rist tenure dominated land use, particularly in
Gojjam Province where the inhabitants have an intense dislike for Shoans.
Rist was an inheritable right of use rather than of ownership: although
farming was individualised, each farm was viewed as a temporary and vaguely
delimited share of corporate land held by a few of the descendants of a
remote legendary figure. Rist rights never died, and they provided each
person with a comparatively wide range of family and kin affiliations
and with a large measure of personal satisfaction. This tenure could be
one of the links between Ethiopian and contemporary Mediterranean peasant
cultures (such as in Sicily), and it helps to explain the individualistic
and conservative character of Amhara peasants. The ambiguous nature of
rist rights often served to foster suspicion and conflict. As little
produce is marketed and as land is virtually the only rural resource that
responds to the application of labour, there is an intensely emotional
and corporeal sense of property; in most parts of Ethiopia, land has not
acquired a monetary value as an asset which can be mortgaged or used to
generate an income through the sale of produce. The burden of paying
tribute was lighter for rist holders than for southern peasants and rela-
tions between lord and peasant were easier, since both usually belonged
to the same ethnic group. Nevertheless, there were, for example, about
375,000 peasants in Wollo Province who had no rist or rest rights just
prior to the 1972 drought, and 'rent' and 'taxes' absorbed up to 85% of

their produce as tenants,[18]

Rest tenure was found in parts of Northern Ethiopia; in Eritrea, Begemder, Wollo and a part of Tigre Province. Rest was often mistakenly termed a communal tenure, despite the fact that it is similar to rist. Under rest, ownership was not perceived as collective and there is little collective working of the land. The land returned to the extended family's 'pot' when the occupier died, however, and a right to claim a share of the family's land was inherited. Another common land use pattern in the North was a village (desa) tenure, in which land was redistributed to family heads every five to seven years, with lots being drawn for land in each of three fertility grades. An outsider could only obtain land if he established himself in the village, and land redistributions did not take account of family size. In recent times, desa grew at the expense of rest because Northerners preferred it and the Italian colonial administration had encouraged it. When compared to other Ethiopian tenures, rest and desa generated excessive fragmentation, greater tenure insecurity and less of an incentive to improve the land in a part of Ethiopia that is relatively overpopulated. Farmers do not, however, view fragmentation as a disadvantage: under traditional modes of cultivation, widely separated plots of differing fertility permit crop diversification and act as a hedge against total crop failure. There were a large number of land disputes, and the older men in desa areas were reluctant to redistribute the land. These tenures were fairly equitable however, fostered a relatively stronger community spirit and served to discourage tenancy arrangements.[19]

The final distinct land use pattern is the nomadic tenures of the Afar, Somalis and pastoral Gallas who live along Ethiopia's eastern boundary and constitute 9% of the population. Their tenures constitute response to life in a harsh environment and consist of group claims to widely dispersed pasturing and water rights which are fiercely defended. The nomads have been all but unadministered by central Government and, until 1975, Government consistently refused to recognise nomadic rights to land, holding that nomads could establish neither an ancient title based on Imperial grant nor the customary rights associated with the known traditional laws and the land tax payments of sedentary agriculturists. Traditionally, nomads were expected to give one-tenth of their herds to the government annually, and this was commuted in 1954 to a

cash payment that was, however, not classified as a land tax and often
went unpaid. The Afar encompass a ruling aristocracy (Beni Amer) and
serf class (Danakalia) who live together in mutual dependence. The Beni
Amer have unrestricted grazing rights while the Danakil must obtain the
local ruler's permission to graze their animals in certain areas. Small
family and kin groups often move independently in wide-ranging searches
for particular needs.[20]

As can be seen from this brief description of traditional Ethiopian
tenures, they constituted a major dilution of development incentives.
Throughout Ethiopia, and particularly in the South, economic decisions,
landlord-tenant and creditor-farmer relations and the environment itself
were totally exempt from the control of peasants, either as individuals
or in groups. Prior to the development of a more powerful centralised
state, lord and peasant had been dependent upon each other for defense
against outsiders and for securing the means of subsistence. Tradition-
al land laws reflect this relationship and the dominance of small-scale
social considerations over purely economic criteria in the organization
of production and distribution. These laws ignore the technological
changes that seldom penetrated rural areas and the fact that the rural
elite was able to alter the terms of subsistence production and obtain
the minimal state protection of their landholdings that enabled them to
shed many of their obligations toward peasants. A sense of injustice
began to emerge among peasants: equivalent value was obviously not ob-
tained when goods and services were exchanged with large landowners.
Elite indifference and a lack of peasant control have prevented the emer-
gence of a social surplus - a regular and reliable food supply in excess
of consumption that can be used to promote development - in a country
with a generally good soil fertility and climate and a relatively low
population density. This exceedingly small margin of survival in rural
Ethiopia is both a cause and effect of the extremely unequal and gener-
ally insufficient access to land, employment opportunities, managerial
experience, credit and capital, and the absence of incentives to acquire
these resources - a state of affairs generated, in large measure, by
traditional tenure rules.[21]

B. Interventions from the Centre

Although several of Haile Selassie's predecessors promulgated laws

relating to land, most of these have been lost and it is fair to say
that traditional tenures held absolute sway until 1944. Since then,
the only laws that had a measureable impact in many of the rural areas
were those concerning the land and livestock taxes and the 1967 agri-
cultural income tax that were discussed in Chapter Three. The effect
of these taxes was further to exacerbate economic inequalities in the
rural areas: about 75% of the revenue realised under the agricultural
income tax was obtained from peasants with incomes of less than Eth.
$140 per year (U.S. $1 = Eth. $2.08).[22]

Haile Selassie felt the need to placate foreign aid donors and
his educated elite under circumstances in which land reform and rural
development would have been risky: new hopes and fears would have been
stirred up in return for few short-term benefits accuring to a tradition-
reared politician. He also had to obtain additional revenue without
antagonising large landowners, some of whom were becoming commercial
farmers. The chosen solution to these problems was the manipulation of
the symbols of agrarian reform in ways which forestalled meaningful
change. Western (especially American) advisors were particularly eager
to urge minor tax adjustments as perpetual preconditions to more thorough-
going reforms. As a result, Myrdal's "soft state" was extended to the
rural areas; it was soft on the gentry and on the fulfillment of planning
targets, but far from soft towards an impoverished peasantry. The ad-
ministration of land reforms, community development programmes and
regional 'development' projects proceeded within the framework of tradi-
tional politics, propped up by foreign aid.[23]

An Agricultural Tenancy Bill was presented to Parliament in 1968.
Under it, model lease covenants were binding on the parties, rents payable
in kind could not exceed one-third of harvested crops, and landowners
could not terminate leases without the consent of a Tenancy Tribunal.
The Bill was passed by the Chamber of Deputies, the Senate rejected it,
and a Joint Session of Parliament failed to iron out the differences.
Successive Parliaments failed to pass the Bill, which began to attract
radical as well as conservative opposition.[24] Haile Selassie could have
promulgated the law by decree (see 1955 Constitution, Art. 92) but failed
to do so, and the only substantive provisions relating to rural land
tenures were therefore to be found in the Civil Code of 1960.[25]

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A first and tentative attempt to regulate agricultural tenancies
is found in Articles 2975-3018 of the Code. These provisions treat the
lease of land as simple contractual relationship, leaving the parties
free, with minor exceptions, to determine the nature of their agreement.
Many rules apply "unless otherwise agreed or provided by custom", or
state that "nothing shall affect any custom to the contrary". These
express exceptions to a general repeal of customary laws (Art. 3347(1)
- see Chapter One) apply to: determining who takes all major decisions
concerning the exploitation of the land, presumptions as to the rent
owed, the payment of rent in kind, sub-leasing and the duration, and termin-
ation and renewal of leases (Arts. 2977, 2990, 2997, 3002-4 and 3006).
Given the extreme inequalities in the distribution of land in Ethiopia
and gross differences in the bargaining power of landlord and tenant,
this freedom of contract could only be genuinely exercised by the few.
In other words, feudal (or patron-client) tenure relations could be
perpetuated under the guise of a neutral facilitative law.

The Ministry of Agriculture drafted model leases, but these could
be expressly negated (Art. 2976) and were in practice simply ignored.
No minimum or maximum duration of the lease was specified; a lifelong
feudal type of relation was therefore still possible under the Code.
Most leases were, in fact, unwritten and of indefinite duration, and
Article 3006(1) stated that they would be deemed to be for four years,
terminable under the Code by giving six months' notice prior to the
expiration of the term (Art. 3003). This provision did not, however,
"affect any custom to the contrary" (Art. 3006(2)) and the relevant
custom was that the landlord could terminate the lease at will (to
borrow a concept from English land law). In recent years, many tenants
were evicted on very short notice, as a result of the spread of agri-
cultural mechanisation or of the landlord's desire to collect leasing
premiums from new tenants. Since a continuing insecurity made tenants
unwilling to invest in the land, provisions entitling them to compensa-
tion for improvements (Arts. 3016-18) were largely irrelevant.

Under the Code, the ceiling on rental payments in kind was three-
fourths of the crop; and the landlord was entitled to half where both
the lease and custom were silent as to rental payment, although the
tenant was theoretically allowed to retain that which was necessary for
subsistence (Arts. 2990-2). Although Article 1360 formally abolished

personal servitudes in relation to land, the absence of enforcement
mechanisms meant that tenants continued to perform a variety of personal
services. The Civil Code did little to alter customary rules, and most
of the people concerned were totally unaware of the Code provisions. If
Code rules were known, the courts could be counted on to interpret them
as wholly congruent with traditional law: in _rist_ areas for example,
claims to land based on succession from an exceedingly remote ancestor
were preferred to those recognised under the Civil Code,[26] In any event,
this purely facilitative law was not intended to redress longstanding
imbalances.

In the only daring innovation he attempted, Rene David, the Civil
Code draftsman (see Chapter Seven), modelled provisions designed to regu-
late the collective exploitation of property under "communal" (and no-
madic) tenures on the _Kolkhoze_ rules found in the Soviet Agrarian Code.
In attempting to introduce collectivised agriculture where non had
heretofore existed, David seemed to share the misunderstandings of many
others concerning the nature of tenures in northern Ethiopia. His pre-
liminary draft was rejected by the Codification Commission that was dom-
inated by the traditional elite, and replaced by Articles 1489-1500.
Starting from the proposition that an owners could use and exploit his
property as he saw fit (Article 1205), Article 1489 recognised the possi-
bility of land ownership by an "agricultural community," but fails to
define this concept. These vague and poorly thought-out provisions
were never really applied, and have received a detailed analysis from
others.[27]

Although the population density of Ethiopia is relatively low,
there are areas in which population pressure is very heavy and the ex-
treme inequality in land distribution meant that some people were totally
landless. Little was done to alter this situation. A 1952 Order which
is not recorded in the _Consolidated Laws of Ethiopia_ allowed landless
and unemployed people to claim 20 hectares from the huge stock of
Government land, as well as permitting officials in the military, police
and civil service to claim one _gasha_ (40 or more hectares). Although
Government officials, including many members of the educated elite, were
quick to seek land under this Order or, more simply, through a direct
gift from the Emperor, few peasants were aware of the existence of the
Order or were able to afford the lengthy procedure and bribery of local

officials necessary to establish a claim. From 1942 to 1970, Government land grants totalled five million hectares; 80% went to officials and 20% to the landless and unemployed. Only 400,000 hectares were granted under the 1952 Order, however. An Order for the Distribution of State Domain Lands, drafted in 1972, was never promulgated. It would have provided for the leasing of Government lands, subject to the condition that particular crops be cultivated under specified conditions. There was a probationary period of three years and no ceiling on holdings, presumably to enable wealthy people to acquire large concessions.[28] Several development projects, such as WADU and AVA (discussed infra), experimented with resettlement programmes, but resettlement on any large scale would have overwhelmed the modest financial and administrative capabilities of Haile Selassie's regime.

C. Agrarian Administration

The Ministry of Land Reform was established in 1966 and empowered to prepare, recommend and implement reforms, alter taxing arrangements, distribute Government lands, and supervise settlement programmes, land registers and surveys.[29] It was, until 1975, an isolated and low-status Ministry, and many of its functions were in fact performed by the Ministry of Interior. The Land Reform Ministry tended to attract modernising personnel who were allowed, in the absence of specifically-defined tasks, to write a plethora of reports which, they were told, would be very carefully considered. By 1968 they had developed an ambitious programme of tenancy reform and registration, cadastral surveys and land registration, and a progressive taxation of unused lands. These policies were complemented, in 1970, by demands for the abolition of patronage land grants and for a subsidised resettlement of the landless.[30] Nothing came of this, apart from the 1968 Tenancy Bill (supra) that was refused by Parliament.

The First and Second Five-Year Plans favoured an individualisation of tenure, while the Third Plan ignored tenure issues. Agriculture accounted for only 6% of public investment during the 1960s, and a strategy of granting commercial concessions over limited areas was pursued. For rural peasants, extremely attenuated programs, including the half-hearted promotion of cooperatives and self-help projects, were offered by the low-powered Ministry of Community Development. These policies

could never have had a marked impact on rural Ethiopia, reflecting as
they did a concern for preserving established rural relations and for by-
passing policies aiming at a socio-economic equalisation. Haile
Selassie's programmes relied on a channelling of innovations through
traditional leaders, a "betting on the strong" which only served to
exacerbate inegalitarian power structures. Peasants were regarded as
inferiors who must be told what to do and who were expected to work
without pay on projects which benefitted rural elites, under the super-
vision of indolent and comparatively wealthy agents of the centre.[31]

Proclamations, orders, and regulations promulgated under Haile
Selassie successfully evade the issue of what, precisely, administra-
tors are expected to do in order to promote rural development. For
example, Ginsberg and Smith stress that an Ethiopian rural development
is heavily dependent upon an educational system which is committed to
social change, rural needs, and sensible planning priorities.[32] Under
Haile Selassie, this was simply not the case; the educational system
followed a Western model in the pursuit of upward mobility for the
privileged few, who consistently demanded an urban lifestyle. There
were no strenuous attempts to achieve the Five-Year Plan targets related
to education. One reason for this state of affairs is that the law
governing educational administration is vague and irrelevant to rural
development. The Minister of Education must "encourage and develop
general education"; establish public schools; license private schools;
and supervise curricula, students, and teacher training. No other
relevant law exists, apart from an unknown quantity of unpublished and
often-ignored internal regulations! It is therefore impossible to co-
ordinate education with other rural development efforts or to assess
the Ministry's development activities in light of legal obligations.
Before these kinds of gaps can be filled, many careful policy decisions
must be made (see Chapter Five). In 1974, the Derg announced a policy
of free and development-oriented education for everyone, but the impact
of this policy (if any) will not be felt for some time.[33] Applying an
analysis similar to that of the Ministry of Education, we find that those
Ministries directly concerned with rural development - Agriculture,
Community Development, and Interior - have vaguely-defined standards of
performance which bear no relationship to the achievement of the plan

priorities, or, indeed, to any other aspect of rural development,[34]

The organisational framework of "semi-autonomous" agencies deal-
ing with important Ethiopian agricultural exports, such as the Coffee
Board and the Grain Board and Corporation, suggests that they were
designed to avoid some of the inadequacies of the purely bureaucratic
Ethiopian organisations (see Chapters Three and Five). They were granted
broad powers to process, store, market, sell, export, license, and con-
trol production and price. Criteria concerning explicit goals and the
means of achieving them were, however, lacking once again: there is no
requirement that a high volume of quality commodities be provided for
export and domestic consumption. Governmental interventions in the
market were generally weak and inconclusive. The Grain Corporation,
for example, suffered from a shortage of capital and an absence of con-
sistent pricing policies; it also lacked adequate market information,
the administrative capacity to make small, isolated purchases and the
desire to expedite the delivery of foodstuffs to urban areas other than
Addis Ababa. The Corporation frequently failed to cover its costs and,
because it accounted for only 5% of the wholesale grain trade, it failed
to influence prices so as to favour peasants,[35]

D. 'Development' Projects

The absence of general laws governing Ethiopian rural development
projects has meant that conflicting policies have been pursued by various
projects, in line with the interests of foreign aid donors and local
project employees. Disparate policies include outright gifts of income
(AVA), raising the political consciousness of peasants (CADU), and push-
ing poor peasants off the land (Ada). The Ada Awraja Project, for ex-
ample, was supposed to test the transferability of a low budget "cata-
lytic" project design, through which rural development efforts could be
diffused more widely. When expatriate Project employees decided, for
reasons of their own, that this goal was not feasible, the emphasis was
switched to experiments with least-cost combinations of inputs and infra-
structure. The latter research is being conducted throughout Ethiopia,
while the former is a vital link between existing development projects
and a broader rural development. Explicit criteria could have prevented
this switch and forced Project employees to perform their tasks more
thoroughly. There is also evidence to suggest that projects such as the

Awash Valley Authority (AVA) performed some of their functions in an
unconstitutional manner under the (suspended) 1955 Constitution,[36]

The failure to achieve the purpose for which the Ada Project was
established is so significant because Ethiopian projects served to place
all of the available eggs (scarce resources, the status of bureaucratic
agencies) in a very few baskets. The short term success of the projects
was pursued at the expense of a long term diffusion of development, yet
the projects were unable to pay their own way, much less provide a re-
turn on capital which could have been used to fund other projects. Most
projects were located on roads rather than where most of the peasants
live (and starve). They purported to encourage the individual farming
of uneconomic plots, rather than a collectivisation which would have
been politically unacceptable under Haile Selassie. The result was, in
fact, the acceleration of agricultural mechanisation in project areas
and, often, the eviction of peasant smallholders. Nevertheless, the
fact that project administrators had relatively clear and visible ob-
jectives - and many of the resources necessary to achieve them - meant
that the standard of efficiency and competence in project administration
was higher than for Ethiopian administration generally.[37] We will briefly
examine the three main projects; CADU, WADU and AVA, as well as a broader
approach to stimulating productivity introduced in 1970, the MPP.

CADU, established in The Chilalo Awraja of Arussi Province by the
Swedish Development Authority in 1967, aimed at a general socio-economic
development, emphasising participation by low-income farmers, improved
employment opportunities, reserach on inputs and intermediate technologies,
and the training of local Project employees. Significant achievements
of the Project include the introduction of dairy farming, the development
of high-yield seed varieties and raising grain yields from 1,000 to 2,100
kg. per hectare - and a not unrelated radicalisation of Project employees.
The estimated net revenue from the use of fertiliser and hybrid seeds
is Eth. $126 per hectare annually, and credit was made available on rela-
tively easy terms to Chilalo residents. (The collateral and security
requirements for credit available in other regions from the Agro-Industrial
Development Bank had the effect of making 80% of Ethiopia's peasants in-
eligible; rural money-lenders charge an average annual interest rate of
110%). Only 36% of the loans in Chilalo were repaid on time prior to the
Revolution, and large landowners had the worst repayment records. They

relied on their political power and the suborning of judges to resist
the Project's demands for repayments. Larger landlords tended to dom-
inate the new cooperatives and credit resources, applying for benefits
through their tenants. Uma Lele concludes that CADU's policies prevented
the emergence of a sense of financial responsibility, and that a local
involvement in financial matters would have been the only means of escape
from CADU's benign but suffocating paternalism.[38]

WADU was established in 1970 in Wolamo Awraja, Sidamo Province, by
a variety of foreign donors. The major goals of WADU differ significantly
from those of CADU and include: promoting a shift from subsistence towards
cash cropping, raising the cash incomes of highland farmers, resettling
1,750 families in the virtually unoccupied lowland areas that had been
cleared of malaria, and increasing the tax revenues received by Government.
If the high costs of clearing and draining the lowlands and settling the
farmers are ignored, the net revenue realised from using improved inputs
in lowland agriculture is Eth. $200 per hectare annually. Despite short-
ages of staff and research facilities, impressive increases in maize
yeilds were recorded in Wolamo. In contrast with the partial successes
recorded by CADU in stimulating social change however, WADU was not de-
signed to promote social change and largely failed to do so. Neverthe-
less, provincial elites opposed the extension of the Project, in spite
of their being its prime beneficiaries. Just prior the Revolution, there
was one agricultural extension agent for every 335 farmers in WADU and
1:470 in CADU, while extension services were virtually unobtainable out-
side the Project areas.[39]

The Awash Valley Authority contains a variety of commercial con-
cessions that were granted to: a Dutch sugar refinery (HVA -- see Chapter
Seven and infra), an Italian firm exporting fruits and vegetables, a
British cotton consortium, a Japanese animal fodder concern and American
cattle-breeding companies operating in conjunction with an AID livestock
project. (These concessions were nationalised by the Derg in 1975). The
profitability of irrigated agriculture in the Valley was extremely high:
the cotton concern, for example, was reputed to be the most profitable
of its kind in the world. The combined incomes of the concessions dur-
ing the 1972 growing season totalled Eth. $120 millions, with future
incomes estimated at $600 millions. The land utilised by the concessions
was obtained by excluding nomaid herdsmen. As a gesture towards

compensation, a few of them were settled in the hope that they would
cultivate cotton. When they declined to do so, they were paid a high
'imputed' income and more labour was brought in from outside the Valley.[40]

These and other projects were costly in terms of finance and
trained manpower, and they could never be replicated nationwide. The
Minimum Package Program (MPP) was therefore funded by a variety of donors
to provide that minimum of services required by peasants. The Program,
and CADU and WADU as well, came to be supervised by the Extension and
Project Implementation Department (EPID), created within the Ministry
of Agriculture in 1971. Ten new MPPs were started each year and five
extension agents were assigned to each Package area, encompassing 10,000
farmers living in close proximity to an all-weather road. Each exten-
sion area has a marketing centre and a demonstration plot, and agents
sell fertilizer and seeds on credit and, prior to the Revolution, en-
couraged the formation of producer's cooperatives without promoting a
large-scale social mobilisation. In one sense, the MPP was a success:
from 1971 to 1975, its fertilizer sales rose from 9,500 to 78,700 quintals
and seed sales from 222 to 3,175 quintals (1 quin. = 50 kg.). Many of
these sales were, however, simply another obligation imposed on tenants
by their landlords, who sold the bulk of the increased produce on their
own account. The paucity of all-weather roads and trained extension
agents continue to act as major constraints on the MPP strategy,[41] now
undertaken by Government in conjunction with peasant associations (infra).

E. Commercial Agriculture

For Michael Stahl, the commercialisation and mechanisation of agri-
culture consitutes a "dynamic" which competed with the MPP for scarce
resources under Haile Selassie. Commercialisation began in the 1950s in
the Awash Valley and, during the 1960s, in the areas surrounding Addis
Ababa and in the coffee plantations of Kaffa Province. Such agricultural
productivity gains as were recorded in Ethiopia during the 1960s and
early 1970s were almost entirely the result of the mechanisation and
commercialisation that were fostered and, to a lesser extent, funded by
AID, FAO and the World Bank. As Alan Hoben notes:

> the introduction of green-revolution inputs and mechanized
> farming during the late 1960s [allowed] commercial
> farming [to become] a more attractive investment than could
> be found in the urban or industrial sector. Weekend farmers

from Addis Ababa, the businessman and bureaucrat alike, began leasing land from landlords in the fertile and accessible regions. . . .[42]

For the most part, the nobility did not take the initiative in commercial agriculture: cultural attitudes contained a prejudice against commerce, most tenants were still paying their rents, and the absence of nearby market towns or adequate transport reduced the potential profitability in outlying areas. As in eighteenth century France, an agrarian capitalism penetrated the accessible rural areas by feudal means - politically rather than economically. Provincial elites were ideally situated to benefit from these trends without exerting themselves; Gunnar Myrdal could have been writing about the rural areas surrounding Addis Ababa when he contends that

> the big landlord in South Asia often managed to enjoy the prerogatives of a capitalist landlord without giving up the privileges of a feudal chief. At the same time, he avoided nearly all the obligations or both. [He] does not typically invest in improvements in land, nor does he contribute to the working capital of his tenants beyond sometimes supplying part of the seed.[43]

Commercial agriculture in Ethiopia, Patrick Gilkes argues, was

> essentially turned towards import substitution, at high cost to the consumer, or to cash crops for exports, using mechanisation procedures that tend to benefit the larger landowners alone. . . . There appears to have been a growing alliance between the feudal and commercial forces that has undercut the dynamics that would otherwise operate for change within the Ethiopian State.[44]

These "commercial forces" included multinational agribusinesses and foreign nationals who had acquired Ethiopian citizenship - chiefly Italians, Greeks and Armenians. While strengthening the status quo economically, these businessmen were incapable of becoming a domestic bourgeoisie and of demanding political change. The HVA Sugar Company was perhaps the most striking example of non-development through agribusiness. One of Ethiopia's largest employers, HVA produced sugar as an import substitute; the result was an annual loss in Governmental tariff revenues of approximately Eth. $9.5 millions. Despite the abolition of high transport costs and import tariffs, its monopoly position enabled HVA to increase the retail price of sugar by 30% from 1965 to 1975, in response to the dividend demands of Dutch shareholders. These dividends represent, at least in part, a net capital outflow of seven or eight times

the total wages paid to Ethiopians; while additional employment was not
generated and wages failed to rise, output per man/hour increased 50%
over the decade and the 2% of the labour force that received 37% of the
wages remitted most of their wages abroad.[45]

The impact of commercial agriculture, in terms of the amounts of
labour absorbed or taxes paid, was relatively small, Government subsi-
dised the use of fertilisers, improved seeds and pesticides, turning a
blind eye to the fact that, under agreements with foreign aid donors,
a large percentage of these inputs were to be supplied to small holders
only. Tractors and fuels were also subsidised, and each new tractor
prompted the eviction of about twenty tenant families, thereby creating
additional unemployment and inequalities in income distribution. The
Derg is obviously keen to reverse these effects of previous policies,
yet it has fallen heir to infrastructures, field layouts, and machinery
designed for large-scale operation.[46]

* * * *

Commercial agriculture was but a drop in the bucket; to sum up our
discussion, traditional tenures were all but unaffected by Government's
rural policies and the laws enacted, with great fanfare, from 1944 to
1974. The investments by Government in development projects and land
reform which we have described were miniscule in relation to the need, in
terms of finance political commitment and legal resources. Legal man-
oeuvres, far from promoting rural change, served only to further solidify
peasant suspicions of Government's intentions. As a result, rural people
continued to rely on traditional land laws which are based on outmoded
social and production relations. Agricultural and land tax laws promoted
neither adequate revenue collection nor, as advocated, modest land redis-
tributions, rationalised land use, incentives to expand production and
an expansion of the monetised sector of the economy. Government used
few resources to communicate the Civil Code provisions that were, in
effect, a reification of the status quo. As such, it is not surprising
that the Code failed to improve the socio-economic position of tenants
and of "agricultural communities".

Any law which contained a semblance of genuine reform was either
watered down, never promulgated or, in the case of the 1952 Order promis-
ing land to the landless, not communicated to those affected. A conserva-

tive Parliament, consisting principally of large landowners and heavily
under Haile Selassie's influence, could be relied upon to deflect reforms,
leaving the implementors - often equally conservative local rulers and
administrators - to complete this task, even in the face of Government's
revenue needs. These land 'reform' failures were one of the Derg's major
justifications for its prorogation of Parliament (discussed in Chapter
Five) and its intense distrust of local administrators. Contrary to the
views of many of the older Ethiopianists, Haile Selassie was not committed
to land reform: he could have, for example, promulgated the 1968 and
1972 draft Bills as Decrees under Art. 92 of the (suspended) Constitution
of 1955 rather than wait for a puppet Parliament to proclaim them. When,
in 1972, the Government of Sweden refused to finance the second stage of
CADU until substantial land reforms were enacted, Haile Selassie could
only throw up his hands and complain about Parliament. In the end,
Sweden gave the money.

ii. The Rural Revolution

The preceding Section attempts to trace the patterns of rural under-
development in twentieth century Ethiopia. On the eve of the Revolution,
most Ethiopianists agreed with T.J. Goering that land reform "is the
virtual _sine qua non_ of broadly-based employment and output gains in
highland Ethiopia. . . ."[47] It can be argued, for example, that the
annual increase of 7% in Ethiopia's urban population, although not terri-
bly large by African standards, represents a "protest of the feet" against
rural living conditions fostered under traditional land tenures.[48] The
centrality of land reform was keenly felt by the Ethiopian intelligentsia,
for whom cries of "land to the tiller" encapsulated a vague ideology of
development in which agricultural policies and detailed implementation
strategies receive less emphasis. "Land to the tiller" is the universal
Agrarian Creed found in the Old Testament and the French Revolution, the
writings of Proudhon and Gandhi, and the philosophy underlying _kolkhozes_,
Kibbutzim and land reforms in Taiwan.[49] It is so vage as to be meaning-
less and, while the 1975 Proclamation served to absorb "land to the tiller"
as a part of _Ethiopia Tikdem_, the Derg's subsequent policies suggest
that an integrated rural development will be pursued.

Much of the proceeding Section is cast in the past tense to indicate
those tenures and laws that are _tentatively_ or theoretically abrogated

in rural Ethiopia, under the Derg's Public Ownership of Rural Lands Proclamation.[50] A brief 'legislative history' of this March 1975 Proclamation is presented in the footnote,[51] and shows that successive drafts display the same leftward march in the Derg's thinking that occurred in the area of constitutional law (see Chapters Four and Five). To the extent that this Proclamation remains unimplemented, unenforced or unenforceable, traditional tenures will, of course, continue to influence events in rural Ethiopia. Given the problems related to the legal penetration of the rural areas (see Chapter Two) and the numerous revolts that occurred in opposition to land reform (infra), traditional tenures have not disappeared overnight, at the stroke of a pen.

The Derg was unwilling and unable to grapple with the intimidating complexities of traditional tenures, and simply stated, in Article 3(1) of the 1975 Proclamation, that: "All rural lands shall be the collective property of the Ethiopian people." Thus, pre-existing landlord and tenant relations and individual, individual-ancestral, village, and nomadic tenures are theoretically abolished, along with related rental payments and servitudes. The meaning of this conversion to collective property is not altogether clear, although peasant associations in the South are to redistribute ill-defined "possessory rights" in the land.[52] Article 32 repeals inconsistent laws without naming them; many of Haile Selassie's 'reforms' therefore disappear. Peasant associations are now to perform a variety of functions, and any underlying reason for the agricultural communities rules found in Civil Code Articles 1489-1500 vanishes. Likewise, land lease provisions found in Articles 2975-3018 are no longer meaningful, grounded as they are in the concept of an exploitation of property by a private owner. Legal discriminations against nomadic tenures, which were considered to be within the State Domain under interpretations of Article 130(d) of the (suspended) Constitution of 1955 and Articles 1146-59 and 1194 of the Civil Code, are eliminated. The 1944 Land Tax Proclamation[53] was based on private land ownership and is therefore repealed, although the Agricultural Income. Tax Proclamation[54] remained in effect until January 1976, since income is not dependent upon ownership. Finally, the military, police, civil servants and landless peasants can no longer claim ownership of a piece of Government land on the basis of the 1952 Order.

A. Land Reform

Only a brief review of a complex land reform can be offered in this
Chapter, and the reader may wish to examine the other analyses cited in
the footnote.[55] While the legal format of land reform resembles the one
created under laws enacted in Yugoslavia from 1945 to 1953, Ethiopia's
is far more ambitious than the land reforms attempted in Yugoslavia or,
for that matter, in Tanxania or China.[56] Prior to the 1975 Proclamation,
the Derg's activities were designed to secure an urban power base;
peasants and the politics of numbers were tacitly irrelevant to a con-
tinuing paternal, factional and urbanised political style, Through land
reform, the Derg hopes to build a power base among the peasantry and to
make. its revolutionary changes irreversible. Depriving traditional
elites of a primary source of wealth and power in rural areas - land -
the Derg sought to drive a wedge between these elites and the peasantry,

There is also a strain of high idealism in the Derg's thinking and,
as the Prologue to the Proclamation indicates, the Derg recognises the
centrality of land reform to a broadly-based rural development:

> a person's right, honour, status and standard of living is
> determined by his relation to the land; . . . it is essential
> to fundamentally alter the existing agrarian relations so that
> the Ethiopian peasant masses . . . may be liberated from age-
> old feudal oppression, injustice, poverty and disease, and in
> order to lay the basis upon which all Ethiopians may henceforth
> live in equality, freedom, and fraternity. [In] order to in-
> crease agricultural production and to make the tiller the owner
> of the fruits of his labour, it is necessary to release the
> productive forces of the rural economy by liquidating the feudal
> system . . ., to provide work for all rural people . . , [and]
> to narrow the gap in rural wealth and income. . . .

In one of the shortest and most sweeping of contemporary land reform
packages, the various Ethiopian tenures and tenancies are replaced by
"possessory rights." Under Articles 4 and 5, land must be cultivated
personally and transfers of land are prohibited, except for succession
by the wife or children, with minor children preferred. No attempt is
made to sever the link between landholding and kinship that was deemed
inconsistent with rural socialism in China. Beyond a simple possession,
apparently at will, the other common incidents of a land ownership -
legally-guaranteed rights of use and management and to income, the capi-
tal and broadly to transfer the land - have apparently been abolished in
Ethiopia, although the position is far from clear. Wide variations can

be found under the rubric of a "public" ownership of land, and it is
ironic that David's Kolkhoze provisos were deleted from the Ethiopian
Civil Code in 1960, since the occupiers of land now have legal rights
and obligations similar to those of kolkhoze members,[57].

Which benefits flow from Ethiopia's rural land nationalisation
policy that could not have been obtained from a more popularly acceptable
and less radical step, such as confiscation and redistribution of estates
exceeding 80 hectares? Aside from the very real possibility that Govern-
ment will attempt to control peasants politically through their land,
there is only one benefit: as the holder of the ultimate title to all
land, Government can require certain patterns of use; cultivation (whether
individual or collective), conservation, harvesting and marketing as pre-
conditions to continued possession of the land. The 1975 Proclamation
makes slight mention of this policy, which has found so much favour in
Tanzania. Article 29 empowers the Ministry of Land Reform to "issue
regulations to give effect to the purposes and provisions of this Procla-
mation," and peasant associations are required to follow such land-use
directives as are issued (Art. 10(2)).

If land-use regulations are to be created for Ethiopia, they should
be adopted quickly so that the lengthy implementation process can begin
before peasants assert land-use notions of their own. A serious problem
would then remain: previous experience indicates that it would be vir-
tually impossible to enforce use regulations by taking away the peasants'
land. In the absence of effective regulations, however, the nationalisa-
tion of land is in large measure irrelevant, from the standpoint of
development; the adoption of innovations is not made a quid pro quo of
a security of tenure. Peasant associations might as well redistribute
or merely recognise the 'freeholds' that would be greatly preferred by
peasants since, without appropriate governmental regulation and super-
vision, security of tenure is totally dependent on the quality of politics
in a local peasant association.

B. Peasant Associations

Under Articles 8 and 10 of the Proclamation, local peasant associa-
tions are established, and their functions include: administering and
conserving public property; establishing "villagisation programmes" and
marketing, credit, labour, and related cooperative associations; and

building, with Government assistance, clinics and schools. There is no automatic right to membership in these associations which, in southern Ethiopia, "redistribute" nationalised land in equal plots that are no larger than ten hectares (25 acres) per family. This maximum farm size helps to satisfy land hunger, promotes egalitarianism, encourages increased production on existing land rather than the desire to acquire more land and represents a total repudiation of traditional tenures.[58] A 25-acre farm is, however, sub-optimal from the standpoint of introducing the agricultural technologies of developed countries; this will have to be done – if at all – on a cooperative or collectivised basis.

In Northern and Central Ethiopia, peasants are simply accorded "possessory rights over the lands they presently till" (Art. 19), and their associations have the "main function" of promoting cooperative farms (Art. 23). The Derg is obviously reluctant unduly to irritate the volatile Gojjamis and Eritreans, or to undertake extensive supervisory responsibilities in provinces where its mandate is most open to dispute. Also, a redistribution of land is not as essential as it is for southern farmers: there are fewer tenants in northern and central Ethiopia, many of these tenants owned part of the land they tilled, and absentee ownership and inequalities in the distribution of land were not as marked. If Article 19 is fully implemented, however, it would freeze the transitory patterns of landholding that arose under kinship and village. (rist, rest, desa) tenures just prior to the Revolution. In the long run, this policy will cause those communal procedures that are used to mediate claims to land, and which the Proclamation seeks to exploit, to atrophy.[59]

Article 24 abruptly shifts government policy by recognising the possessory rights of nomadic peoples over customary grazing and agricultural land. Optimistically, associations of nomads are proclaimed under Article 26, in order to promote cooperative grazing and water use – the major sources of conflict among kin groups in arid areas. Ultimately, political control over nomads can only be achieved by permanently locating them and settling colons in their midst. The Derg has shown little interest in these kinds of policies to date, and the Somali invasion of the Ogaden has forestalled reforms there.

It was obvious from the beginning that the provisions of the land reform Proclamation (No. 31 of 1975) relating to peasant associations

organised them in too vague a manner. Their functions were clarified and
expanded by Proclamation 71 of December 1975,[60] and they became a signi-
ficant cog in a new and decentralised system of local administration. A
peasant association must be registered with the land reform Ministry and
is accorded legal personality, the power to sue and to issue and implement
internal regulations and the liability to be sued, so as to "enable
peasants to secure and safeguard their political, economic and social
rights" and to "work collectively".[61]

Functionally specialised cooperatives are envisaged, which are some-
what similar to Tanzania's. They are distinct from each peasant asso-
ciation, and Government assistance is only promised with regard to "con-
struction" and land redistributions. If these cooperatives are to bear
the brunt of rural development activity, they will have an uphill fight
to establish themselves. Group activities have never been voluntary or
cooperative among many of Ethiopia's ethnic groups and, when they took
place, traditional elites usually organised them. Prior to the Revolu-
tion, the self-help activities of traditional voluntary associations
(equbs, edirs, mahabers, waqfs) had a significant impact in a few areas,
particularly in the South. Political and economic activities of volun-
tary associations were, however, actively discouraged under Haile Selassie,
and the leadership of the associations was dominated by provincial elites.[62]
The Derg has attempted to co-opt these associations, but displays little
interest in fostering new ones.

Many of the functions of voluntary associations are now performed
by the service and producers' cooperatives created under Proclamation 71;
another Proclamation concerning their organisation and administration is
forthcoming (Art. 9). Service coops are voluntarily created by from
three to ten local peasant associations (without affecting their legal
personalities) and are loosely supervised by the relevant woreda (district)
peasant association (discussed infra). In addition to functions like
those of the local peasant associations, service coops shall: "procure
crop expansion services", tractor services, flour mills and improved
agricultural implements; market its members' produce "at fair prices";
grant loans "at fair interest rates"; provide facilities for storage,
savings and the supply of consumer goods; promote cottage industries;
provide education in "socialist philosophy" and cooperative management;
and to enhance political consciousness and to encourage the formation of
producers' coops (Art. 7).

These producers' cooperatives are "established voluntarily by peasants [sic] associations", to place the "main instruments of production" under the "control" and/or the "ownership" of society and to form collective working groups for mutual and social benefit. No compulsion has in fact been used to establish these (somewhat Chinese-style) coops, a fact that led Peter Enahoro to observe that the Revolution is less rigid than it presumes; the Derg's ideology thus attracts an unncessary odium.[63]

Producers' coops may sue and be sued and issue internal regulations, but as a result, perhaps, of sloppy draftsmanship, they have no separate legal personality or authority to implement regulations. Their other functions include: helping "poor and middle peasants" and advancing them to leadership roles; enhancing political consciousness, democratic rights and unity; abolishing exploitation; raising production and improving the instruments of production; and paying members according to the quality and quantity of their work, subject to the maintenance of a "special welfare fund" (Art. 8).

In addition to clarifying matters of general administration somewhat, Proclamation 71 provides that members and leaders of peasant association "defense squads" are elected for two years "from the broad masses of peasants" and function as a police force and as the executive arm of peasant association executive committees and judicial tribunals. They also perform such security and defense duties as are required by central Government (Arts. 11-13). Women's associations may establish "professional associations" and "mobile teams", which "follow" the political, economic and social problems of their members and "do everything necessary" to secure members' rights (Art. 10). That the vagueness of the provisions concerning women stands out in a generally vague Proclamation reflects the fact that only an extremely complex law could encompass wide variations in the degree of sexual equality among Ethiopian ethnic groups. It is also doubtful that urbanised soldiers can understand and respond to the interests of rural women.

In March 1975, higher-level woreda (district) and awraja (sub-province) peasant associations were created under Article 11 of Proclamation 31. Once again, formal structures are vague: woreda associations are "composed of delegates" from local associations who coordinate local activities.

equalise peasant landholdings and allot unoccupied land to the landless.
Awraja associations, "composed of delegates" from woreda associations,
coordinate the activities of the woredas. These coordination functions
are not continued to the provincial and national level and, as there are
108 awrajas in Ethiopia, a great diversity of activity has resulted,
although the Ministry of Land Reform has undertaken a limited degree of
coordination.

Another set of institutions involved in the coordination of policy
making and implementation was created under Proclamation No. 71: Revolu-
tion and Development Committees, established at the woreda, awraja, pro-
vincial and, at the national level, a "permanent central committee".
These committees are a temporary expedient, and will disappear when a
local self-administration law is issued. Proclamation 71 perpetuates
the defects found in Ethiopia's unintegrated prefectural system of local
administration (see Chapter Three): the Committees "shall not interfere
with technical matters of government offices."[64] The Articles enumerat-
ing the powers and duties of these Committees were repealed and replaced
by Proclamation No. 115 in May 1977.[65] This law illustrates the Derg's
increasingly militant leftism: the Committees were more broadly empowered
"to mobilise full moral, material and other support", in order to "main-
tain the unity and integrity of the Revolutionary Motherland" and "to
completely eradicate feudalism, imperialism and bureaucratic capitalism"
(Prologue).

In particular, the Revolution and Development Committees are expected
to: detain and prosecute those who engage in "anti-revolutionary" or
"anti-unity" acts or who sabotage production or marketing arrangements;
coordinate battlefield aid; protect public property; "agitate and rally
the broad masses", promote cultural education and prepare the way for
local self-administration; and "control and supervise Government and mass
organisations" (Arts. 3, 6). These powers, and the latter one in particu-
lar, are extremely broad and vague. Under them, the Committees are begin-
ning to supplant both peasant associations and the Ministry of Interior's
hierarchy, particularly in light of the need to coordinate defense efforts
during the Ethio-Somali War. While the pretense of only sending volun-
teers from the urban areas to fight the Somalis was maintained, a compul-
sory conscription was used in the rural areas. These Committees are com-
posed of representatives of the military, police and most of the ministries

plus, at the woreda and awraja levels, representatives of peasant asso-
ciations, urban dwellers associations (see Chapter Seven), women's and
youth organisations and the All-Ethiopia Trade Union (see Chapter Seven).
Elected representatives are therefore excluded from the upper reaches
of political and administrative activity once again.

In September 1975 the Ministry of Land Reform announced that 16,000
peasant associations with 4,5 million members had been formed. By May
1977 the number of associations had reportedly grown to 60,000. These
figures, and the organisational stability they imply, should be received
with caution, although the figure of 54,000 hectares of choice farmland
distributed by Government to the peasant associations is probably accu-
rate. Proclamations 31 and 71 do not detail the ways in which peasant
associations are to be run but, in practice, a general assembly formulates
policies and elects an executive committee. The committee executes
assembly directives and consists typically of literate and numerate
former small landowners who had behaved well towards peasants and who
are able to stand up to local bureaucrats.[66]

C. New Approaches to Rural Administration

Revolution and Development Committees are an obvious and radical de-
parture from the administrative practices of Haile Selassie (see Chapter
Three) and the Derg's approach to central administration (see Chapter
Five), as is the zemecha. This ad hoc administration of land reform by
secondary school and university students was termed the Progress Through
Cooperation, Enlightenment, and Work Campaign - or zemecha, an Amharic
equivalent of jehad or military campaign. Beginning in November 1974,
most of the 30,000 students were sent to rural areas, largely in the
South. In addition to land reform and the Derg's policy of keeping dissi-
dent youth out of Addis Ababa, the students were expected to explain
Ethiopia Tikdem to the peasants, to improve literacy, to foster self-
reliance, to eradicate "reactionary" traditional beliefs and to assist
drought victims.[67]

The students were initially left unsupervised by the military and
police and were thus able to define their own strategies, which tended
to be even more radical than those found in the land reform Proclamation.
Students promoted collective farming, redistributed plow oxen, forced the
election of landless peasants and members of minority groups to leadership

roles, hounded "enemies of the peasants" and, in some cases, supplied
guns to the peasants. Clashes between students and residents of Sidamo
and Hararghe Provinces during April 1975 led the Derg to assert a measure
of control over the students.[68] It was felt, however, that the services
of zemecha students would be needed in the future and, in August 1975,
the campaign was extended to September 1976.[69] Many students became
dissatisfied with rural living conditions, the pace of rural reforms and/
or the lack of progress towards civilian rule, and about half of them
drifted back to the urban areas. In December 1975, the Derg pro-
claimed its willingness to exonerate a variety of offenses committed by
zemecha students, provided the students performed such tasks as were
prescribed by the zemecha headquarters.[70] By this time, however, many
of the students had become involved in the urban opposition politics that
were described in Chapter Four.

One of the most interesting innovations found in Proclamations 31
and 71 is the division of implementation responsibilities between peasant
associations and the central bureaucracy, a division which largely bypasses
local administrators serving within the Ministry of Interior that had
been hitherto dominated by rural and traditional elites (see Chapter
Three). As balabats, chikashums, etc. were usually landowners as well
as unpaid local administrators, land reform, particularly in the South,
put an end to the lower levels of administration as well as to landlord-
ism. As in many other Third World states, the Ethiopian bureaucracy is
manifestly incapable of coping with many of the demands and challenges
of development (see Chapter Five). On the eve of the land reform, the
Ministry of Land Reform had only 200-300 employees with eight to twelve
years of education; most of these had been recruited direct from school
during the previous two years. Additional manpower (including zemecha
students) was therefore requisitioned immediately. From the outset, it
was realised that the detailed implementation of an Ethiopian land reform
could not proceed from the top downwards; it had to be given over to
local organisations like the peasant associations.[71] For the most part,
the Proclamations are structured so as to create few of the additional
burdens that land reforms have placed upon administrators in other states.

Under Proclamation 31, the Ministry of Land Reform "shall notify
and explain to the public the provisions and aims" of the Proclamation:
"shall, with the cooperation of the Ministry of Interior, help in the

formation of peasant associations at every level"; shall establish woreda-
and awraja-level land registers, assigning surveyors to help in this task;
and shall assign at least one Land Reform Officer to each of the 550
woredas to explain the purposes of the Proclamation and to advise peasant
associations (Arts, 12-13, 15). The performance of these mandatory func-
tions vastly increases the scope of the Ministry's operations but, based
on the previous experiences of rural Community Development Officers for
example, the purely advisory functions of the Land Reform Officer must
be more carefully structured and formalised. Sound advice has its de-
sired impact in Ethiopia only if it comes from a person with a great deal
of authority. A merger of the Ministries of Agriculture and Land Reform
apparently occurred in 1976, but further information is unavailable and
no law to that effect was published.

Reform functions given to the Government as a whole include the
punishment of offenses against the Proclamation, and the expropriation
of peasant association land "for public purposes such as schools, hospi-
tals, roads, offices, military bases and agricultural projects". The
Government "shall make good such damage as it may cause", and its powers
of intervention for "public purposes", regardless of the views of peasant
associations, may indicate an intention to "fence them out" from these
activities. But the Government makes no explicit promise to promote
rural development apart from settling nomads and the landless for farm-
ing purposes, establishing cottage industries, improving nomadic grazing
areas, and digging wells in arid areas (Proc, 31, Arts, 10(1), (6), 16-7,
27).

A Compensation Commission has been established (see Chapter Seven),
but land reform administrators do not have to concern themselves with
this issue, which occupies so much of the time of bureaucrats in many
other Third World states. No compensation is given for land, forests or
"tree crops" (including the coffee bushes that hitherto constituted ex-
tremely profitable investments), but "fair compensation" is promised for
movables and "permanent works on the land",[72] "Fair compensation" has no
legal meaning in Ethiopia, and there appears to be no reason to compensate
on the basis of land values which reflect the political monopoly hitherto
enjoyed by feudal landowners or commercial concessionaires. This is the
approach adopted by courts in several other Third World states.[73]

The Minister of Land Reform decides whether a large-scale farm –

obscurely defined as being mechanised, or engaging in modern animal husbandry - is to be a state farm, a cooperative farm, or redistributed as plots for individual tillers. Until this decision is made, the Government supervises the farm and its former owners are required to run it.[74] The official Government position is that land from large-scale farms will be distributed to peasant associations; collectivisation remains a distant goal. This policy is a wise one, in the sense that it avoids additional administrative burdens, but many of Government's actions contradict it. For example, there has been a limited collectivised resettlement of the landless and the urban unemployed on large-scale farms and production may have declined. Many Ethiopian peasants are violently opposed to collective farming; according to Allan Hoben, they dream of becoming kulaks.[75]

D. New Rural Policies and Projects

"Land to the tiller" can only be a first step, albeit an important one, towards an integrated rural development strategy. The Derg has certainly not been idle since the land reform decree of March 1975, and the kinds of institutional reforms we analysed in this section are both necessary and cheap - in terms of scarce capital, foreign exchange, and highly-trained manpower - but costly from the standpoint of absorbing coercive resources. These institutional reforms cannot, however, markedly improve rural development prospects if the new institutions have no viable programmes to administer. We shall now describe the progress that has been made on this front, in the areas of rural taxation, the partial reorganisation of agricultural projects and state farms, and the overhaul of grain marketing arrangements - a crucial link between centres and peripheries. While the Derg has not promulgated a detailed development plan,

> it has . . . stated in a variety of contexts that increased production of food grains is one of its highest priorities for development in general and rural development in particular.[76]

Despite the defects in Haile Selassie's land, rental and agricultural income taxes that we discussed in Chapter Three, Eth. $35.5 millions was collected under them during fiscal 1973-74. Although the agricultural income tax survived the land reform - as income is not dependent on ownership - peasants were exceedingly reluctant to pay it. In January 1976,

a new "rural land use fee" and agricultural income tax were decreed,
on the basis that it is the "national duty of every peasant", by virtue
of his right to use land, to contribute to funds specifically earmarked
for rural development programmes.[77] Peasant associations submit lists
of farmers in their locality to a tax office which registers the lists -
the beginnings, perhaps, of a more centralised control over land use.
Peasant association members then pay a land use fee of Eth. $3 annually,
non-members pay $4 and the tax liability of Government farms is assessed
at the rate of $2 per hectare.[78]

In addition to this fee, the local peasant association (the "tax
collector" - an important innovation), or the tax office, collects a tax
on income derived from agriculture, agricultural processing, cattle
breeding or forestry. Peasant associations receive 2% of the sums col-
lected: while the shortage of honest and competent bureaucrats makes
collections by associations a necessary expedient; it also represents an
effective means of funding them and a significant curb on corruption.
The tax payable on incomes below $1,200 ranges from $3 (on incomes below
$600, compared with $1.50 under Haile Selassie) to $6. Taxpayers earn-
ing more than $1,200 can deduct "necessary" expenses and depreciation on
equipment (a vague provision), and are subject to a sliding scale of from
15% to 70% of net income. Government farms pay tax at a flat rate of
50%. Income is either declared by the taxpayer or estimated by the tax
collector or office, whose estimate remains effective for the next three
years. No safeguards against corrupt estimates by tax offices, a major
problem under Haile Selassie, are mentioned. Where more than $6,000 is
earned, the taxpayer must keep a set of books - an extremely optimistic
requirement (see Chapter Seven). As before, a taxpayer who is dissatis-
fied with the assessment can appeal to a Woreda Tax Assessment Committee,
after depositing 75% of the sum assessed. A further appeal, on questions
of law only, lies to the Awraja Court.[79]

The net effect of these taxes is to increase the burden on the poor-
est and wealthiest of peasants and markedly to reduce the rate payable in
the middle, to the detriment to the national treasury. As the ten hectare
ceiling imposed by the land reform Proclamation will keep the annual
incomes of most taxpayers below $1,200, the new law serves to simplify
rural tax collection. Under the new Proclamation, $23.7 millions was
raised in fiscal 1975-76 - a tribute to the effectiveness of peasant

associations, once the numerous rebellions that frustrated tax collections in many areas are taken into account. Several anomalies in rural taxation did arise, however, including a report that officials had seemingly resurrected the traditional tithe and were demanding 10% of peasants' crops in parts of northern Ethiopia.[80]

Under the Derg, the Minimum Package Project (MPP), administered by EPID (supra), was extended to cover additional rural areas; tentative contacts with peasant associations and coops were developed and the MPP also expanded its programmes relating to livestock. During the 1974-5 growing season, for example, CADU and the MPP nearly doubled their sales of agricultural inputs. There are still too few extension agents however, and they are ill-paid, ill-trained and equipped with an inadequate package of inputs.[81]

A Settlement Authority was established in February 1976 and, by June, it was administering 21 settlements covering 12,000 hectares. The Authority coordinates programmes for the settlement of landless peasants, nomads and the urban unemployed. These settlements are designed to implement land reforms, utilise idle lands and resettle those who are displaced by the forest, soil and water conservation programmes that are, for the most part, still forthcoming. It is also expressly stated that: "All Public Authorities shall cooperate with the Authority in matters relating to settlement."[82] The Authority is structured in a manner that is becoming commonplace under Ethiopian administrative law. It is described as an "autonomous" agency with a full "judicial personality" under the direction of a General Manager. The Manager is the "Chief executive officer": he "shall direct and supervise . . . operations and management subject to the general direction of the Board." In particular, the General Manager "shall": determine staffing, draft work programmes and budgets for the Board's approval, incur expenditures, and "to the extent necessary for . . . efficient administration, delegate his authority. . . ." The powers and duties of the Authority actually vest in the Board, which recommends the appointment of a Manager to the Derg. The Board consists of the Ministers of Lands, Agriculture, Interior and Labour, and the Commissioners of Planning and of Relief and Rehabilitation.[83] Serious problems could arise concerning what constitutes a "general direction of the Board" and at what point a manager shall delegate his authority, in view of a traditional reluctance to delegate (see Chapter

Three).

In April 1976, a Rural Projects Agency was created to plan, construct and maintain "buildings and projects" for educational, health or agricultural purposes. Its powers include designing buildings or promulgating construction standards and ensuring conformity with plans and standards. The Agency can contract out or delegate its duties, and it is identical structurally to the Settlement Authority, except that the Board consists of the Ministers of Public Works, Education, Health, Agriculture, Interior and Finance - or their representatives - and the Gneral Manager.[84] Haile Selassie's Ministers, some of whom were overworked, usually sent powerless subordinates to an endless procession of board meetings, at which nothing ever got done. The Derg is perpetuating these practices, and the number of boards is growing exponentially. The likely result is that functional autonomy will continue to be little more than an excuse for inaction and for an inability to introduce indirect but meaningful controls over policy making within the Agencies. The only means of circumventing these tendencies under existing administrative laws and practices would be to confer real authority upon subordinates with regard to particular agencies, and to then hold them strictly accountable for its exercise (see Chapter Five).

A Horticultural Development Agency was set up in April 1976 "to promote, encourage and coordinate horticultural development", in order to improve the availability of low-cost foodstuffs, promote agricultural exports and increase employement. The Agency's functions include advising the Ministry of Commerce concerning the licensing of traders; with regard to exports, establishing cultivation practices, fixing and collecting levies (cess), and inspecting products at the port of embarkation; assisting the extension service in establishing storage and processing facilities; and providing seeds and seedlings. The structure of this Agency is identical to that of the Projects Agency, supra, except that the Board is constituted by a different set of officials.[85]

Six regional Agricultural Development Corporations were created in February and March 1976 by Regulations promulgated under the 1975 Public Enterprises Proclamation (see Chapter Seven). The Upper, Middle and Lower Awash Valley Corporations (mixed agriculture and animal husbandry), the Hararghe Province Corporation (largely coffee) and the Tendaho and

Gewani Corporations (mostly cotton) are to administer the commercial concessions and Imperial farms that were nationalised in 1975.[86] Before these Corporations were created, the nationalised plantations were run ad hoc by their former managers and by the Ministries of Agriculture and National Resource Development.

These Development Corporations were apparently found wanting - at least in the Awash Valley - and a Valleys Agricultural Development Agency was instituted in July 1977. The Agency is to: foster irrigated agricultural development through planning and plan implementation; establish, coordinate and supervise development agencies; establish conservation and environmental protection programmes; build up the necessary infrastructure; and fix and collect fees for water use. The organisation of the Agency is similar to that of the other new institutions: the powers of the Board are spelled out in greater detail, but little real specificity is achieved. The Minister of Agriculture issues regulations on the Board's recommendation.[87] Under this Proclamation, Regulations were immediately issued which created an "autonomous" Awash Valley Development Agency. In addition to the powers of its parent Agency, the Awash Agency is to coordinate activities of Government (arguably, an 'ultra vires' proviso) and public bodies (including the three Awash Corporations) concerning agricultural use and resource development and - somewhat optimistically - to control the flow of the Awash River. While this Agency has a General Manager, it lacks a separate Board and is responsible to the Board of the parent Agency.[88]

A brief review of grain marketing practices under Haile Selassie will be used to set the scene for an assessment of recent policy changes. Prior to the Revolution, about 90% of grain marketing was in the hands of 12,000-25,000 rural grain merchants and 4,000-8,000 in the towns. In Addis Ababa, the 25 largest dealers had a combined storage capacity of one million metric tons. Merchants were mostly Muslim, although Orthodox Christians began to overcome their aversion to commerce during the 1960s. A merchant might act as wholesaler, retailer, transporter or financier, depending on who the customer was. The virtual absence of organised marketing and orderly pricing arrangements have been cited as major reasons for the slow progress made by CADU and the MPP under Haile Selassie.[89]

After the land reform, grain production by peasant smallholders - who supply roughly three-quarters of the marketed grain - increased by an

estimated 10-20% during the 1975 season. Nevertheless, there were periodic shortages of grain in the urban areas, particularly in Addis Ababa. While there was no acute hunger, grain was on occasion obtainable only on the black market, at prices 20% higher than the record price fixed by the Derg. The retail price index for food rose by 12% from March to April in 1975. Government could only enforce its pricing policies at the point of a gun and, after seven merchants were executed, grain quickly came out of storage and prices plunged to an all-time low. From mid-1975 to mid-1976, the Ethiopian Grain Corporation more than doubled its turnover, handling about 25% of the total volume marketed. The Corporation also managed to accumulate urban buffer stocks.[90]

The Grain Corporation was established in 1960, subject to the supervision of the Grain Board that was created in 1950. The Corporation was empowered to promote high-quality commodity exports and to buy and sell in order to stabilise the domestic market. Criteria concerning more explicit goals and the means of achieving them were, once again, lacking.[91] In November 1976 the Corporation was replaced by a new one, empowered to maintain emergency grain stocks and import grain when necessary, purchase and sell inputs, construct storage facilities, market the produce of state farms and "purchase, process, mill, transport, sell or store agricultural products and inputs, whether for profit or otherwise." Ten percent of net profits are to be paid into a reserve fund until it totals 25% of "the capital" (which either refers to authorised capital or to initial capital). This fund is then to be used to cover trading losses. The organisational format of the new Corporation is like that of the Valleys Development Agency, save that the Corporation is subject to "Government's policy guidelines" emanating from the Minister of Agriculture, who is also the Chairman of the Board.[92]

Urban grain shortages reflect the fact that landlords are no longer marketing grains acquired in the form of rent, that peasants have increased their own grain consumption and are now able to hold back limited amounts for purposes of speculation, that the number of oxen available for threshing had declined, that merchants are reluctant to make purchases because they fear confiscations, that the Derg regularly commandeers supplies to feed the military, and that military priorities and the attitudes of the lorry owners make for an acute shortage of trucking capacity (see Chapter

Seven). All of this argues for a new market strategy, and the Declaration
of Economic Policy, issued by the Derg in February 1975, promises that
the Grain Corporation will improve its price stabilisation measures and
offer adequate production incentives - including higher prices paid to
peasants, lower pricing margins and a larger fertilizer subsidy. These
policies would enable peasants to realise more of the benefits of increased
production and to raise local levels of savings, investment and purchas-
ing power. If these policies are pursued consistently, the opportunity
to extract additional Governmental revenue from marketing monopolies
will be missed, but the payoff for the rural areas will be more immedi-
ate: tax revenues would probably be invested in slow-yield assets such
as education, research and infrastructure, and the wastage represented
by the incompetence of the bureaucracy will be avoided.[93] Lurking in
the background, however, is the political necessity of ensuring a con-
tinuity of grain supplies to embattled military units and to volatile
urban areas through a command market. This kind of marketing strategy
would seem to be more consistent with the tenets of Ethiopia Tikdem and
notions of a 'disciplined' economy than with the policies currently be-
ing pursued; as in the Soviet Union, a Stalinist collectivisation may be
forced on the State by the low levels of political control exerted in
most rural areas and by the growing organisational strength of peasant
associations. Much remains to be done if grain marketing institutions
are to become effective. Pricing and marketing forecasts must somehow
be made more realistic: given the fundamental disequilibria that exist
in isolated markets, decisions are currently made on the basis of ques-
tionable assumptions about the behaviour of peasants and their institu-
tions. In addition to improving transport, a rapid expansion of storage
(and refrigeration) facilities is needed; it is currently cheaper for
northern Ethiopia to import grain than to obtain it from the South.
Black marketeering must also be suppressed - an enormous task. The
monetised sector must be extended so as to discourage the investment of
local agricultural surpluses in livestock, which are valued for their
numbers rather than for their age and condition and which contribute to
soil erosion through overgrazing. The market-dependent population of
Ethiopia is only about six million, although it is growing at an annual
rate of 3.5% (1.5% faster than the rate of population growth). Ultimately,

monetisation can only be fostered through punitive taxation or the wide availability of reasonably-priced consumer necessities. Grain marketing is only one side of agricultural production incentives and, in light of the decline in manufacturing after the Revolution, certain consumer goods may have to be imported.[94] Finally, Ethiopian peasants should not "be left hopelessly exposed to a process in which they could lose on the market all they won in the revolution"[95] - the plight of peasants in Mexico - or left in a position where they are at the beck and call of the bureaucracy, as in Egypt.

III. A Preliminary Evaluation

Although the evidence is incomplete and somewhat impressionistic, it points towards a successful implementation of land reform in southern and western Ethiopia. There was less resistence to land reform than expected, both by the Derg and by Western experts: peasants generally continued to plant as before, and smallholder production expanded by an estimated 10% to 20%. While more favourable weather conditions must have accounted for much of this production increase, we should note that short-term production declines, which have resulted from less radical land reforms in other countries, have been avoided. The dark side of the picture is that, at any given time from 1973 to the present, some 8% of the population has experienced acute starvation and some fifteen million people have often gone hungry. Localised droughts and regional rebellions have caused basic economic maintenance - a cardinal political goal and a precondition to more thoroughgoing forms of rural development - to elude the Derg. The magnitude of the problem of maintenance can be judged from the fact that, just prior to the Revolution, the average daily calorie intake in Ethiopia was 1,566. This compares extremely unfavourable with an African average of 2,455 and an Indian average of 1,950, particularly when the cool climate and high altitudes of the Ethiopian highlands are taken into account. The fact that the urban Ethiopian calorie intake is roughly equivalent to the African average points up another important rural-urban differential. The volume of agricultural exports declined after the land reform, although favourable international price trends have kept total revenues from falling.[96]

A. Politics

Catching the holders of traditional authority off guard, as it were, and executing some (but by no means all) of them on 23 November 1974, the Derg hopes to make its revolutionary changes irreversible by isolat- ing the peasants from those groups who could mount a counterrevolution. While a socialist rhetoric is used to justify land reform, the simplistic verbal jugglery employed in Tanzania and some South Asian states - 'proofs' that socialism is immanent in traditional village organisation and philos- ophy - has been dispensed with. The real problem has, on the other hand, been given a fair measure of prominence: how do attempts to legislate socialism into existence impinge upon ongoing social processes with deep roots in the past? The language of class conflict is employed to a greater extent than social circumstances warrant, but European analyses are deemed irrelevant to a situation in which the bourgeoisie and prole- tariat are tiny minorities and the vast majority of the people are peasants and urban middle-income groups. As in China, a national reconstruction is viewed as providing the major development incentive, with the dis- possession of feudal-minded landlords as a prime mover of revolutionary changes in social structures. If Ethiopian peasants dream of becoming kulaks however, it may be difficult to incorporate them into a socialist system; like the leadership in China and the Soviet Union, the Derg may find that "the desparate acquisitiveness of the peasant person long struggling on the brink of penury, did not fit with the ideals of socialism",[97]

Although the initial stages of the Revolution featured "stop-start" tactics, the land reform Proclamation is the cardinal example of the break-in continuity with the previous regime. As in Mexico and Egypt, large landowners became temporarily powerless as a result of revolution, and the emphasis was placed on policies which pose minimal bureaucratic and financial burdens and on achieving rural equity, even if this proved to be detrimental to crop production. The Derg's policy pronounements in the Proclamations may in fact be too ideological, concentrating as they do on form rather than on substance and implementation problems.[98] It is possible, for example, that the cooperatives and even the peasant associations themselves will be permanently forgotten as a result of the recurrence of seemingly more pressing issues, such as urban opposition, Eritrean separatism and invasions from Somalia.

While a plethora of laws relating to the rural areas have been promulgated since the land reform Proclamation of 1975, they revolve around its core concepts; land reform is the cornerstone of rural development policies. There are two possible rural development strategies – from the bottom up and from the top down – and the land reform Proclamation employs both. Peasants are provided with an organisational framework and with a few economic and still fewer political resources – through a combination of military-style commands and power-delegating policies – in return for anticipated gains in the Derg's legitimacy.[99] The Proclamation divided implementation responsibilities into vaguely-defined compartments between peasant associations and the central bureaucracy, thereby completely bypassing local administrators serving under the Ministry of Interior.

Ambiguities in these and other areas seem to be both unintended and intentional. Although united by the felt need to dismantle feudal authority, there has been considerable tension – within the Derg, the military as a whole, trade unions, the university, and modernising elements in the bureaucracy – between the advocates of popular civilian rule and those who believe that socio-economic transformation, through socialism and nationalisation, necessarily precedes a "peoples' government."

The latter group has won the field, yet the land reform Proclamations aim to accommodate the supporters of popular rule by providing, for example, a potential basis for local political activity. Many vital provisions create, in effect, blank cheques subject to reinterpretation in light of changed circumstances in the rural areas and shifts in the balance of power within the Derg. Thus, the land reform Proclamation represents an attempt to build an essential but minimal consensus within the modernising elite. Under Haile Selassie, the loyalty of the military, civil service, and rural elites was held through grants of land ownership. Genuine reform therefore required that modernising elites place the interests of the people above their own landholdings, and persistent rumors suggest that some were unable to do this. Half of the Army – the Second Division in Asmara and the Third Division along the border with Somalia – apparently sent an ultimatum to the Derg which combined a demand that soldiers' land be exempted from the Proclamation with a call for civilian rule and negotiations with the Eritrean Liberation Front. These demands coincided, in April 1975, with a reported countercoup attempt by civilians and intelligence officers.[100] The commitment to removing the landlords'

influence over rural events, while high, is therefore far from complete.

B. Peasants

It is quite likely that some of the ambiguities in the land reform
Proclamation are the unintended result of the Derg's ambiguous attitude
towards peasants. On the one hand, the Derg is ideologically committed
to respecting toilers and tillers and must, of practical necessity, rely
on peasants to implement vague but ambitious programmes locally. This
is a refreshing contrast to the cynical realism of the Emperor's formal-
istic reforms, but there is another and conflicting view of peasants
which arose within the modernising elite prior to the Revolution. Peas-
ants are seen as problems rather than assets, as tradition-bound, unthink-
ing and obdurate innocents who will react negatively to any new policy
and who must be forcibly re-educated to understand their own best inter-
ests. As in the Soviet Union, rural reforms are pursued by urban activ-
ists who are ignorant of the realities of rural life and unsympathetic
towards peasants.[101] This predisposition calls forth tactics - such as
an arguably careless nationalisation of rural lands - which only serve
to confirm the suspicions of some peasant groups; the circle is completed
when peasant revolt and apathy, particularly in northern and central
Ethiopia, are regarded as affirming the preconceptions of elite groups.
The military wants to trust the peasantry but fears that it cannot do so;
it grants broad functions to peasant organisations but withholds the re-
sources needed to make the exercise of power effective. As Martin
Woollacott argues, the Ethiopian Government has yet to work out a func-
tioning relation with its peasants, whether on the commercial, financial
or, ultimately, the political levels.[102]

Despite these vaguenesses, the core of the land reform Proclamation,
particularly Article 10, confers a measure of local peasant enfranchise-
ment and some of the means by which a peasant can begin to assert his
control over life's circumstances. Given the paucity of Ethiopian de-
velopment resources and their high cost, in terms of interest or tax
payments, to such private or public bodies as are willing to supply them,
rural development can only occur if local initiative is radically expanded;
in a Maoist fashion, the Derg is concerned with calling forth unused re-
sources, in addition to better allocations of existing resources. Taken

together, peasant associations, their coops and courts, women's asso-
ciations, the people's militia and the revolutionary development committees
give the most impoverished of peasants an opportunity to participate in
local affairs, point towards decentralised forms of government, and raise
political consciousness - for good or ill, from the Derg's standpoint -
while promoting equity. These new institutions are well-adapted to the
introduction of socialist agriculture: there is a great flexibility in
the size of organisations and the speed at which they depart from tradi-
tional modes of production and political practices and a dependence on
agents of the centre; there is a (partially-unrealised) potential for
cooperative marketing and management arrangements which operate on a
large enough scale to foster development; and the new organisations pro-
vide an opportunity to introduce voluntarism and a new vitality into
many rural areas.

The land reform experience of other countries suggests, however,
that isolated and low-status peasants seldom break through the obstacles
of subsistence economics, entrenched bureaucracy, and political pressures
to forge links, on their own terms, with the modernising elite. In par-
ticular, people seldom succeed in modifying their material environment
simply by organising themselves differently.[103]

The future vitality of peasant organisations depends upon a variety
of factors which have not been forthcoming as rapidly as have institu-
tional changes - a natural sequence, in light of the rapid pace of land
reform. Leaders of peasant organisations must be trained effectively in
such commonly-neglected topics as trading and, perhaps, speculation.
Peasants must be stimulated to generate local initiatives, as well as to
respond to sensible programmes promoted from the centre. This entails
the acquisition of basic literacy, numeracy and such non-agricultural
skills as are involved in the small-scale light manufacturing carried
out by producer's coops in China. Initiative and response, in turn, de-
pend upon peasant perceptions of material and financial incentives. The
Derg has been rather dilatory in this area, particularly with regard to
a rapid expansion of the MPP, although resources have been extremely
scarce and new taxation and grain marketing policies provide some of the
necessary incentives. Continued assistance by zemecha students and im-
proved administration from the centre are obviously called for,[104] but
the nature of the political links that are emerging between peasants,

administrators and the Derg are one of the least satisfactory aspects
of the land reform.

Peasant associations are effectively cut off from national politics
- seemingly a major goal of the Derg - and higher-level committees and
agencies are dominated by bureaucrats. These tendencies suggest that
the Derg lacks the interest to pursue a politically-integrated rural
development strategy. A failure to attend to the specifically politi-
cal aspects of peasant associations may be a major weakness of Ethiopian
(and Tanzanian) land reform; since political motives are going to dominate
anyway, they must be dealt with creatively rather than ignored. Like
ujamaa coops and development committees in Tanzania, Ethiopian organisa-
tions look good on paper but the reality is often otherwise: organisa-
tions are manipulated by agents of the centre or former traditional
elites, short-term programmes with politically-visible results receive
an excessive emphasis, technical knowledge and national plans are seldom
translated effectively into local action, and imbalances appear, both
within and among organisations, which sometimes denote ethnic group con-
flicts or new differentiations in social status which are irrelevant to
the achievement of economic development. Another example of how Ethiopia's
reform strategy could go wrong is provided by the policies pursued by the
populist regimes of Goulart in Brazil and Sukarno in Indonesia. Peasants
profited from the measure of control left to them and began to organise
themselves, but the organisations soon reverted to traditional forms of
patronage and the governments succumbed to the temptations of a dicta-
torial peasant mobilisation. Those who refused to participate were
arrested, and right-wing regimes succeeded to populism.[105]

The importance of a politically-integrated rural development is also
illustrated by Marx's analysis of peasants in nineteenth century France.
Despite similarities in material living conditions, the peasantry did
not enter into social or political relations at the regional and national
levels; and did not therefore constitute a class (for itself). The "great
mass of the French nation is formed by the simple addition of homologous
magnitudes, much as potatoes in a sack form a sack of potatoes". Unable
to speak for themselves, these peasants were 'represented' by those who
were also their masters and who sent "rain and sunshine from above".[106]

Ethiopian peasant associations can thus be thought of as "potatoes"
which have been insulated from national political life. Gunnar Myrdal

shows how the stratification of groups within non-viable villages, each group having divergent interests and problems, is probably the greatest single hindrance to the implementation of reform programmes in South Asia.[107] This obstacle is even more marked in Ethiopia, with its multiplicity of slightly-differing traditional tenures and the absence, in some areas, of anything that could be termed a village. Many local problems requiring individualised treatment none the less have a national impact, exceed peasant resources and spill over the boundaries of peasant associations and coops: credit, marketing, transport, communications, social services, new inputs and technologies, and radical changes in traditional values and structures. In this context, Ethiopian "peasant power" is an illusion, in the absence of channels of influence and regular agricultural surpluses.

The creation of farms which are too small from the standpoint of long-term economic development - no larger than 10 hectares and usually much smaller - means that present policies emphasise, of necessity, economic maintenance and the satisfaction of land hunger at the expense of large productivity increases. Although the dignity, the fresh outlook and the minor independent source of income that land confers on the landless[108] - and the importance of maintenance during periods of famine - ought not to be overlooked, the absence of integrated long-term strategies which need not conflict with maintenance tends to freeze Ethiopian agriculture at the subsistence level and leaves the peasants' traditional attitudes towards land unchanged. The Derg's aggressive resettlement policy is the correct one: if more people continue to farm the same land, fragmentation can be the only result, as rural unemployment becomes disguised unemployment or underemployment.

Further, the opportunity was missed to maximise the incentives created through land reform. The Proclamations do not, for example, ensure a secure right of occupancy and the ability to somehow recoup investments if occupancy terminates. Guarantees against the risks of adopting agricultural innovations are also lacking. The revolution has resulted in a land nationalisation of uncertain content; and peasants, reasonable pragmatists within a traditional frame of reference, will determine for themselves whether the Derg's definition of new rural realities is accurate. Peasants are not interested in ideological purity, mere promises, or poorly implemented institutional changes.

What do Ethiopian peasants think of the land reform? In the
southern provinces a large measure of support for reform exists, although
local rulers in some areas initially convinced the people that it was not
in their best interests. Some tenants assumed, as a result of ambiguous
encouragement from the Derg, that they could evict their landlords before
reforms were actually promulgated. Farmers came to provincial centres
assuming that they could register their ownership of a newly created
10 hectare farm, but administrators were more interested in finding out
how much land they had and in organising the collective working of the
land. Disappointed, the peasants went home and continued to work their
original plots. Local police, who hitherto took the part of the landlords,
enforced land reform minimally, if at all, and there were some localised
battles organised by landlords and rich peasants. It is impossible to
determine the precise extent to which armed resistance constituted oppo-
sition to land reform; government reports often spoke of the "surrender"
of "bandits". Many disputes over the distribution of tools and oxen also
took place. The impact of land reform was stunted by the large pockets
of starvation that persisted in Wollo, Hararghe, Bale, Sidamo and Gemu
Gofa Provinces,[109] by the ongoing revolt in Eritrea and by the Somali
invasion.

> In northern and central Ethiopia, the picture is not encouraging:
> the difficulty with [the Derg's] . . . measures and particularly
> land reform is that they did not significantly affect the life
> of the lowland nomads in the Ogaden or Eritrea, or the highland
> peoples of the latter province. In the lowlands, where the
> Amharic [sic] nobility had never really penetrated, there was
> no great release from a past servitude. In Eritrea there was
> already a war going on which precluded proper implementation of
> reforms.[110]

Every province has experienced serious armed opposition to land reform,
led by royalists, former MPs and southern landlords with kinship ties in
the North. Representative examples include: Sultan Ali Mirreh's rebellion
against proposed changes in the tenure system that led to the formation
of the Afar Liberation Front in June 1975; the assassination of the
Administrator (Governor) of Begemdir-Semien Province three months later;
clashes with rebels in Wollo and Arussi Provinces in October 1975; and
the defeat in Woldia, Wollo of an estimated force of 5,000 led by De-
jazmatch Berhane Maskal. The Ethiopian Democratic Union (see Chapter
One) claimed to be organising and coordinating these attacks, but its

actual influence is slight.[111] Although rebellions have continued to
the present day, they ceased expressly to be directed against land re-
form by the beginning of 1976. Little is known of human rights viola-
tions in the rural areas. Amnesty International finds that many atroci-
ties have taken place - including the destruction of whole villages -
and that at least 10,000 people have been killed in the rural areas for
political reasons through 1977. In October 1977, the Ethiopian News
Agency stated that over Eth. $40 millions of crops had rotted in fields
as a result of rural disruptions.[112]

The highly individualistic and conservative nature of Amhara-Tigre
smallholding peasants generated resistance to reform, and revolts have
been caused by opposition to the Derg's treatment of the nobility (who
retained the confidence of many people) as well as by land reform itself.
Among the most conservative of peasants are those Amhara who live in
Manze, where "the good man is one who defends the land of his fathers,
seeing that it is not sold to outsiders or that foreigners do not come
to take it."[113] It has even been argued that local cohesiveness only
forms in reaction to virtually synonymous threats to family livelihood
or land. This conservatism can, perhaps, be explained in the terms
adopted by - of all people- Stanley Baldwin: "If you want the people
to be conservative, then give them something to conserve."[114] In the
Amhara heartland, culture, lifestyle and status differentials are cher-
ished to an extent that few Westerners would find credible, and most
peasants owned at least some of the land they farmed.

Inevitably, given previous legal and political manoeuvres, the 1975
Proclamation is regarded by many Amhara-Tigre peasants as an attempt to
take their land by a "foreign" Government located in Addis Ababa; in
place of absentee landlords collecting rents, an 'absentee' Government
will radically increase taxes. In 1973, Alan Hoben found that the
Amhara of Gojjam Province opposed any land reform for a variety of rea-
sons, fearing that it would: become an instrument of Shoan Amahara dom-
ination and promote the spread of gult-type tenures; decrease social
mobility, particularly for the young, by freezing existing land alloca-
tions or enabling tillik sewoch (big men) to acquire more land; and re-
sult in confiscation of larger holdings and a revival of old boundary
disputes.[115] There is no need, despite the Revolution, to revise these
findings.

C. Administration

Although the centrally controlled bureaucracy acquires some important new functions within the framework of land reform, the devolution of authority to peasant associations is amazing in a country where, beginning in 1930, the passion for centralisation has dictated that the exercise of effective rural authority sanctioned by state law be within the Ministry of Interior's rigid hierarchy. The Proclamation clearly refuses to compromise with those traditional rural elites who monopolised sources of local legitimacy, information concerning land boundaries and soil fertility, and an (albeit minimal) managerial direction of production and paternal provision of welfare services. These elites have been suppressed by force, and a political, social and economic vacuum has arisen. Ideally, peasant associations and coops would step into this vacuum, but it is unlikely that most of these organisations will have the resources to do so. The Derg obviously feels that it can serve as the proxy representative of rural people by stepping into this breach bearing the ideology of Ethiopia Tikdem, although no concrete basis for doing this is presented under the Proclamations and Marx's analysis of the French peasantry suggests that rural life cannot be fundamentally changed under such a policy. Perhaps the Derg wishes permanently to isolate the peasants from political power, but there are plenty of indications to the contrary.

Traditional rural elites are, unfortunately, ideally placed to retard land reform, since they dominate local administration from within the Ministry of Interior and are, to a large extent, immune from centralised control. [116] These officials could not be replaced in the short run, and the Derg has chosen to circumvent them wherever possible. The radical changes brought about by land reform point up the need for the administrative law reforms and the resocialisation of existing bureaucrats that were discussed in Chapter Five.

It is clear that a centralised administration of Ethiopian agriculture would become hopelessly entangled in day-to-day decision making, creating a further administrative proliferation which would paralyse producers and generate plans that are ill-adapted to concrete local needs. This is what happened in post-independence Algeria, where agriculture was given back to the farmers in 1966. The decentralisation and partial autonomy

represented by specialised agencies and regional development corporations in Ethiopia is thus a good idea in theory; in practice, technical man-power may be spread too thinly and problems of coordination and meaning-ful control may prove to be insurmountable. Finally, new marketing arrangements must be taken much further: socialist agriculture, as envisaged by the Derg, can never be achieved through feudal cum capital-ist norms of resource allocation and income distribution.[117]

D. In General

Land reform has, however, produced some significant changes in status patterns and in the distribution of income — the raw materials of politics in Ethiopia and elsewhere. Under definitions elaborated in Chapter Two, the Derg is attempting to pursue policies of a broadly-based development, rather than those of an economic growth which place an untoward emphasis on increases in production, thereby widening the gap between rich and poor. In other words, supply does not create its own demand where income distribution is highly skewed; development necessitates the restructuring of an economy catering to the needs of the very rich, a twisting of con-sumption in favor of the rural areas (where most of the poor live) and towards food and, to a lesser extent, clothing. In Ethiopia, the costs of these policies are being borne by urban middle-income groups, traders, other businessmen, civil servants, unionised workers, students, teachers, and even the military, as reflected in a decline in their standards of living and socio-economic expectations, and in the availability of Western-style food and consumer goods in the urban areas.[118]

Under Haile Selassie, links between centres and peripheries ran wholly to the benefit of the centres and, initially, the Derg continued to attend to urban demands rather than the interests of peasants - more of a Russian than a Chinese strategy of revolution. Beginning in March 1975, however, the nature of rural-urban links was altered in the peasants' favour, by abolishing feudal tributes and lessening the burden imposed through taxation and grain marketing arrangements. While it should be obvious from the foregoing analyses that land reform is a unique product of the Ethiopian urban elite - in conception as well as misconception - there are some who would argue that the Derg used an entirely Maoist approach to the reform. In some respects, reforms would have been more effective if detailed materials concerning Chinese policies had been

available in Addis Ababa and studied intensively, although much in China's experience is unique. Rural rebellions and urban food shortages in Ethiopia have certainly borne out Mao's dictum: "revolutionary villages can encircle the cities, but revolutionary cities cannot detach themselves from the villages. . . ."[119] The kind of links that will develop between centres and peripheries in the future is very much an open question: will, for example, city dwellers demand that the 'terms of trade' be readjusted in their favour, and will the Derg be willing and able to resist these demands? At this stage and given the Derg's overriding desire to dismantle a traditional political power based on land and in the rural areas, it seems that - to twist a metaphor - the nature of the omelette to be made is less important than the breaking of the eggs.

Returning to the arguments concerning political resources that were introduced at the end of Chapter Two, Ethiopian large landowners were extremely powerful and did not accept radical changes willingly; a high level of rural violence and the potential for violence far into the future were voluntarily incurred by the Derg. The long-term solution to the problem of maintaining rural order is the firm establishment of viable political processes to replace the shattered traditional ones that are described in Chapters One and Three. Pending acquisition of the additional resources by peasant organisations and the bureaucracy that are essential to rural institution-building, the demands placed upon coercion will be inordinately high. If other scarce resources are used effectively, through the careful augmenting, communicating, propagandising, implementing, and enforcing of land reform, the amount of coercion required in a particular district will be relatively small. Ethiopia is a vast country however; and disputes with Somalia, the Eritrean Liberation Front, and within the Derg itself will, as priority concerns, claim a large share of coercive resources. Reliance upon coercion has been an historical necessity in Ethiopia because Government policies have failed to penetrate most of the rural areas.

In Chapter Two, we argued that government is a two-way street; penetration is fostered by public participation. In the absence of sanctioned channels, participation will nevertheless out when Ethiopian peasant subvert or simply ignore Government policies. New channels have been created through the peasant organisations, but they function imperfectly at best.

Government has been unable to allocate sufficient material incentives
through them and genuine power-sharing at the national level is not
intended, at least at this stage. Peasant organisations offer an oppor-
tunity that should not be missed for overcoming ethnic conflicts and
gross socio-economic inequalities. The enforcement of universal norms -
by Government against local organisations and vice versa - would help to
build a homogenous and modern society, providing fixed points around
which new interests could coalesce. The Derg's policies are only the
beginnings of this quest for a mass involvement through decentralisation
and the Derg seems overly-optimistic about the speed at which difficul-
ties can be overcome. Nevertheless, an advance - astounding to those
who visited the rural areas while Haile Selassie was in power - has been
made: the politicisation of the peasantry, most of whom had hitherto
responded only to manipulation by local elites.[120]

* * * * *

The development strategy that is unfolding in Ethiopia is clearly
one of Agriculture First. As we noted in Chapter Two, this basic choice
is a wise one: for many decades to come, an Ethiopian industrialisation
would create little additional employment for a rapidly-expanding populace;
and, as in many other African countries, the shortage of labour is a
greater constraint on increasing agricultural productivity than is any
shortage of land, provided that aggressive resettlement policies are
pursued and the appropriate inputs and technology are made available.
While we are still too close to the Ethiopian Revolution to provide a
definitive assessment of its impact on the rural areas, the available
evidence points towards a cautious optimism. In any event, such liberat-
ing effects as are generated through a revolution take a long time to
appear and "no fundamental reform can avoid errors at one stage or another;
and the more controversial the issues, the greater the risk of mistakes."[121]
It is clear that other, less radical land reform policies will not work
in Ethiopia, especially if the Derg's attachment to a revolutionary
socialism is taken into account:

> If the existing social order is preserved it is the powerful
> members of the gentry . . . who will ultimately decide upon the
> ways the reform will be carried out. It is they who sit on the
> land tribunals; it is they who interpret the law, allow all
> kinds of circumventions and take care that the material inter-
> ests of their peers will not be really affected.[122]

The enactment of a vigorous and progressive taxation of landowners, combined with rent and wage controls, would not have forced Ethiopian landlords to expand production or quit; the paucity of administrative competence and the tradition of tax evasion would have made enforcement impossible. The concentration of resources on improved agricultural efficiency and technology rather than basic institutional changes was tried, in a rather haphazard way, by Haile Selassie's regime and ignores the centrality of feudal landholdings and the peasants' subsistent and subservient status. The Ethiopian bureaucracy is a politically-unreliable instrument of land reform and is manifestly incapable of assuming the additional administrative burdens that have arisen during land reforms in other countries: policing ownership changes, issuing titles, compensating the dispossessed, collecting payments from new purchasers and adjudicating boundary and inheritance rights. The Ethiopian approach is, rather, to rely on the peasants themselves in the short run and to hope to resolve technical problems over a longer period of time.[123]

Ethiopia's land reform is more ambitious than that of Tanzania or China and, unlike the Chinese reform, the Derg's was not preceeded by years of ideological preparation and the creation of disciplined cadres dedicated to the implementation of rural programmes. While no single element of the Ethiopian reform is inherently unworkable, the difficulties encountered at every stage are formidable in sum. Agrarian patterns have nevertheless been altered permanently by the Revolution. Rural changes - particularly in the West and the South - are the Derg's most enduring achievement, and they would certainly survive the collapse of military rule. Changes in tenures have had a once-and-for-all shock effect on traditional peasant attitudes. New institutions are capitalising this transformation and are beginning to alter the balance of aspirations, opportunities and the environment in a way that is much more effective than the indirect policies advocated by Western modernisation theorists (see Chapter Two).[124]

Ultimately, however, these radical structural changes will not have their desired effect unless they are integrated with more ordinary approaches to development in a carefully-balanced strategy of implementation. While there is no particular virtue in prudence, the Derg's initial imprudence resulted in a huge wastage of scarce resources. From mid-1975 onwards, however, there has been a growing realisation that land

reform of itself grows no crops; an integrated rural development strategy has begun to emerge.

Additional peasant organisations, new tax, marketing and settlement policies, and new regional development corporations were started, but they remain vulnerable to the political needs of the moment and to competing claims on scarce resources. Peasant organisations have succeeded to a remarkable degree in mobilising and allocating scarce resources and in achieving a reasonable balance - albeit at a low level - between the partly conflicting goals of raising productivity and promoting welfare. They have also made a start towards the localised political participation of the under-endowed. What is lacking is a rural access to capital that is sufficient to enable the wholesale adoption of new inputs, technologies and services - which are also in short supply. There can be no doubt, however, that these defects can be remedied within the coop framework devised by the Derg, and under proprietary rights which are much more limited than those commonly found in the West. But peasant organisations cannot succeed on their own: the role of the centre is crucial in the areas of delivering new inputs and social services, overcoming the effects of recurring droughts, and stimulating small-scale rural industries. A more careful planning of social services is required: the needs are infinite and the resources scarce, so complex choices must be made on the basis of strict cost-benefit analyses which take account of the political dimensions of rural policies. Droughts have produced severe shortages of things that impoverished regions are unable to acquire for themselves - livestock, plow oxen and seed - and have demonstrated the need for vaccination programmes, clinics, additional sources of clean water, reforestation and soil and water conservation. Although there is an interest in tackling each of these problems (except in Eritrea and the Ogaden, where much has been made of the fact that Somali troops were using new irrigation ditches as trenches), a great deal remains to be done. In order to make all of these links between centres and peripheries effective, the capabilities of the Ethiopian bureaucracy must be radically expanded along the lines suggested in Chapter Five. In particular, technical skills and the ability fully to utilise resources locally must be expanded. The capacity to undertake efficient large-scale development programmes, to feed the urban areas and to promote agricultural exports, must also be developed.[125]

Lest the reader conclude that law has but a marginal impact on rural development prospects in Ethiopia, we hasten to add that, while the centre's law-as-norm plays only a small role in the peripheries, law-as-institution is having a major influence on processes of rural change. While this perspective may be unfamiliar to Western lawyers, it is the one commonly adopted by socialist jurists: in the U.S.S.R. - and in Ethiopia - 'kulaks' used obsolete customs and traditional laws for counter-revolutionary agitation against land reform. The institutions created under socialist law and guaranteed by state coercion attempt to abrogate traditional laws and customs that have lost their meaning in a changed society, and they utilise law-as-norm in an attempt to create the "new socialist man" with new political loyalties. This is what the Derg seems to be doing in the rural areas. Compared with the land-related laws of Haile Selassie, those of the Derg are not purely symbolic: an attempt has been made to avoid unenforceable provisos that call attention to the impunity with which the regime may be flouted; there is a lively interest in implementation and enforcement; and there is some genuine delegation of authority to peasants;[126] although such delegation is hardly so generous as to enable peasant organisations to determine the direction and pace of the rural Revolution.

CHAPTER 7:   The Centres

To assert that Agriculture First policies will serve to maximise Ethiopia's development potential is not to suggest that urban and other centres - and manufacturing and commerce in particular - should be starved of resources and left to fend for themselves. The main reason for basing our analyses on an exploration of links between centres and peripheries is to emphasise the interrelatedness of sectoral processes of under-development and development, as well as the interdependence of the political, economic, social and legal aspects of these processes. In Chapter One, we stressed the need for decreasing the varying distances within and among centres and peripheries, and rejected the more common dualistic descriptions of the Ethiopian economy that can only lead to unduly simplistic conclusions. There is no firm dichotomy of rural and urban areas in Ethiopia: each sector displays wide variations in life-styles, and there are enclaves of a Western-style commercial agriculture in several rural areas. Further, many urban people are engaged in some form of traditional service, commerce or administration, or are totally peripheral to economic activities, in a sense that the peasants in rural areas are not. We have adopted a fairly arbitrary definition of Ethiopian centres as having a concentrated population of more than 20,000 - accounting for 6.5% of Ethiopia's total population - but it should be kept in mind that medium-size towns function both as centres and peripheries. While they are clearly centres in relation to their surrounding areas, they are also peripheries from the standpoint of the influences exerted by Addis Ababa.

In this Chapter, we will attempt to unravel the complexities of underdevelopment and development from a different vantage point than the one adopted in the previous Chapter. Business activities in the centres will be analysed in light of the laws governing them, the evolution of organised labour and the processes of urbanisation that have stimulated - but more often frustrated - industrialisation. While the Chapter thus focuses on economic matters, the social and political impact of the Derg's reforms and nationalisations will emerge during the course of discussion.

While the late 1960s saw a growth in Ethiopian industiral output of 15% per year, manufacturing accounted for only 5.3% of Gross Domestic Product in fiscal 1969-70; the corresponding figure for mining was 0.3%

of GDP. Another index of the small size of this manufacturing sector is
that it employs only 80,000 workers - 0.6% of Ethiopia's economically
active population and 5% of the active population in the urban areas.
An annual increase of 3.3% in industrial employment failed to keep pace
with a 7% increase in urban populations during the late 1960s and early
1970s. Employment per industry actually declined by 3.5% while produc-
tion continued to increase rapidly - a logical outcome of a heavy depen-
dence on imported capital-intensive-technologies.[1] -Other aspects of the
foreign dependence of Ethiopian industry (see Chapter One) are illustrated
by the statistics in the footnote.[2]

In addition to the multinational firms involved in agribusiness that
were mentioned in the previous Chapter, other areas of the Ethiopian
economy dominated by the multinationals included: petrol distribution
(Shell, Agip, Total and Mobil); oil exploration (Tenneco - an American
firm which reportedly made a major discovery in a part of the Ogaden
claimed by Somalia); Leyland and Fiat lorry, bus and jeep assembly plants;
Ethiopian Airlines (a daughter company of TWA); copper mining (a small
Japanese concern operating in Eritrea); potash extraction (American);
textiles (Japanese and Indian firms); major coffee plantations and fores-
try schemes owned by American shareholders; and drug manufacturing and
meat packing concerns operated by British companies. Government held a
substantial interest in most of these companies prior to the nationalisa-
tions of 1975. American companies with a 50% or more stake in Ethiopian
companies prior to 1975 include: American Life Insurance Co., Dean
Export (shipping), I.B.M., National Cash Register, Kalamazoo Spice Co.,
and Singer Sewing Machines. These companies were neither large nor,
primarily, profit-orientated; for the most part, they were established
to stake out a market position for the future.[3]

When compared to many other Black African countries, Ethiopia has a
wide range of industries, but in so populous a country, industrial pro-
duction is very low when evaluated on a per capita basis. While the high
degree of industrial concentration - in Addis Ababa, its satellite towns
and, to a lesser extent, in Asmara - is similar to that found in surround-
ing countries, there is a smaller degree of foreign dependence in Ethiopia
(for the reasons mentioned in Chapter One). Investments in industry and
commerce had begun to displace the acquisition of land as the basis of
security and status for Ethiopian elites. Broad managerial functions

were usually delegated to intermediaries, who were often both foreigners
and incompetent. Individual firms were often natural monopolies facing
a small aggregate demand, artificial monopolies created by legislative
fiat, or price leaders tolerating a small and often traditional competi-
tive fringe. As a result of the lack of competition, consumers have
little choice among products and pay higher prices for a smaller volume
of goods, particularly as there is much excess capacity in plants which
are smaller than the optimum size dictated by Western technology. Local
businessmen remained merchants in essence, as much of manufacturing con-
stituted a license to engage in disguised importation; little more than
a screwdriver was typically required to assemble knocked-down equipment.
The scarcity of Ethiopian entrepreneurs has been attributed in part to
cultural traditions, and much business was in the hands of foreign groups,
some of whom acquired Ethiopian citizenship: Yemeni Arabs and, to a
lesser extent, Armenians, Italians and Greeks. Perhaps three-quarters
of the persons engaged in 'commerce' are hawkers or market stall keepers
who perform unsophisticated functions inefficiently - in a manner rem-
iniscent of the traditional bureaucratic processes described in Chapter
Three. The Addis Ababa Mercato is at the hub of Ethiopian commerce, with
a 1970 turnover estimated at Eth. \$1,000 millions, attributed to 7,100
businesses employing some 13,400 people (Eth. \$2.08 = U.S. \$1).[4]

Gunnar Myrdal's summary of the predicament of South Asian states
could well have been written in Ethiopia:

> . . . The industrial sector is small, particularly in organized
> large-scale industry. In all other sectors, but especially in
> agriculture, crafts, and traditional industry, techniques of pro-
> duction are primitive and capital intensity is low. The ratio
> of savings to income is also low. Savings per head is lower
> still. There is little enterprise, particularly in long-term
> productive investments. The overhead capital in the form of
> roads, railways, ports, power plants, and so forth is inadequate.
> Labour utilization is low in regard to worker participation and
> duration of work and also in labour efficiency.
> These conditions are directly related to each other in . . . .
> [a] one-directional way. . . . Thus the low savings ratio tends
> to keep down the formation of capital. Crude production techniques
> are partly the result of low capital per man. The distribution
> of labour is faulty, in that too many are occupied in relatively
> unproductive activities. In turn, low labour input and efficiency
> are in part a result of primitive techniques and lack of capital.
> We have catalogued the low levels of living for most people in
> the countries of South Asia. These low levels manifest specific
> deficiencies: insufficient food, bad housing, poor public and

> private hygiene and medical care, insufficient facilities for
> vocational and professional instruction, and education in gen-
> eral. These low levels of living are caused mostly by low
> levels of productivity and income, and low levels of living
> cause low efficiency of labour.[5]

The second paragraph in the quotation from Myrdal effectively describes

problems found both in Ethiopian centres and peripheries, but casts them

in the form of a "vicious cycle" - an analytical frame we criticised

in Chapter Two. We can, however, note that Haile Selassie's policies

had a negligible effect on this "cumulative circular causation".

Import substitution by Western-managed enterprises - a "hothouse

capitalism" involving light manufacturing in a few enclaves, economic

growth for the few behind high tariff walls, and heavy demands for

foreign exchange - is the strategy that was pursued rather than a Soviet

type of self-reliance and emphasis on heavy industry. New profits were

not ploughed back into new and productive local activities and many

traditional artisans were thrown out of work by a wider availability

of Western-style products. In other respects however, there was a

peaceful coexistence of traditional institutions with the new businesses

(a major reason why this particular strategy of industrialisation was

chosen), except when organised labour came to demand higher wages. Where

the State chose to manage industrial and commercial concerns directly,

a further bureaucratisation and entrenchment of authoritarian traditions

took place. American 'experts' often praised the "stability" (strongly

resembling inaction) that resulted from "free" Ethiopian enterprise (a

rather primitive form of corporate syndicalism) and what was viewed as

American-style industrial relations. The negligible impact of indus-

trialisation on the growth of the economy as a whole and the virtually

non-existent effect of industrialisation on traditional politics meant

that social stratifications continued to display their customary rigidity

among most cultural groups.[6]

The centres' business activities are conducted under varying mixtures

of traditional practices, Western-style private laws, Government regula-

tions concerning private activities and rules concerning public enterprises.

Many legal problems have resulted from the incompletness, internal con-

tradictions and confusing combinations of the public and private laws

that are applied, ignored, distorted and rejected. While a mixed system

of public and private enterprise logically entails a mixed legal system -

and while the Derg is hard at work changing the mix both of law and of enterprise - little thought has been given to the overall effect of law on the economies of the centres, either by the Derg or under Haile Selassie. Major enactments, the Civil and Commercial Codes promulgated in 1960 under the Emperor, draw largely on French sources whose cardinal postulate is a rigid segregation of private and public laws. While pragmatists deny the validity of such a separation in France (it certainly does not exist in Ethiopia) and Marxists view private laws as little more than delegations of the coercive power of the State, the segregation of public and private law is fundamental to the very operation of a legal system in the civilian mould. Rules from one sphere cease to be valid in the other.[7]

The nature of this dichotomy has been best expressed by an eighteenth century Scots jurist, John Erskine:

> The public law is that which hath more immediately in view the public weal and the preservation and good order of society. . . . Private law is that which is chiefly intended for ascertaining the civil rights of individuals.[8]

In other words, private law has its locus in relations and organisations which are subject to other, non-legal social controls and are relatively independent of the state; this locus is in one-to-one transactions, where individuals bring their wills and assets to bear on narrow projects of primary concern only to themselves. These projects provide, in turn, the motivation and the means to invoke legal processes. Public law, on the other hand, posits a failure of markets and other social controls to serve a public interest which diverges from that of the individuals directly involved. If markets and private business activities are regarded as basically wholesome, they are merely regulated under public law; if fundamentally tainted, they are replaced. Public law generates changes in the ways in which production is organised, and these changes have a marked effect on other social organisations, increasing the need for more effective ways of legitimating the political system. A quasi-political wage structure displaces the "invisible hand", for example, and then serves as a focal point for political conflicts between social strata.[9]

Worldwide, socio-economic change calls forth legislative interventions and the growth of state power through administration. In the

context of the present discussion, this process results in a constant penetration of private law by principles enacted in the public interest - as defined by those in power. The legal system of the West failed to adequately anticipate this trend, and much analytical confusion has resulted. The subordination of public to private law assumed by the common law (at least until recently) has proved no more adequate to the task of incorporated legal change than has the rigid segregation adopted by civilian jurisdictions.[10] The only juristic technique that makes sense, under conditions in which active state interventions are both a political inevitability and a prerequisite for development, is the subordination of private to public law. That this is the approach that the Derg will continue to use is reinforced by the fact that it is the prime juristic technique used in communist party-states, many of which deny a separate existence to private law. We will, however, discuss Haile Selassie's private laws in some detail; to date the Derg has made only marginal change in the Codes (some of these were mentioned in the previous Chapter); few changes have been projected for the foreseeable future, and other avowedly socialist regimes have learned to 'make do' without detailed revisions of the substantive rules of private law.

I. Private Laws[11]

A discussion of Government's private laws has been relegated to a Chapter about the centres because, as we saw in Chapter Two, the penetration of these laws into subsistence rural areas has been negligible. The 1960 Codes were a cornerstone of Haile Selassie's political strategy; their utilitarian and instrumental rules will remain irrelevant to most social situations for a long time to come, and they posed no threat to Imperial politics; they establish a well-defined and fairly rigid body of law (along with suggestions as to juristic technique) which satisfied the demands of some elites and served - for a time - to forestall demands for more radical changes; they do nothing to hinder the growth of a bureaucracy which was, and largely still is, incapable of an overall administration of the economy (see Chapters Three and Five); the Codes seem to confer property rights on Ethiopian elites while broadly permitting expropriation and an ongoing segregation of landed wealth and political power; and they provided a facilitative framework familiar to Western businessmen, while their French orientation

retarded the growth of American influence over Ethiopian law.[12]

Apart from adaptations of the <u>Fetha Negast</u> (see Chapter One) found in Civil Code Title IV - Bonds of Consanguinity and Affinity - the 1960 Codes represent an almost complete break with the past. They also illustrate virtually all of the pitfalls that attend legal transplantations (some of which are mentioned in Chapter Two). Legal academics with experience in Ethiopia have nevertheless tended to follow uncritically the lead of Professor Rene David, the Civil Code draftsman. The thesis typically advanced prior to the Revolution was that Ethiopia now has a moderately modernised legal system - one which is moderately-well adapted to Ethiopian society and which will become, through moderately-creative judicial, legislative and educational efforts, acceptable to many Ethiopians of this generation or the next.[13] Although the "moderatelys" beg the question to some extent, they are utilised to provide an accurate distillation of the minor qualifications found in many pages of analysis. The viewpoint implicitly adopted has been carefully summarised by Roberto Unger:

> The growth of a formal legal system is inextricably associated with the rationalization of man's understanding that is at the core of 'development'. . . . By providing for enforceable contractual arrangements, equalizing the law of inheritance and structuring the law of property in accord with criteria of 'efficient' resource allocation and income distribution, imposing duties of contribution to the public welare (taxation) and organizing and promoting labor, the law can promote more directly 'social interdependence,' 'achievement orientation,' and 'instrumental rationality,'[14]

In this Section, we will examine the legal theories underlying these theses, in order to discover the nature of Ethiopian private law and its relevance in an era of revolutionary change.

A. <u>French Law Comes to Ethiopia</u>

The predominant flavour of the Ethiopian Codes is French - in approach, style and, to a large extent, substance. The French draftsmen of the 1960 Civil and Commercial Codes (David, Jauffret and Escarra) claim to have used an eclectic approach based on comparative law methodologies, and consulted Western European, Middle Eastern, and North African Codes, as well as Anglo-American legal rules.[15] Their approach appears less eclectic once we recall that the other Codes that were consulted are heavily influenced by the French model, and that all of

the rules examined are the products of a single (Western) legal culture, with a common core of categories and history. Further, persons pursuing a comparative approach must possess a sensitivity towards what Holmes would have termed the "inarticulate major premises" of Ethiopia's legal system (see Chapter Two).[16] There is ample evidence to suggest that Ethiopia's draftsmen lacked this sensitivity. David, for example, argues that Civil Code obligations rules will encounter no opposition since "the Ethiopian society of yesterday did not know the concept of contract."[17] Escarra remarks that:

> until now there have not been local commercial customs in Ethiopia. . . .[18]

> The business practices which came to my attention were generally not very significant. In fact, Ethiopian trade - especially foreign trade - is based legally . . . on fairly poorly-defined Anglo-American practices to which have been grafted the business customs of each trading group.[19]

These views mistake the nature of pre-existing Ethiopian law by finding its essence in form rather than function and by uncritically transferring French assumptions in areas where the Ethiopian legal environment is not understood. Contract is obviously equated with modern French obligations law, since even traditional forms of commerce are contractually regulated, and notions of reciprocity, duty and the bargained-for regulation of social and economic relations - elements of a more relevant contract definition - have existed in Ethiopia for many years.[20] Inter alia, the Fetha Negast, which has been applied since at least the sixteenth century, states:

> The purchase is not valid unless the seller and buyer may dispose of their own property and unless they agree with knowledge [of the price] and unless they have been emancipated. [The contract of] purchase and sale is completed by the transfer of the object from the seller to the buyer who receives it without violence and they shall not make a deal in the absence of a third person acceptable to both. . . . As a general proposition the rule is that [the contract is concluded if] the buyer gives his consent by saying 'yes' and [is annulled] if he rescinds it.[21]

Furthermore, historically significant commercial customs and practices have existed in Ethiopia for thousands of years, and modernising codes could have been drafted which take these practices into account.

David's and Escarra's statements are revealing examples of an approach to law similar to that found in colonial legal thinking:

"good law in one place is good law any place else", since there is no
need to consider interactions between law and social values and struc-
tures.[22] In this vein, David contends that Ethiopian development and
modernisation

> necessitate the adoption of a 'ready-made' system; they
> force the reception of a foreign system of law . . .
> rather than a codification along such lines of legal
> development as can be identified.[23]

As we argued in Chapter Two, development requires the establishment of
some rules and institutions on an a priori basis, yet codification is a
serious matter and should be undertaken only after a deliberate choice
of objectives and an analysis of the actual and potential role of law
in Ethiopian society. Immense political changes have made it desirable
to reformulate portions of the Codes after only nineteen years.

More fundamentally, David presupposes that the French legal model
and its related assumptions are the appropriate ones from the standpoint
of Ethiopian development. French private laws were not instrumental in
securing a broadly-based development in their country or origin, however,
and it is unlikely that they will do so in Ethiopia.

The historical events that are relevant to the development of French
private law in the nineteenth century are alien to Ethiopia's experience,
and have been characterised by Marx as comprising the era of Bonapartism:

> The exercise by the state, through a strong executive, of ar-
> bitration between classes and social forces, to assure the
> necessary conditions of stability for the promotion of de-
> velopment under the leadership of the bourgeoisie.[24]

This process was interrupted by the Third Republic and has continued under
De Gaulle and his successors. That the arbitration of interests was in
favour of the bourgeoisie (as that term is used in French political
analysis) is shown by the fact that concern for the well-being of the
majority arrived quite late in France: a welfare state did not begin
to emerge until the income levels of the masses could support it. French
economic development was slow and emphasised stability rather than
achievement. The peculiar inflexibility of the French "bourgeois spirit"
made for little resource allocation and for an institutional "set" in
favour of small and timid businesses and farms, which are subject to
inertia and are structured around the family. Adaptations to new econo-
mic circumstances and social conflicts were, in other words, inadequate.[25]

The related French private laws which emerged "were merely the re-
flections of the social; political and economic philosophies character-
istic of the era",[26] and "a prematurely ossified system of premises".[27]
(While the latter assertion is applicable to the Codes as transplanted
in Ethiopia, the former most certainly is not.) The original French
codifications were a sharp reaction against what were seen to be the
excesses of the Enlightenment and the Revolution. While Roman law pro-
vided the conceptual frame and some of the rules of obligations (con-
tract) and property laws, many rules were backward-looking, grounded as
they were in customary law. While property was liberated from feudal
privilege by the Civil Code (a tendency which never materialised under
Ethiopia's Code - see Chapter-Six), the basis of a rural and increas-
ingly bourgeois society was the fierce protection of immovables within
the family. French and Roman notions of a patriarchal family coincided
and served legally to strengthen the role of the family posited by a
Mediterranean Catholicism. The power of other groups standing between
the individual and the State (manors, guilds, the Church, provincial
authorities and municipalities) was proscribed because, inter alia,
they hindered attempts to achieve an Imperial absolutism - Napoleon's
or Haile Selassie's. In the name of an extreme individualism and free-
dom of contract, the individual was left face to face with the State.[28]
The French Codes enshrined the basic principle that the State can
not operate businesses so as to distort market equality, an obsolete
rule that causes many legal difficulties in France today. If the French
courts ever served as effective arbiters of business transactions, they
certainly ceased to do so in the twentieth century. The French Commer-
cial Code was already old at its birth: designed as it was for shop-
keepers and artisans, it largely re-enacted the Ordinances of 1673 and
1681. It fails to take account of state intervention, nationalisation
and economic planning (problems that plagued the legal system under
Haile Selassie) and it cannot be analysed as a logical entity since
many of its basic principles are enshrined in the Civil Code. There
is some pressure towards a unification of the two Codes in France, and
there is little reason for separate Codes in Ethiopia,[29]

There have, of course, been changes in the French Codes since they
were promulgated early in the 19th century. These changes took place

within a framework provided by the persistent social and economic relations detailed above, which also exerted a major influence on the nature of juristic speculation (<u>jurisprudence</u>, <u>doctrine</u>) and legal practice. Rural and Labour Codes were enacted to supplement the Civil Code, landed property and family cohesion became somewhat less important and group economic activity became more prominent.[30] Viewed from the vantage point of France, these changes were great indeed. Viewed from the outside - such as from Ethiopia - however, the main outlines of the law remained as stable as the social system they served and important Code reforms were not secured.

Thre are a few similarities between the codification experiences of France and Ethiopia. Bayitch's characterisations can, for example, be applied both to the Ethiopian and the French Codes:

> a self-righteous remoteness from actual problems permeated by didactic overtones make such codes frequently showcases of learning rather than tools handed over to government to cope with everyday problems. . . . [The] most impressive codifications owe their existence to one form or another of authoritarian regime, denying free action to political, social or economic forces in favor of one guiding, all-embracing official doctrine. Such a doctrine may be personfied in an absolute ruler or an 'elite' , . . permitting the creation and enforcement . . . . of the grand legal image of a uniform society.[31]

A superficial comparison of French and Ethiopian legal environments discloses some further similarities: the importance of the family, immovables, individual economic activity and Christian morality (albeit of different content) fall within the sphere of interests associated with a tiny, state-supporting, Westernised, urbanised and, usually, landed Ethiopian minority - the group that practiced a rudimentary capitalism and dominated Parliament and the Codification Commission under Haile Selassie. When examined in detail, however, numerous value differences emerge, and many of the interests that can be pursued through Ethiopia's Codes are not, in any event, even within the frame of reference of the Derg or of ordinary Ethiopians.

This is not surprising since, notwithstanding the fairly minor modifications that have been enacted, the French Codes are designed to fit an early nineteenth century French "social field" - that interplay of institutional structures, physical constraints, ideologies, traditions, values and a host of other forces that determine the realm of

individual and judicial choice.[32] The needs and demands represented
within that field are radically different from those of the Ethiopian
social field, and largely unmodified French (or Italian or Tunisian)
legal rules will not, except by chance, result in the same behaviour
when transplanted to an Ethiopian environment.[33] Alan Watson argues
that:

> Variations in the political, moral, social and economic
> values which exist between any two societies make it hard
> to believe that many legal problems are the same for both
> except on a technical level.[34]

Unlike Ethiopians, the French are, for example, "a law-minded, law-using
people, whose affairs were touched by legal processes at many points. .
. ."[35]

   High levels of indifference and deviance with regard to Ethiopia's
Civil and Commerical Codes should therefore have been predicted prior
to their promulgation and such has indeed been the case, both before
and after the Revolution. Acceptance or active support of the Codes by
more than a tiny minority can only be achieved by devising more inclu-
sive legal values or - less realistically for Ethiopia, given the low
levels of legal penetration and the Derg's political predilections - by
absorbing more people into the existing system of private law.

   Codes which do not respond to Ethiopian needs and demands will not
promote development. Arguably, Ethiopia needs integration of rather
than arbitration among strata and ethnic groups, as well as legal pro-
visos which secure greater social justice and equality for larger numbers
of people. Instead of a crystallised inflexibility, tension, conflict
and change must be dealt with explicitly and creatively (see Chapter
One). Ethiopia's Codes fail to accomplish these goals.[36] Although we
have chosen to explore the difficulties arising from legal transplanta-
tions across social fields in relation to Ethiopian private law, the
same sorts of conclusions could be drawn from analyses of the public
laws discussed in Chapter Three. These conclusions would be much more
tentative and subject to qualification, however; as we noted, trans-
plantations were far less direct and wholesale in the area of public
law.

B. Ethiopia and Professor David

   If the Codes that were brought to Ethiopia are neither modern nor

modernising - a subject we will return to infra - what, then, was the purpose of codification? The Codes effect, in Rene David's opinion, a compromise between the present need for dispute settlement and the introduction of a new model of social organisation:

> They [Ethiopians] wish it to be a programme envisaging a total transformation of society and they demand that for the most part, it set out new rules appropriate for the society they wish to create.[37]

David urges that "Ethiopians" reject an assertion he associates with the historical and sociological schools of jurisprudence: a non-traditional mode of conduct cannot be imposed upon people. The Codes are a new and ideal Fetha Negast which aims at social perfection, although it will be imperfectly followed in practice.[38] These questionable assumptions (which must be ascribed to David rather than "Ethiopians", given the divergence of views that results from high levels of social stratification and ethnic fragmentation) underlie much of the Ethiopian codification process and raise numerous questions. Are the Codes an appropriate means of introducing a new social model? Do a majority of Ethiopians favour social change through law? Do particular legal rules serve to compromise essentially conflicting goals, providing both concrete, mandatory solutions to present-day disputes and fluid statements of future good intentions? Beckstrom, for example, notes that:

> [Ethiopia's] Civil Code has been pictured as a sophisticated body of law lying dormant, waiting for the nation to grow into it, an inappropriate picture in instances such as this where the Code began to operate immediately upon an unprepared population.[39]

The models that compete with the one proposed by the Codes are contained in the Fetha Negast and the customary laws of Ethiopian cultural groups which are outlined in Chapters One and Six. With incredible self-confidence, David purports to repeal these laws under Civil Code Article 3347(1) - see Chapter One. Although he recognises that "customs" provide the substance of private law, he denies them the status of law, viewing them as "mores" which will evolve under the pressure of modern education. For David, African custom "became the symbol of an imperfect society", in which "justice is barely distinguishable from conciliation". The authority of customs "ended the moment it was realised that there was another social and moral order both different and superior."[40] The

apparent reason for so arrogant an ethnocentrism is that the Codes are
viewed as the "real" law; they are to conquer Ethiopia as Roman law
conquered Europe. Roman law backstopped the emergence of a market econ-
omy within feudal societies, and the same thing was to happen in Ethiopia.
The migratory idea whose time has come was thus to stimulate Ethiopian
social development somehow. Further, David sees no place for traditional
laws as such in a codification based solely on "national interest", as
discerned by draftsmen, Codification Commission and Parliament.[41]

David goes on to explain why the incorporation of traditional rules
was fairly rare:

> If there is still some attachment to the Ethiopian custom, it
> is a matter of sentiment or self-interest . . . It has no sacred
> character in the eyes of the population.[42]

> The Ethiopians have sorted out their customs, keeping only the
> necessary ones which either correspond to their profound senti-
> ment of justice, or else appear too generally and too profoundly
> rooted for one to hope to take them away from Ethiopians in the
> foreseeable future.[43]

The first statement is clearly erroneous and both of them raise a number
of interesting questions: are "sentiment" and "self-interest" not major
driving forces in other legal systems? Who decided what is "profound
sentiment" and "too profoundly rooted"? On what basis? Who will take
traditional law away from Ethiopians in the future? How will they do so?
The traditional elements that were retained by David in the Civil Code
will not necessarily foster its acceptance: "for many inhabitants of
the Empire, a few traditional norms kept in the Codes are utterly foreign
as they reflect the traditions of other politically more important
groups."[44] This disregard of the traditions of non-Amhara cultural
groups will create problems if Code norms ever begin seriously to impinge
upon customary laws in the rural areas.[45] Societal integration which
promotes unity and stability requires that a national culture and legal
system evolve simultaneously, with selected values which best promote
development being drawn from various cultural groups.

The theoretical repeal of traditional laws by the Civil Code epito-
mises Arthur Schiller's characterisation of Ethiopian private law as
"fantasy law".[46] William Harvey terms David's Code an illustration
"of overextended expectations from legal modernisation. . . ." Despite
"able scholarship and imaginative design", the Code has made no

significant contribution: "The critical deficiency . . . was the
failure to take sufficiently into account relevant social realities. . .
."[47] There is abundant evidence in Chapter One to support Schiller's
and Harvey's assertions. Many centuries of legal history are not turned
into a _tabula rasa_ so easily, and David fundamentally misunderstood
Ethiopian traditional laws, the degree of popular attachment to them,
and the realities of African customary law generally. While a codifi-
cation of private laws is a fresh start, it cannot be invented out of
the blue; it must be kept within the stream of continuity of pre-existing
laws,[48] especially in long-established areas such as Ethiopian commerce.
Further, David displayed a manifest ignorance of traditional Ethiopian
politics, social stratification and ethnic fragmentation: he assumed,
for example, that he was dealing with the Ethiopian people while present-
ing his Drafts to the Codification Commission.

The only indication that David thought about some of the issues we
have raised is his assertion that the Code was drafted for the "more
developed" highland population, and that its application elsewhere in
the near future is unlikely.[49] This sounds like the conscious invigoura-
tion of a legal dualism (like those which some lawyers have discovered
in Anglophonic Africa), but a more accurate characterisation would be
of a 'class' legislation manipulated by those who gain from it - includ-
ing lawyers in particular. Brun-Otto Bryde notes that:

> In a legal sense, every Ethiopian is subject to the rules about
> driving motor vehicles, or writing cheques. In practice, the
> law is in both cases of relevance only to a relatively small
> group.[50]

At a deeper level, Robert Lee Hale adds:

> Inequalities of fortune based ultimately on governmental assign-
> ment of property rights and enforcement of contracts, are in-
> equalities in individual liberty. Legal obligations to respect
> other people's property bear more heavily on those to whom the
> law assigns little property than on those to whom it assigns
> much. . . . In assigning and enforcing property and contract
> rights, however, government . . . conceived itself as hewing
> to a narrow line of governmental activities, letting the chips
> fall where they may.[51]

Otto Kahn-Freund then picks up the story of the kind of transition between
traditional laws and Codes that was occurring in Ethiopia:

> . . . The legal order of feudalism deliberately allocated the
> control of land and goods, established the hierarchy of power
> and imposed the duty to work in accordance with the social

> functions of possession, power and labour. The function of
> the legal institutions corresponded to their legal structure.
> Capitalist society, however, pretended to be able to forego
> the functional organisation of possession and of labour. It
> covered the order of goods with a legal concept of property
> defined in the abstract. . . . Society pretended to abdicate
> in favour of the will of the individual. . . .[52]

If the broad definitions of contract and property - use of and control over political and economic resources - which we argued for in Chapter Two are adopted, Ethiopian private laws are seen to be helping to bolster the political status quo while conferring licenses to acquire additional wealth (and, ultimately, political power) on Westernised elites. David's stated desire to avoid fragmented legal systems has, temporarily at least, created additional fragmentation, and there can be no equal protection of the laws under these circumstances.

The Codification Commission and Parliament were composed of people possessing a relative abundance of economic and political resources, who could only deal with those issues they could perceive as social problems. The distances (see Chapter One) between them and the ordinary people are much greater than between legislators and citizens in the West. Ethiopian elites are closer to their Western counterparts than to their own people, and it is therefore not surprising that what is regarded as legal common sense by elites in the West - rules relating to property, contract, commercial law and business organisations should appeal to Ethiopian Parliamentarians. A Western conservativism, combined with a few selected indigenous concepts (chiefly in the area of family law and successions), was brought in to compete with traditional conservatisms. Several serious anomalies were also introduced, such as the deletion of David's transitional arrangements and the "suspension" of provisions establishing the Registries of Immovables and Civil Status which have never been implemented. The process of codification illustrates many of the characteristics of Ethiopian government described in Chapter Three: secrecy and a lack of public discussion, the rapid pace of enactment that was forced by the Emperor, and an emphasis on the symbolic value of law rather than on its usefulness. The clearest evidence of the symbolic nature of the Civil Code is that David's plan for commentaries and an exposé des motifs was never carried out; the Ministry of Justice also refused to translate prior case law.

for David's perusal. As a result, the practical impact of the Code was lessened substantially. Also, a consensus among David's "Ethiopians" never came into existence.[53]

Should the reader be sympathising with a Professor David who has been tricked by the wily Ethiopians and is being unfairly criticised here, we would point out that Third World lawmakers are at the mercy of a foreign expert: they can reject or alter rules in politically sensitive areas, but they typically lack the expertise to challenge basic assumptions and technicalities. As Bryde notes, the Code could be viewed "as a product of the Ethiopian parliament rather than of Rene David, ... [but] this would put the actual contribution to the Code upside down."[54] Irresistably, the conclusion emerges that David was naive or cynical - or both. We would plump for naivety and for an ethnocentrism: like some other civilian jurists, David was preoccupied (while drafting the Code in Paris) with artificial concepts and systems bearing no relation to Ethiopian realities and with what he has termed the "new universalism" of a "legal science": The ways in which his preoccupations were dealt with invariably involved the French law. This is particularly worrying, since David is among the best-known of comparativists. Common lawyers can, however, take little comfort from his (and Ethiopia's) misfortunes. For example, English draftsmen of land reforms in Kenya, Sudan and Malawi came up with equally irrelevant - but English - concepts; Coke's view of the common law as the ratio scripta has also come to plague processes of legal transplantation.[55]

C. The Codes in Court[56]

Any assessment of Ethiopian private law must take account of the manner in which the courts apply the Codes: difficulties in developing and administering the law often reflect conflicts among laws and social values. Prior to the adoption of the Codes (and the related Civil Procedure Code),[57] High Court judges of differing nationalities applied their own notions of justice and equity without being tied to the letter of the law. At the local level, judges were appointed by governors possessing an almost unlimited authority. Justice was thus an extension of individual authority, a function that was often turned to personal profit. A certain amount of arbitrariness resulted from the

application of individual perceptions, the undertainty of custom, and the adjudication of novel situations for which customary laws provided no answers. Although these practices were far from ideal, Vanderlinden's assetion that there was an absence of legal profession, legal education and legal science in Ethiopia must be rejected out of hand as ethnocentric.[58] There are specialised advocates and sophisticated principles of legal philosophy, and customary laws are learned by listening to cases and through discussions with judges and elders.

David envisaged the Codes as effecting the gradual implementation of a minimal security in legal relations by limiting mistakes and arbitrariness, and by furnishing "a manual cutting [through] the uncertain contours of equity."[59] It can be argued that the further legal fragmentation introduced by the Codes results in additional mistakes and arbitrariness; David seems to have transplanted the very French distrust of judges that is symbolised by a Revolutionary slogan, "God save us from the equity of the courts". _Aequitas_ (équité, Billigkeit) has always played a leading role in civil law, as a means of escape from narrow formalistic interpretations - a more precise natural justice. More recent codifications require, as in Article 4 of the Russian (R.S.F.S.R.) and Article 1 of the Swiss Civil Codes, that judicial interpretations reflect the spirit rather than the letter of the text. Rather than adopt this approach, David omitted canons of interpretation altogether and attempted to embody the leading fruits of French jurisprudence and doctrine in Code rules. Extracontractual liability ('tort'), for example, is dealt with in 151 Articles, compared with five in the French and seventeen in the Italian Codes.[60] Throughout the Ethiopian Codes, the message is clear: judges are not to be trusted.

While High and Supreme Court decisions generally display an accurate and effective application of the Codes, justice in the lower courts has scarcely felt their impact. Despite a theoretical centralisation of the judiciary, local procedures and practices and traditional modes of proof survive. Argumentation continues to emphasis the persuasive presentation of facts rather than complex legal interpretations. If the applicability of the Codes is recognised at all, judges typically cite irrelevant provisions to 'dress up' their opinions and fail to explain how the Code is applied to case facts. Even when judges attempt

to apply the Codes conscientiously, Articles tend to be viewed as situations rather than as principles, with the facts being fitted into the most relevant situation.[61]

Another common tendency in Ethiopia is to utilise traditional arbitration or conciliation by local elders (shamageilles) in preference to Government courts. Urban merchants, for example, use these devices to save time and expense and to preserve business relations. Typically, there is recourse to Government courts only if large amounts of money are at stake, the issues are complex, a foreigner is involved, or a criminal case or vengeance is being pursued. Disputes settled by elders can be brought to court later but social pressures and settlement techniques, such as written agreements, usually induce compliance with the elders' decisions. Under Civil Code Article 3312, these compromises have the effect of 'res judicata' regardless of mistakes as to the rights compromised, and can only be attacked on the ground of fraud or duress. The agreement constituting the compromise need not be written unless it concerns an immovable. In a settlement analogous to a bankrupcy proceeding, for example, the shamageilles will destroy the evidence of the debts in order to prevent creditors from later going to court. The parties usually prefer this procedure to the punitive bankruptcy provisions found in Commercial Code Articles 974-1153, which presuppose that businesses are registered, books are kept, and sophisticated judicial administration of complex and delicate rules is available.[62]

Arbitration and conciliation do, of course, exist in all legal systems and are flexible procedures that decrease court caseloads. They should always be subordinate to state-sanctioned adjudication however: if, as in Ethiopia, they come to constitute an alternate legal system, the legitimacy of government and the uniformity of law-in-action will suffer. While traditional conciliation usually fulfills the needs and desires of the parties, there have to be winners and losers under the new laws: under the Codes, of course, but in the Derg's new courts as well, where a single, ideologically correct decision is expected.

The confused state of legal administration in Ethiopia supports the contention that: "In a developing country the institutions and procedures by which the law is administered may be more significant than the law itself".[63] Law and order (properly defined - see Part II)

is a necessary condition for development, yet we find that formal
dispute settlement mechanisms in Ethiopia are inadequate; case presen-
tations are confused, disorderly and delayed. A central problem of
Ethiopian law therefore becomes the recruitment, training and promotion
of skilled personnel.[64] Many excellent suggestions for improving the
quality of Ethiopian judicial administration can be found in articles
by Sedler and Geraghty[65] and need not be reproduced here.

The judicial "style" emerging in relation to Ethiopian private law
is a product of conflicting currents: civilian substantive rules, a
codification of the English procedural rules applied in India, and the
Derg's socialist policies that are elaborated during judicial conferences.
While, for example, Western lawyers occasionally speak of rights without
remedies, the converse is also possible in Ethiopia: procedural rules
vindicate rights which are unknown to the civil law, particularly when
the American-style class action provisos that were added to the Civil
Procedure Code are taken into account ('balance of convenience' when
'enjoining nuisance', etc.). Thus, substantive similarities between
French and Ethiopian Codes can easily be nullified, for no good reason,
by procedural divergences which impair the functioning of the Ethiopian
Civil Code as a system. Anglo-Indian (-American) models are no more
relevant to Ethiopia than the French ones, save that much of traditional
litigation tends to be adversarial rather than inquisitorial.[66]

An unnecessary amount of confusion has surrounded the question of
whether Ethiopian courts ought to follow the doctrine of <u>stare decisis</u>.
Owing to the influence of English procedural law and American Law
Faculty instructors, an attenuated theory of stare decisis has entered
Ethiopian legal thinking. While it is possible to apply stare decisis
to the interpretation of a code, continental jurists have reasoned that
Ethiopia has imported civil law techniques along with Civil and Commer-
cial Codes. Rather than stare decisis, "judicial custom" is to be of
"overriding persuasive force . . . since judges will not easily risk
contradicting the known settled views of the higher courts, or their
own".[67]

There are no objective differences between this "judicial custom"
and a modern or liberal view of stare decisis: in the common law world,
only the lower courts of England cling to (or are forced to retain) a
strict view of stare decisis; most common lawyers would accept the

Continental jurist's description as an appropriate means of statutory. interpretation. An appreciation of the strengths and weaknesses of both systems has led to a (perhaps unconscious) convergence in civilian and common law judicial thinking: precedent is accorded respect but not a servile obedience; case rules are applied only so long as judges consider them useful; there is an awareness that merely "logical" inferences from codes lead to fortuitous and arbitrary results; and the French view of the jurisprudence, of an explanation and demonstration of the law by judges, is increasingly accepted as a proper role for common law judges.[68]

There is, in other words, no danger that a few ill-considered cases will prematurely crystallise Ethiopian law under either approach, or that a slavish cult of judicial authority will emerge. Numerous subjective differences exist, of course, in the ways common law and Continental courts approach legal problems. The techniques used in these jurisdictions (as well as those of other Third World and socialist states) must be carefully examined with a veiw toward assisting Ethiopian judges in the enormously difficult task of interpreting their Codes. Deciding cases is not an act of mechanical deduction; contra H.L.A. Hart, it is a (political) act of will:

> As Kant said, there is no rule for applying a rule. It is
> 'the specific quality of the so-called mother-wit.'[69]

Ethiopian judicial decision making is made more difficult by an acute shortage of clear case reports and a settled system of appeals prerequisites of a successful system of stare decisis. Likewise, doctrine (academic opinions which are of great importance to civilian case decisions) is fragmented. No general rules of interpretation are to be found in the Codes, although it is possible broadly to apply rules of contract interpretation found in Civil Code Articles 1733-7 to other areas of private law. The Amharic is the official version of the Codes, while the English verions have some standing, owing to their publication in the Negarit Gazeta. The French originals have no official status, however. Even if careful translations are assumed, the meaning of legal concepts differs radically in different languages, and there is a vast potential for ambiguity where a few words, which have numerous referents, must be applied to a wide variety of legal sitatuions. Added to these problems are the numerous avoidable ambiguities, errors and contradictions

that resulted from hasty drafts and translations of the Codes. Amharic
legal concepts are "quite loose", and much mistranslation, non-translation
or too-literal translation of the Codes occurred. Many legal concepts
have been forced into ill-fitting Amharic moulds, and the break with
Ethiopia's previous legal culture means that judges are playing a game
where the rules are not completely understood.[70]

When all of these factors interact, they create numerous instances
of genuine Code vagueness. Coming to grips with an interpretation prob-
lem, a creative judge could ascertain the relevant Code principles,
apply them tentatively and predict the result. If the result is absurd,
manifestly unjust or contrary to specific tenets of Ethiopian Socialism,
he could fashion an alternate rule based, perhaps, upon a concrete
political pronouncement or a rule of traditional law. Recourse to cus-
tomary and traditional laws is appropriate in areas where Code principles
are vague, although a return to the subjective application of diverse
customs and subtle changes in express Code language must be avoided.
Sedler's contention that, on the whole, Ethiopian judges are not sophis-
ticated enough to engage in this type of reasoning[71] can only be accepted
if sophistication is equated with a knowledge of the Codes and appro-
priately-chosen Ethiopian judicial techniques.

In order to develop these techniques, there must be a widespread
recognition that judicial decision-making is not a mechanical process,
that there are strengths and weaknesses inherent in the judicial process
and that the interests pressing for judicial recognition must be inves-
tigated with care and insight. These perceptions, in turn, depend upon
appropriate judicial education and socialisation, by fellow judges and
new political institutions, and on a sensitivity towards the public
generally. The courts will inevitably refuse to follow the Codes where
they conflict with pronouncements from the Derg, but a measure of judi-
cial independence ought to coexist with this inevitability: the courts
ought sensibly to adapt the Codes to changed circumstances on their own
account, and to explain the broad issues involved (as well as the legal
technicalities) in order to build the public confidence that constitutes
the basis of a court's legitimacy.[72]

D. Brief Commentaries: Property

The outstanding characteristics of Ethiopian private law are its

orientation towards nineteenth century capitalism and the absence of socialist provisos, meliorating provisions associated with the welfare state or rules related to a broadly-based development. Both property and capital - one of the uses to which property is put, through contract - fall back on organised state power and form one of the most confused areas of economic and legal theory. Property is the cornerstone of Western private laws. Complementary institutions based on contracts of, for example, employment and association (including companies - discussed infra) do not change the legal structure or social function of property, which is an entitlement to power, as well as to rent, interest and profits. For the Western economist, the test of the effectiveness of property law is "whether it provides a secure foundation, so far as the law can do it, for the acquisition, enjoyment and disposal of wealth."[73]

At first glance, this is what Ethiopia's private law does; for those who have the means to acquire wealth. Articles 1204 and 1205(1) of the Civil Code state that:

> Ownership is the widest right that may be had on a corporeal thing [i.e., 'incorporeal hereditaments' and 'choses in action' are not included]. Such right may neither be divided nor restricted except in accordance with the law.

> Without prejudice to such restrictions as are prescribed by law, the owner may use his property and dispose of it as he thinks fit.

These provisions convey the substance of Article 544 of the French Civil Code, and the Ethiopian Codification Commission made only marginal changes in David's draft (except for the deletion of the Kolkoze provisos - see Chapter Six). Under French and Ethiopian law, property is the exclusive, perpetual and all but absolute Roman dominium, an inviolate extension of personality which is rigidly segregated from the state (imperium). Property rights may be exercised for no economic benefit, even though another will be injured; as in all relations seen as subsisting between man and nature, what a man does with his property is of no concern to the law. These legal concepts are inconsistent with a public interest in broadly-based development. They are inappropriate in a country where non-legal social controls fostering the beneficial use of property continued to constitute the basis of a feudal exploitation and rule (see Chapter Six). David missed the opportunity to

introduce a broad "abuse of rights" proviso like those found in more modern codifications, such as Article 8 of the Dutch and Article 2 of the Swiss Civil Codes, although rules like the ones found in Anglo-American nuisance law were promulgated (see Art. 1225).[74]

The fierce protection of property that derived from the fight against feudal burdens and restrictions in France soon gave way to a recognition of the State's right of expropriation, which was initially treated as an embodiment of Rousseau's belief that property rights are limited by community needs and rationalised as an "accidental" incursion which posed no threat to the segregation of private and public law. Broad expropriation powers were transplanted to Ethiopia: all that is required is a declaration that expropriation serves the "public interest", defined vaguely as something other than a purely financial benefit; and a public inquiry should be held where it "appears to be necessary" (Civil Code Arts. 1463-5). As we saw in Chapter Three, Articles 43 and 44 of the 1955 Constitution did not effectively protect vague property rights either. The net effect of these rules was, in fact, a simple restatement of broad traditional powers of expropriation except that, as another index of centralisation, rapacious local officials could no longer exercise them as of right.[75]

At the Emperor's pleasure, therefore, property law provided a framework within which wealthy but commercially unsophisticated Ethiopians could earn a profit with little risk or effort. The details of this process revolve around rural and urban land ownership practices (discussed in the previous Chapter and _infra_) which have been abolished by the Derg. It therefore seems only logical that the Derg would wish fundamentally to revise many Civil Code provisions. The socialist's concern over the living conditions of those with little or no property typically leads to the conclusion that freedom is attained in and through the state rather than through private property ownership. Surprisingly, however, socialist property laws do not differe markedly from Western ones. Article 58 of the Russian (R.S.F.S.R.) Civil Code, for example, provides that: "Within the limits set by law, the owner has the right to possess, use, and dispose of his property" – language similar to that in the Ethiopian Code. Under the 1954 Chinese Constitution (soon to be replaced), the right to lawful incomes, houses and inheritances is

protected, as is the title to village land for thirty years. After nationalisations or under a state socialism, a political institution succeeds to private rights in property for, as Marx noted: "Appropriation which appropriates nothing is a contradiction in terms."[76] He took the view that property - but not necessarily private property - is inevitable:

> All production is appropriation of nature by the individual and through a definite form of society. In that sense it is a tautology to say that property (appropriation) is a condition of production.[77]

Hans Kelsen uses this quotation to rebut the doctrine of the withering away of law and State, arguing that, since property presupposes a legal order, society must have law.[78]

Under socialist legal systems, the distinction between private and public law breaks down; property law acquires a public character and is then used to buttress new forms of political power and social organisation. A liberal (Western) concept of ownership is nevertheless retained, although the range of objects to which it attaches is more restricted. Private property continues to exist in those things deemed necessary for the satisfaction of what are termed the cultural and material needs of individuals while individual ownership of the means of production - particularly those which confer a power to command others - is prohibited.[79] We therefore conclude that Code property rules could be adapted to serve the Derg's purposes without a massive revision.

E. Obligations

Taken alone, property law cannot endow its object with the nature of capital; it must be assisted by complementary institutions such as those found in the Ethiopian Commercial Code and Books Four and Five of the Civil Code dealing with obligations ('contracts'). The most important contracts, of loan, association and employment,[80] are discussed infra. A common characteristic of the Code rules in this area is that they purport to be only facilitative or power-creating. A sharp discontinuity between state action and inaction - the private sphere, where government's role is limited to dispute resolution - is presupposed, and law delegates the power to create enforceable norms to individuals.[81]

Article 1711 of the Ethiopian Civil Code enshrines the Western ideology of freedom of contract in its purest form. "The object of the

contract shall be freely determined by the parties subject to such restrictions and prohibitions as are provided by law." Familiarly, contracts are given effect unless the obligation is unlawful or immoral, or there is a defect in the consent or capacity of one of the parties (Arts. 1716, 1808). Restrictions and prohibitions are few in number because, David argues, "contractual freedom . . . is fundamental to a society and an economy that wants to leave considerable scope to private initiative."[82] The idea, borrowed from nineteenth-century liberal economics, is that the total autonomy of persons and mobility of the factors of production will, through an obligations law of unlimited pliability and with a minimum of ceremony, ensure an efficient and continuous flow of goods and services. Obligations law imposes no value judgements: the exercise of individual preferences is respected once the phenomena of 'offer and acceptance' are detected ('consideration' is not required); and the sum total of these preferences constitutes the free markets with which obligations law is roughly coextensive. The terms of contracts are determined by the Invisible Hand which, along with a multiplicity of parties to transactions, eliminates the possibility of abuses of and imbalances in power. It is therefore presumed that those agreements which are not narrowly illegal or immoral are fully consistent with society's interests, that one-to-one dealings encompass all of the factors that the law ought to reckon with.[83]

The rise to prominence of this legal concept is fairly recent; Blackstone, for example, makes scant reference to it. It has, however, come to dominate Western legal thinking, causing David to opt "pour une solution transactionelle"[84] for Ethiopia. This is unfortunate: such a value-neutral law is a practical impossibility (see Chapter Two); it assumes a high degree of social consensus which has never materialised in Ethiopia (see Chapter One); and development-oriented rules can be blind neither to persons nor to their purposes (see Chapter Two). There can be no free bargaining where there are gross inequalities in the distribution of the major subject matter of contracts - property rights. Abuses tend to be cumulative rather than to cancel one another out, and the mobility of factors of production is hindered by rigid social stratifications, the fragmentation of markets and ethnic groups, the displacement of economic motivations by traditional political ones, and consumer inexperience. Freedom of contract thus becomes an inefficient and often

exploitative device in Ethiopia, concealing acts of submission which
arise in the course of power relations:

> Feudal relations, domestic relations (such as master and
> servant), trust relations, have been converted at the magic
> touch of business into contractural relations.[85]

> Behind the Invisible Hand there is a thumb on the scales.[86]

Hopefully, the preceeding paragraph makes out a good (albeit brief)
case for the revision of obligations rules, particularly since the Derg
rejects a _laissez faire_ out of hand. As in our discussion of property
provisos, however, a wholesale revision is unnecessary. While there are
significant restrictions on the kinds of things private individuals can
contract about in socialist countries, many Code provisions read the
same as they do in the West since, _inter alia_, economic relations with
Westerners must increasingly be taken into account. Certain additions
are made, however, such as Article 82 of the Polish Code of Obligations:

> An impossible condition and a condition contrary to the law
> or principles of common social life in the People's State
> nullifies the transaction if it is a condition subsequent.

These kinds of provisos are not held to result in a "legal nihilism",
and they serve to make an impersonal obligations law more directive,
placing a greater emphasis on contract as a device for social coopera-
tion. As we argued in Chapter Six, the State potentially has the power
of command over all of property, and it could intervene more creatively
by recognising only those individual and organisational relations which
do not hinder a broadly-based development and by providing incentives
for those transactions which actively foster development. This can be
done on the basis that a person who accepts the benefit of Code provi-
sions also accepts such regulation of the transaction as exists. In
this way, a formerly private law can become an integral part of a sen-
sible development planning, provided that many careful choices are made:
"facilitative law manipulates the weaker party, as does planning law or
social engineering. The principle difference lies in who does the man-
ipulating"[87] and for what purpose.

Despite the 1975 nationalisations (_infra_), private business activi-
ties will continue far into the future in Ethiopia and an urgent need
for a more modernising framework of obligations law remains, particular-
ly one that can be understood by the smaller producer and trader. Wide-
scale socio-economic relations require wide-scale law, and customary

'obligations' laws must be made uniform and emptied of their reliance
on the status of the parties and terms prescribed by tradition. Need-
less to say, such a resource-consuming exercise would only be under-
taken by the Derg if it were seen to further its intentions; obligations
law could, for example, usefully regulate relations within and among
city dwellers' associations (infra) and peasant organisations.

Inevitably, in a more intensively planned economy with a large
measure of state ownership, certain types of contracts become subject
to a more detailed regulation. Where an activity is vital to the
achievement of plan targets, for example, an obligation to contract is
often imposed on enterprises and 'specific performance' and an adminis-
trative accountability are readily available. It is, however, wise to
leave the methods and details of performance to a bargaining among
parties who have some choice as to who they deal with. If an unbiased
arbitration is also available, these kinds of contracts can provide an
index of exchange values that is extremely useful, given market imper-
fections and the impossibility of rational price fixing in many sectors.[88]
The basis for these kinds of contracts can arguably be found in Ethiopian
Civil Code Articles 3131 to 3306 relating to administrative contracts.

F. Commercial Law

Many of the provisions found in a commercial code are more specific
applications of civil code obligations rules. Escarra, the primary
Ethiopian Commerical Code draftsmen, believed that:

> the future Commercial Code must tend to encourage Ethiopians
> to take an active part in the economic development of their
> country and so the Code should include institutions which
> will help in obtaining this result.[89]

A laudable ambition, but he tried to fulfill it by designing an extremely
complex and severe set of provisions designed for a large-scale Western,
capitalist-type business sector. David asserts that, under Escarra's
Code, "the need to attract foreign capital often prevailed over consid-
erations of what was humane or even just".[90] The French Commercial
Code manages to be inegalitarian while serving to implement an extreme
economic liberalism, and these characteristics were faithfully repro-
duced for Ethiopia. Except in bankruptcy proceedings, "traders" (Arts.
5-10) are treated differently from "business organisations" (Arts. 227-
560). Farmers, fishermen and artisans cannot take advantage of Commercial

Code provisions (Arts. 5-8); a separate Code which never materialised was to govern their transactions. Escarra justifies the severity of his Code as follows: "although it will inhibit some persons, [it] nevertheless will assure the prosperity of the greatest number."[91] Instead of adopting an inability to manipulate an extremely technical Code as the criterion for inhibiting activity, the draftsman's goal should have been to create simple economic inventives while protecting the legitimate interests both of society and of individual businessmen.

In France, and hence in Ethiopia too, there has been so little hard thinking about business objectives and responsibilities that legal priorities are unclear and often contradictory. Article 5 of the Ethiopian Commercial Code vaguely requires traders to pursue their activities "for gain". The position of business organisations seems to be the same, except that certain partnerships are not required to act "commercially" (see Arts. 5, 10(1) and 213); under Article 346, for example, any action which does not narrowly benefit a company renders the directors liable to the shareholders. The theory seems to be that individuals can augment their capabilities, through collective action (private planning), by utilising neutral contracts of association, and while remaining substantially immune to public interference. Interventions are, nonetheless, introduced by the public laws that constitute a potential basis for a thoroughgoing public planning in Ethiopia and that represent a marked departure from the French model. Many Commercial Code provisions are simply ignored because judges and bureaucrats are lax in the enforcement of complex requirements. For example, Article 100 requires that businesses be registered, and non-registration is a penal offense (Art. 115); only 8,000 businesses had been registered in all of Ethiopia by 1969, while there are 7,100 buinesses in the Addis Ababa Mercato (the main quasi-traditional marketplace) alone.[92]

Many of the complexities found in the Commercial Code can be traced to the numerous provisions governing the six types of business organizations permitted: ordinary partnerships, joint ventures, general partnerships, limited partnerships, share companies and private limited companies (Art. 212). The existence of four types of partnership can only be attributed to a direct transfer of French and German legal experiences. The joint venture (Arts. 271-9) has proved a particularly

dangerous institution, since wealthy Ethiopians used it to conceal the nature of their business dealings - partners and assets can be kept secret and the organisation cannot be sued. The "severe" provisions concerning private limited companies (Arts. 510-43) are not severe enough, since these organisations can engage in wide-ranging activities on a very thin capitalisation.

Complex share company provisions (Arts. 304-509) suffer in comparison with those drafted by Gower for Ghana. Notably absent are Code rules detailing any kind of social responsibility. They reflect, rather, a primacy of property relations between shareholders and managers over the public interest that, contra *laissez faire* theories, often conflicts with private ones. Share companies possess substantial advantages, in terms of continuity, secrecy, internal discipline and attracting small bits of capital from people who need not trust each other, yet the Code requires precious little in the way of a *quid pro quo* which reflects public interests. In line with unreformed French and German patterns, Code requirements concerning disclosure of annual account and of business activities generally were minimal in Ethiopia, and groups that supported Haile Selassie politically - the multinationals and conservative urban elites - thus escaped public scrutiny. Certainly the economic performance of Ethiopian business did not warrant so high a degree of trust and, under changed political circumstances, a greater degree of managerial accountability - to shareholders, consumers and employees, in addition to the State - becomes possible in theory. These are the kinds of reforms that are being increasingly demanded in the West,[93] and the inability to hold politically and economically unreliable groups accountable in Ethiopia was probably a major reason for the swiftness and breadth of the Derg's 1975 business nationalisations, discussed in the next Section.

Civil and Commercial Code provisions concerning commercial instruments are exceedingly complex. The Commercial Code is based on the formalities and technical distinctions found in the Uniform Law of the Geneva Convention on Negotiable Instruments, and these provisions, combined with share financing rules and conservative banking practices, operated unduly to favour big business in the money market - a Third World version of the "Macmillan Gap". Business assets can be pledged

(with the "thing" being delivered to the creditor), sold with a right of redemption within two years, or mortgaged. In the latter case, the mortgage must be registered and covers those parts of the "business" that are specified. Owing to an anomaly in the English translation, a "business" consists mainly of goodwill and does not normally include tangible assets. Another anomaly is that a business is defined as an incorporeal immovable (incorporeal hereditament would be the closest English equivalent), which cannot be mortgaged under French or German law. Documentary and open credits can be obtained and warehouse receipts and vouchers are negotiable, although there is no express incentive to use these devices as financing techniques.[94]

These financing procedures are cumbersome and the related banking laws that are anticipated by the Commercial Code have never been promulgated. As a result of the state of the law and banking practice, small businessmen can obtain, at least prior to 1975, only short-term credit by using post-dated cheques, despite the fact that writing a cheque without cover gives rise to severe penalties under Penal Code Article 647. Rather than issue their customers with bill of exchange forms, banks refuse presentment of post-dated cheques until the date shown, contra Commercial Code Article 854. Many Ethiopians are extremely suspicious of banks, and bank accounts are little used.[95] The Derg has opted for direct regulation of financial institutions (infra) rather than for changes in the Commerical Code, but much remains to be done. Although a complex law may be needed to govern the commercial paper used in international transactions, domestic capital mobilisation requires that an extremely simple set of provisions be enacted.

In an empirical study of small businessmen in Addis Ababa, Ross and Zemariam show that the Civil and Commercial Codes fail to solve major problems creatively: obtaining payment in customer credit transactions, disputes over the quality of goods with customers and suppliers, partnership disputes where a written agreement does not usually exist, securing timely deliveries from suppliers, and failures to abide by price fixing agreements (which are illegal). As a result, there is extensive recourse to traditional dispute settlement practices in which the Commercial Code is seldom applied. These are, of course, recurrent problems in other Third World states, too.[96] A distinctly Ethiopian

problem is that the Codes do not facilitate the activities of traditional voluntary associations (equbs, idirs, etc.) —the major indigenous attempts at cooperative business activity. While many of these associations are being absorbed by city dwellers' associations and peasant organisations created by the Derg, the balance of them are in need of a new law: neither Civil Code Articles 404-82 which regulate "associations" nor the Cooperative Societies Proclamation[97] provide a congenial framework for voluntary associations, or discourage dishonesty among association leaders, ensure that members make timely contributions and understand their rights, and provide constructive supervision by a Ministry.[98]

In the face of this evidence, Ross and Zemarian nevertheless concluded in 1972 that:

> Little, if any, evidence of resistance to these laws on the
> basis that they are foreign to the customary way of doing
> things was detected. . . . It seems likely that, with a
> growing awareness on the part of businessmen, they can be
> fully implemented and utilized.[99]

If this conclusion is accurate, it can, following Dror and Chambliss,[100] be cited as an instance of law promoting social change in an area that is emotionally neutral (business) and a merely instrumental means to a desirable personal end (acquiring wealth and power). Jauffret, the other Commerical Code draftsmen, must have had this in mind when he equated the Ethiopian situation with the gradual adjustments that French businessmen made to complex Commercial Code provisions.[101] It is more likely, however, that a lack of resistance to the Commerical Code may simply reflect a lack of understanding or knowledge of its provisions, and that the Code may fall permanently into disuse by all but the few Western-style businesses that have not been nationalised. There is also evidence that suggests a widespread misunderstanding of the effects of the Codes among these businessmen: banks draft invalid surety agreements, automobile dealers fail to waive Code warranties, and insurance companies repeatedly lose cases on questions of form and the wording of exclusionary clauses.[102]

Ethiopian law has had little civilising influence on business organisations, and the emerging "corporate conscience" that is associated with a sensitivity towards the public interest in the West is virtually non-existent. Western experiences demonstrate the futility of company law reform as a means of fostering this sensitivity: business

organisations are able to adjust rapidly to legal changes without altering their behaviour markedly, and this facility leads to public demands for a continuous official supervision. By way of contrast, there are no commercial law concepts in socialist states, as they are wholly replaced by what is termed economic law. In Ethiopia, the Derg has added to the latter without abolishing the former, although, as we shall see in the next Section, new share companies, or partnerships with more than five partners, can no longer be created. Although economists might doubt the wisdom of the Derg's new policies, the political will to carry them out — and to nationalise the major manufacturers and traders — is clear and must be dealt with as a given. These business nationalisations are, paradoxically, made easier by the separation of enjoyment from control that is accomplished through contracts of loan and of association. Instead of attaching things to men, Western concepts of property effect an assignment of powers over things to administrators, through the medium of contract. Nationalisation then simply shifts the locus of decision-making from private administrators to public ones. When this happened in Ethiopia, there was little public outcry: the separation of ownership from control calls forth the need for a political legitimation, and large Ethiopian companies had acquired little legitimacy while coming to dominate a large share of economic resource allocations in the centres.[103]

G. The Impact of the Codes

If, as Holmes contended, the inarticulate major premise of every rule ought to be its social utility, this premise has never been more mute than in Ethiopian private law. Local problems and the role of Haile Selassie's regime in economic affairs were misunderstood by ethnocentric draftsmen who were, in any event, interested in the internal logic of abstract legal concepts rather than in the social effect — or, rather, the lack of it — that the Codes were going to have. The academic analysts spawned by the draftsmen have been similarly predisposed towards tracing an austere analytical order rather than the careful analysis of the rough-and-tumble of business practices and judicial administration. The Codes became little more than showcases for an arid learning, lacking the means of self-renewal. Those whose interests the Codes served;

Westernised supporters of the Throne, are now in political eclipse;
and the interests of the Derg and of 'ordinary' Ethiopians are not
furthered by Codes which are oriented neither towards traditional laws
nor development. William Shack has even suggested that the lowly status
ascribed to lawyers by students "reflects in part the general ambiva-
lence of the wider [urban] society" towards the Codes.[104]

The questions of whether and when to codify lack anything like de-
finitive legal answers; they fall almost entirely within the realm of
political choice. The Derg's choices are not congruent with those of
Haile Selassie in other areas, and there is no reason why preferences
in the area of 'private' law ought to coincide. For a variety of rea-
sons, however, an Ethiopian recodification (one could amost say a first-
time codification) would be premature. While Stjepanovic, for example,
argues persuasively for new Yugoslav codifications to mark the end of
one era and the beginning of another, she notes that many legal concepts
would have to be clarified, including the role of old institutions under
changed circumstances. Ethiopia has clearly not reached this stage:
new legal relations are continually emerging, and the time and inclina-
tion for the mature reflection needed for a codification are lacking.
Ethiopia will obviously have to 'make do' with the Codes for the fore-
seeable future or risk a legal vacuum, and this is the approach the Derg
has adopted. We have also argued that wholesale changes are probably
unnecessary. Little more than a provision such as Article 1 of the USSR
Civil Code - "Civil rights must be exercised in accordance with their
economic and social purpose in order to secure protection" - is needed
at the moment; there are no clausulae generales to conflict with such
a directive. After that, a more wide-ranging comparative approach is
needed to fashion solutions to pressing legal problems. Third World
sources are particularly relevant because of the analogous problems
faced. The somewhat similar nature of the legal system in other "mixed"
civilian jurisdictions - Scotland, Sri Lanka, Quebec, Louisiana and the
Philippines - make them potentially useful sources. The most relevant
source, however, may be Eastern European codifications, since they
attempt to combine the stabilizing idea of Codes in the civilian tradi-
tion with the extensive discretionary powers of economic-administrative
agencies.[105]

Ultimately, revision of the Codes is not enough; a precondition to
the effectiveness of a legal rule is that it be communicated to and com-
prehended by those affected by it (see Chapter Two). A survey carried
out in the early 1970s indicated that the vast majority of literate
litigants in Addis Ababa had never heard of the Civil Code. Ignorance
of the law is widespread in Western countries too; if anything, Ethiopians
know their customary laws better than Europeans know theirs. The point
is that, if customary laws are supplanted, an Ethiopian will interest
himself in the new laws only to the extent that they touch on matters
with which he is personally concerned. To the extent that laws rely on
private initiative, they will not, of themselves, change behaviour[106] -
a point David et al. failed to grasp. Even if the laws require the
citizen to do something, publication in Ethiopia's Negarit Gazeta does
not trigger the high degree of conforming behaviour observed in the West.
A traditional jural postulate — the non-interference of central Govern-
ment in day-to-day life in the rural areas — is also at work and can
only be overcome by legal penetration (see Chapter Two) through the mass
media, direct political or bureaucratic channels and indirectly through
peasant associations. It is likely that the Derg will be unwilling and/or
unable to do this (except in selected areas, such as land reform); a
potentially valuable link between centres and peripheries will be slow
to materialise, as the Codes continue to be phenomena of the centres;
and David's "social model" will, in national terms and happily so, re-
main a mere model. Conceived of by most Frenchmen (at least until re-
cently) as apolitical, this model is singularly inappropriate for the
Third World, where all of law is highly political and an active partici-
pant in struggles for power, stability and development.

II. Business Regulations and Public Enterprise

The political character of Ethiopian law emerges with a greater
clarity from the changing public law context of business activity. All
mixed economies display some degree of a socialisation of production and
distribution, in accordance with political priorities and through state-
owned enterprises, state participation in business activity, and controls
over private enterprises. The latter include: fiscal and monetary poli-
cies; loan guarantees; business licensing; price, wage, dividend, tariff,

currency and profit repatriation controls; monopolies regulation; and quotas on production, delivery, import and export. Even the so-called free enterprise sectors of an economy are subject to legally-prescribed minimum performance standards, designed to prevent exploitation by the incompetent or dishonest. From the vantage point of private law, all of these policies and controls constitute an interference with freedom of property or of contract: certain contracts or objectives are prohibited or made subject to administrative authorisation; other contracts, terms or activities are made mandatory; and economic activity is subjected to overall bureaucratic supervision or undertaken directly by the state on such terms as it sees fit.[107] Regulations proliferate on the boundaries of private law codes in an ad hoc fashion when an extreme economic liberalism is rejected or deemed inadequate, and the formal beauty of the codes is thus destroyed. While government's economic actions must satisfy constitutional standards in some countries, notably in the U.S. and Germany, such was not the case in Ethiopia (see Chapter Three).

Regulations and public enterprises both effect a redistribution of rights and duties within an everchanging business community, to make it more amenable - for good or ill - to governmental policies. They can be distinguished on the basis that regulations speak to the managerial functions of private property and leave the beneficial enjoyment of it relatively untouched, while public enterprise, and the nationalisation of private businesses in particular, confer both of these functions of property on the state. The impact of these policies on development prospects depends, of course, almost entirely on their content and on the efficiacy of private and public administration and pricing and market mechanisms. Under Haile Selassie, a chaos of rules and forms of organisation and supervision responded to traditional politics and fragmented markets; the almost total absence of a legal or political accountability (except, in a rough way, to an Emperor who was preoccupied with other matters) meant that no coherent policy was pursued, much less a development-oriented one. While the public enterprises of every state form intricate systems which reflect historical, philosophical and legal differences, Ethiopia's are, perhaps, among the most chaotic in the world: the lack of accountability and coordination echoes the "wilderness of single instances"[108] that Tennyson found in the common law.

A. Private Businesses under Haile Selassie

While governments may characterise their economic policies as pro-
motional, facilitative or indicative, they are all regulatory in nature.
In theory, they are designed to foster changes in behaviour; under Haile
Selassie and in line with the symbolic nature of his laws that has been
mentioned at various junctures, they served to mask the perpetuation of
traditional arrangements by other means and in new areas. Enforcement
of regulations was sporadic and arbitrary, with a view towards securing
bribes and ensuring personal loyalty rather than towards compliance. As
in Kenya, there was a great deal of competition within and between
Westernised Ethiopians and foreigners for access to favourable bureau-
cratic action; bureaucrats, in turn, tried to maximise their own power
and opportunities for corruption. As a result, statutory policies (which
are often vague anyway) lost their cutting edge through a variety of
placations and accommodations.[109]

Until about the mid-1960s, business in Ethiopia was at what might
be termed a buccaneering stage. A vague and incomplete jumble of legis-
lative standards allowed businessmen, if they were not too ambitious,
to bribe their way towards a moderate degree of freedom of action. If
they overreached themselves, however, they were brought back into line
by forcing them into Government service or through arbitrary fines,
property confiscations or, what amounts to the same thing, licence
revocations. Ethiopian businessmen retaliated by installing foreigners
as nominal heads of their businesses.[110] More detailed regulations
were gradually introduced, yet there was little noticeable change in
business and administrative practices.

In 1963, an Exchange Control Proclamation[111] replaced narrower
Proclamations of 1942 and 1948, set up a system of authorised banks,
and broadly empowered the National Bank to promulgate regulations. As
the Bank's employees were among the most honest and efficient of Ethiopian
administrators, and as Ethiopian exchange rates were relatively realis-
tic, the system worked fairly well. The same could not be said for the
Price Control Proclamations and Regulations,[112] introduced from 1965 to
1969 and repealing outdated Proclamations of 1944 and 1952. The law
was changed yet again by the 1972 Trade and Price Regulation Proclama-
tion,[113] which empowers the Minister of Commerce to fix the price and

regulate the distribution of all goods by public notice (Arts, 4, 6).
Unfair trade practices – agreements or tacit understandings causing a
direct or indirect injury to trade or free competition – are prohibited,
although the Minister can authorise them if they increase employment or
exports, reduce business costs, economise on the use of scarce resources,
or protect the public (Art. 13). Article 14(1) states that: "No person
may carry on a trade in a manner contrary to honest and commercial
practice." It is unclear whether the narrow definition of "trader" in
the Commerical Code (Art. 5) should be applied, and the fertile grounds
for corruption can be imagined.

One of the major barriers to entry into an Ethiopian market (condu-
cive towards monopoly or oligopoly) is a restrictive licensing system.
The rules relating to industrial and domestic and foreign trade licences
were clarified somewhat, consolidated and updated in 1971. These rules
had barely been put into effect before the Derg modified them substan-
tially in 1975 (infra). There is little in the 1971 Proclamations that
relates to development: the Minister shall grant licences, subject to
regulations he makes and which can be changed at any time, and subject,
in the case of new industries, to his approval of feasibility studies,
blueprints and health and safety measures.[114] In practice, the mandatory
language was ignored and the approval of licence applications was based
on bribes and the political needs of the time. Vague standards admin-
istered in a traditional fashion left traders and manufacturers in the
dark concerning the extent to which government was going to intervene
in their affairs, and this uncertainty had the effect of retarding busi-
ness activity.

On the face of it, the 1966 Investment Decree served to promote
Western-style economic activity. An Investment Committee, composed of
five ministers and the National Bank Chairman (or their nominees), could
exempt the payment of income taxes for five years by foreign companies
investing Eth. $200,000 or more, and grant relief from import duties on
agricultural and industrial machines and from export duties. Foreign
exchange was made available for the repatriation of profits, the earn-
ings of foreign employees and, on sale or liquidation, the net proceeds.[115]
In many other countries, well-conceived investment laws are regarded as
a legal counterpart of development planning, since they enumerate and

classify projects according to government's priorities. Under Ethiopia's Proclamation, however, objectives were not stated clarly, and the decision-making process was not described in detail. In reality, projects were approved or rejected - after extremely long delays - as outcomes of bureaucratic power struggles rather than as reflections of planning priorities; the Investment Committee was often circumvented by direct appeals to the Emperor; and conditions commonly imposed in other countries - the Africanisation of management and raising a certain proportion of capital in the host country - were almost never employed. There were even a few instances in which an approval by the Investment Committee • was negated by a refusal to issue the relevant licences. Analysing Ethiopia's Investment Proclamation, along with those of Mexico, Puerto Rico and the Philippines, Timothy Bodman argues that tax incentives are a marginal factor in a company's investment decision, when compared to labour costs, the availability of raw materials, and the distance between production and marketing areas. Bodman concludes that Ethiopia's Proclamation was little more than an expensive form of advertisement.[116] Its quiet death under the Derg was not mourned by the Ethiopians, and there is a growing reluctance among development theorists to countenance the many types of direct foreign investments that serve only to prop-up conservative politicians and to generate further inequalities in the distribution of income.

B. The Emperor's Public Enterprises

While the number and size of public enterprises continues to increase worldwide, there is also a growing disenchantment with them, particularly among Western lawyers. Their performance, in terms of initiative, public service and profitability, is exceedingly uneven - as is that of private enterprises. Economists are coming increasingly to doubt that profitability is the sole aim of private enterprise, and public ownership is, ideally, expected to blend the best features of private organisations - flexibility and initiative - with politically-prescribed goals. These include: undertaking high-risk activities where private capital is lacking, providing essential services, redistributing income, smoothing out regional imbalances and, of course, an acting out of an ideology. Most legal analyses emphasise structural considerations, as to whether an enterprise is organised as a government department, a public corporation,

or a share company under the-private law; Lawyers tend to regard a separate legal personality as almost indispensible. This view stresses form at the expense of function and is based on assumptions that are probably false: that public business administration can be segregated from overall policy formulation and that this segregation will eliminate the vices of bureaucratic organisations,[117] For Yash Ghai, the better view is that since public enterprise is regarded as a key instrument of government policy, its autonomy has little constitutional or economic justification. The case for autonomy has to be based on considerations of efficiency and responsiveness to policy,[118]

While most Ethiopian public enterprises are described legally as "autonomous" (see, e.g., those described in the previous Chapter), the little autonomy that exists in practice serves primarily to conceal inaction, the inability to coordinate economic policies effectively, and the pursuit of personal wealth and power through the bureaucracy. There was little consistent Government economic policy for bureaucrats to respond to under Haile Selassie - another reason for inaction. Like the Emperor, the Derg has shown a greater interest in applying political (and punitive) sanctions to secure compliance than in developing concrete and detailed policies to be complied with.

The structure of Ethiopian public enterprises defies attempts at a neat but detailed classification. Unlike Ethiopian law, the common law does not have to distinguish between legal persons in public and in private law and, as France supplies the model for Ethiopia's substantive Codes, we will base our analyses on French classifications. While there is little direct business administration by Government departments (regies) in Ethiopia, most of her enterprises are either concessionaires performing public services under public laws or profit-oriented establissements publics, organised under the Commercial Code but involving varying degrees of public ownership and sometimes possessing special privileges noted in company 'byelaws'. The conclusions reached in France by the authors of the 1968 Nora Report can also be applied in Ethiopia: the opportunities for irrelevant political interference in the activities of the concessionaires (chartered corporations in Ethiopia) should be reduced, while establissements publics (public companies) should be made more responsive to nationwide economic trends - a call for a convergence in the forms of public enterprise.[119]

There are no general laws specifically addressed to chartered corporations or public companies in Ethiopia. The Codification Commission decided to defer consideration of such provisions[120] and, to date, none have been promulgated. While public companies in the West are often created as the result of an emergency (such as the rapid decline of an essential industry in private hands), Ethiopian public companies were designed from the outset to augment political control and Governmental revenues. Unlike in Britain and France, for example, Government seldom supplied capital or expertise in return for public participation, which was just another business tax (payable as dividends to Government as shareholder), plus an (often fragile) assurance of prompt and favourable bureaucratic decisions. In theory, an increased political control over enterprises ensures greater access to commercial information for government, influence over low-level decisions, and fewer tax evasions and exchange control violations, but there is no evidence to suggest that control was used for these purposes in Ethiopia.[121]

The Commercial Code provides an exceedingly inappropriate framework for public sector economic activity: it does not allow public companies to provide subsidised social services or effect a redistribution of income, since activities must be "for gain"; it does not ensure coherent decision-making, since the possibility of irrelevant bureaucratic interventions is not taken into account; and it does not provide concrete means by which conflicts between state interests and the rights of private shareholders can be resolved. Data collected by a research assistant in 1974, summarised in the footnote,[122] shows that, of the 68 public companies organised under the Ethiopian Commercial Code, 21 were wholly owned by Government, which had a 50% or more stake in fourteen others, a 20%-50% stake in ten, and less than 20% of the shares in 23. Income tax returns (which probably understate incomes but provide the only available data) show a rough balance in each category for any given year between firms reporting a profit and those recording a loss. The paid-up capital of companies in which Government had a majority interest totalled Eth. $272 millions in 1974: 53% of the companies were involved in industry, 35% in commerce and 12% in commercially-unprofitable but development-oriented activities. The authorised capital in companies where Government was a minority shareholder totalled Eth. $48 millions,

and the corresponding percentages were 67%, 11% and 22%,[123] At the
very least, therefore, some 15% of Ethiopian public companies should
not have been organised under the Commercial Code.

What are termed chartered corporations in Ethiopia were created in
one of three ways: by a proclamation (approved by Parliament), by a
ministerial regulation promulgated under the authority of a proclamation,
or by an executive order. The latter type of chartered corporation was
based on the Emperor's exercise of a 'Crown prerogative' under Articles
27 and 36 of the (suspended) 1955 Constitution – like the one exercised
by English monarchs during Tudor times.[124] The standard of legal drafts-
manship displayed by these brief charters is very low (see, e.g., the
Derg's adaptations of these forms discussed in Chapter Six); and if, as
often happens, a dispute cannot be resolved within the terms of the char-
ter, there is no relevant law to be applied. The 28 major Ethiopian
chartered corporations existing in 1974 are described in the footnote.[125]

The fundamental problem of Ethiopian public enterprises is a politi-
cal and bureaucratic interference which does not amount to coherent and
continuous accountability. This is understandable, since politics per-
meate Ethiopian economic activity and the virtual absence of controls
over public enterprises mirrors the weakness of controls over Government
itself. Creating economic regulations under such circumstances is not
so simple a process as many lawyers might think. For example, the dis-
tinction made in many Commonwealth states between ministerial control
over policy formulation and a managerial autonomy in day-to-day matters –
is an empty one; these kinds of decisions are interdependent and they
also exist on a continuum, and the functions of controller and controlled
must therefore be defined with great specificity and enforced rigorously.
As a control device, boards of directors of Ethiopian public enterprises
have less expertise and commitment than do the boards of private companies,
and political rewards usually went to the "yesmen". Some Ethiopian
chartered corporations have vague responsibilities towards a minister
but, as we saw in Chapter Three, running an efficient ministry attracted
no particular rewards in the past and ministers were usually able to
circumvent a responsibility to Parliament. Legislation was not required
to authorise expenditures by public enterprises, and expenditures usually
did not fall within the standard headings of annual budgets. Audits by

the Auditor General were in the discretion of the Prime Minister and seldom took place. Parliament thus lacked the information, expertise and, often, the inclination to examine public business activities, as well as the incentives to develop these capabilities. Parliament, ministers and boards were unwilling and unable to coordinate the public sector economic activity that is unduly fragmented by the legal forms used to organise it and by the nature of Ethiopian markets.[126]

The courts of most countries – and Ethiopia's in particular – have been unable to police adequately the borderlands of private and public law and enterprise. For example, public or private shareholders in Ethiopian public companies have not, to my knowledge, brought an 'ultra vires' suit, probably because it was realised that a court would not deal with it adequately. Since 1961, the Conseil d'Etat has introduced interesting innovations with regard to the control of French concessionaires: in addition to error of law (including 'ultra vires'), "manifest error" (including errors of fact) and, of course, detournement de pouvoir ('abuse of power') have also been used. The absence of a French public law tradition in Ethiopia would, however, make it difficult to introduce these kinds of changes. Under Haile Selassie, well-founded complaints of unconstitutional actions by chartered corporations – the Imperial Highway Authority and the Telecommunications Board – were not upheld by the courts (see Chapter Three). The language in Ethiopian corporation charters is so broad and subjective that provisos do not give rise to judicially (or, for that matter, bureaucratically) enforceable controls. More specific directives are not made public or even circulated widely within the bureaucracy, and, if a dispute arises, the typical outcome is some ad hoc and secret accommodation.[127]

The result, in legal terms and politically, is that each bureaucrat tends his own garden – a dangerous tendency in Ethiopia. The growth of public enterprises has been largely responsible for an ever-expanding army of bureaucrats – the educated elites whom Haile Selassie attempted to co-opt through offers of relatively well-paid jobs (see Chapter Three). There is a large gap between the value of their productivity and the volume of public funds they absorb and, to the extent of this gap, the bureaucracy is a parasite on economic activity. The public interest becomes a cloak for private competitions through the machinery of

Government, and most of the reasons for establishing public enterprises
are negated.[128]

C.   The Derg's Nationalisations

There is, therefore, a need for an Ethiopian Public Commercial Code,
which promotes a convergence in the organisational forms of public enter-
prise and replaces the patchwork of narrow rules that breed economic
inefficiency and misallocations of resources. This need acquired a
greater urgency early in 1975, when the first concrete steps to implement
Ethiopian Socialism (apart from the zemecha) were instituted. On 1
January, all banks, financial organisations and insurance companies were
nationalised and transferred to the Ministry of Commerce and Industry –
rather than Finance, as might have been expected. "Appropriate compen-
sation" was promised. This was followed, on 3 Februrary, by the nation-
alisation (with "fair compensation") of 72 of Ethiopia's largest com-
panies, and Government's acquisition of majority interests in 29 other
companies. These companies represent all phases of Ethiopian industrial
and commercial activity. Initial forumlations of nationalisation poli-
cies stressed that a government-appointed manager would, along with a
workers' committee, run each company in an independent fashion and trans-
form profits into socially-necessary investments. The subsequent
Proclamation deleted references to these Yuogslav-style workers' commit-
tees, however; the political balance within the Derg may have shifted or
the statements may have been intended merely to symbolise a transfer of
ownership to 'workers'. In the end, a tight central control was opted
for, like that utilised in the Soviet Union during the 1950s. The stated
purpose of the nationalisations is to take control of the "commanding
heights" to avoid the alternating booms and depressions that lead to
waste and exploitation in capitalist economies, although it was admitted
that, in the short run, production may decrease and economic dislocations
result.[129]

These policy declarations were partly implemented by Proclamations
creating a Ministry of National Resources Development. This Ministry
absorbed the nationalised companies, businesses formerly belonging to
the nobility and nationalised in 1974, and the National Resources
Commission. The latter was set up after World War II to manage the
property of Italians and political prisoners, controlled by the Emperor

and used to help finance the favours he granted. The new Minister is empowered to promote, establish, direct, supervise, safeguard, coordinate, amalgamate and dissolve public enterprises. His ancillary powers over each enterprise include: adopting work programmes and budgets; requiring audits and annual reports; employing and supervising general managers; issuing regulations and directives; establishing levels of reserve funds and capital expenditure; and remitting earnings to, or requesting additional funding from, the Minister of Finance.[130] When compared to previous laws, ministerial powers of supervision and control are both broader and more specific, but the Proclamation is still hopelessly vague.

Under Proclamation 26 of 1975, the following sectors of the economy are reserved for exclusive State control: "basic industries", precious minerals, large-scale salt mining; petroleum; textiles; leather and rubber products; fertilizer; drugs; tobacco; glass and bottles; large-scale printing; rail, air and sea transport; and the mass media. The participation of private investors in joint ventures with Government is invited in certain areas: the mining of coal, non-precious metals, potash, phosphate and sulphur; the export-oriented processing and canning of foodstuffs; paper and pulp industries; large-scale construction; and tourism. The remaining types of economic activity are supposedly left to private businessmen, although some nationalisations have occurred in areas such as domestic food processing and the manufacture of wood and metal products.[131]

The nationalisations of 1 January and 3 February are deemed to have been made under Proclamation 26, which provides that fair compensation shall be provided by law, and that managers of nationalised enterprises cannot resign until they "satisfy the Public Authority" (presumably the newly-created Ministry) that the transfer of authority to a state-appointed manager has been completed. Article 10(1) of the Proclamation adds that those who commit acts against nationalised enterpises which fall within the scope of the Special Penal Code (see Chapter Five) - breach of trust, malversion and receipt of ill-gotten gains (Art. 12), misuse or waste of government property (Art. 13), and forgery of governmental or public documents (Art. 16) - "shall be punishable thereunder." Article 10(2) of Proclamation 26 notes that "inciting disturbance of industrial peace" falls within the definition of "such other acts" which

constitute an offense under Article 12 of the Special Penal Code.[132]

Changes in the mining law provisos found in Proclamation 26 were made under Proclamation 39 of 1975.[133] The requirement that agreements with foreign governments or companies concerning joint mineral exploitation reserve a 51% ownership for the Ethiopian Government was abolished. The terms of existing leases will remain in effect, although the Derg reserves the right to renegotiate those leases which do not provide for present or future Ethiopian participation. The Mining Proclamation of 1971 and related Regulations remain in force to the extent that they are consistent with these new provisions.

Prior to the enactment of these new Proclamations, the supervision of most public enterprsies was assigned ad hoc to various ministries. With the acquisition of the Emperor's enterprises and properties and the recently-nationalised companies, the old system broke down completely. The new Proclamations represent a first step towards the rationalisation and coordination of public sector business. In May 1976, the workload of the Ministry of National Resources Development was lightened somewhat: supervision of the importing, exporting, wholesaling and retailing of some goods - through the newly-created Import-Export, Domestic Distribution, and Ethiopian Department Stores Corporations (infra) - was transferred to the Ministry of Commerce and Industry.[134] Manufacturing and commerce are thus, in a rough way, dealt with by separate Ministries. Additional reorganisations, involving the hiving off of public enterprises to other ministries, were apparently effected in August 1976, but further information is unobtainable.

In December 1975, a Compensation Commission was established to negotiate the amounts payable as a result of the nationalisation of private schools, rural lands, urban lands and extra houses (infra), and private sector businesses.[135] A Commissioner and four Associates are appointed by the Derg and empowered boradly to obtain evidence from persons, organisations and governmental agencies (Arts. 4, 7). The Ministry of Finance makes the payments stipulated in compensation agreements reached with individuals and private enterprises (Art. 8). This Proclamation does not clarify the meaning of the various types of compensation called for under the Civil Code or the Proclamations discussed supra,[136] and does not entail what should happen if agreement is not forthcoming.

It is, however, stated that a failure to obey the orders of the
Commission (or an attempt to suborn, deceive or insult the Commission)
is punishable by imprisonment up to seven years and/or a fine of Eth.
$10,000 (Art. 11). Agreement is thus encouraged by the threat of an
order that can be enforced through penal sanctions and, in any event,
no agreement means no compensation. The Commission's decision is pre-
sumably final, although the brief Proclamation is silent on this issue.

In comparison with its land reforms, the Derg's business nationali-
sations place huge and immediate new burdens on the bureaucracy.
Analyses in Chapters Three and Five suggest that the bureaucracy will
be incapable of fulfilling thses tasks with even a moderate degree of
efficiency in the near future, but the business nationalisations are
clearly a political 'given'. The development potential of Ethiopian
public enterprises can therefore be realised only if each administrator
is forced to reach his maximum potential, through a carefully-designed
network of accountability. Since the lines of a political accountabil-
ity run to the Derg, most legal controls must also do so if a fantasy
law of public enterprises is to be avoided. The evolution of new
political practices is at least as important as legal reforms, however.
The problem is that few useful models are available; although socialist
and capitalist countries use public enterprises for radically different
purposes, institutional forms display basic similarities and often
function poorly. In the U.S.S.R., for example, no legal limitations
on interference by planners or politicians in the management of enter-
prises are recognised. This is a rather unsatisfactory situation, and
language like that in the Israeli Commodities and Services (Control) Law
of 1957 could be adopted; the Minister may intervene in private or
public business where he has "reasonable grounds for believing that it
is necessary so to do for the maintenance of an essential activity or
the prevention of profiteering and speculation". Additional grounds
for interference, such as the fulfillment of Plan targets, could be
added and the exercise of discretion would be restricted somewhat, yet
the language "reasonable grounds for believing" would not bar a deter-
mined intervention (see, e.g., Liversidge v. Anderson). As the Derg is
far too preoccupied to be capable of a continuous and detailed super-
vision, intermediate bodies with immediate access to the Derg should be

strengthened. The Auditor General's functions could be expanded for example (this has already been done to some extent - see Chapter Five), and complemented by an 'administrative tribunal' like the <u>Cour des Comptes</u> (<u>Corte di Conti</u> in Italy). There is also a need to better coordinate the activities of public enterprises with policies reflected through regulatory controls: fiscal and monetary policies, investments in infrastructure and the licensing of private businesses.[137]

D. The Changing Structure of Business

Proclamation 76 of December 1975 empowers the Minister of Commerce and Industry to licence wholesalers, retailers, importers, exporters, domestic or foreign trade "auxiliaries" and industrialists in the private sector.[138] While the Prologue speaks of the need to regulate commercial activities which remain in the private sector (after the nationalisations under Proclamation 26), Article 2(1) of the Proclamation states that it "shall not apply to . . . any individual enterprise or business organization which lawfully carries on commercial activity on the effective date of this Proclamation. . . ." In other words, licences granted under the 1971 Proclamations (<u>supra</u>) remain valid, and this is the apparent reason for not repealing these enactments. Little is left of them, however, and the Minister is given scant guidance as to the relationship between policies designed to promote development and his licensing powers under Proclamation 76. The Minister can grant new licences to "individual enterprisers" only (new share companies or partnerships with more than five partners cannot be created); and only one licence per person will be issued. No one may obtain a licence if he "has a permanent job" - a provision aimed against civil servants - and the Minister may assess the qualifications of applicants and limit the number of licences, to ensure "the proper distribution of goods and services" (Arts. 4, 9). Licences will not be issued to retail establishments with a capitalisation of more than Eth. $200,000, to wholesalers with more than $300,000 in capital or to an "industry" having more than $500,000 worth of capital (Arts. 5-6, 9). Capital is defined as "cash used for carrying out commercial activity, the value of trade receivable, of stocks and of fixed assets, but does not include buildings" (Art. 3(1)).

In addition to the reorganisation of the Housing and Savings Bank

(infra), the powers of the National Coffee Boards were clarified and those of the Agricultural Marketing Corporation (see Chapter Six) were expanded in 1975-6. Eleven new public corporations were also created by charter to manage some of the newly nationalised business assets: the Housing Construction Corporation (infra); the National Transport Corporation (infra); the Import-Export, Domestic Distribution, and Department Stores Corporations;[139] the Salt, Natural Gum and Building Materials Corporations;[140] the Hotels and Tourism Corporation;[141] The Addis Bank;[142] and the Ethiopian Insurance Corporation,[143] While a management structure consisting of a general manager and a board - similar to those of the new rural development corporations discussed in Chapter Six - is elaborated for the Bank and the Insurance, Housing and Gum Corporations, managerial arrangements are not specified for the Hotels, Building Materials and Salt Corporations or for the three merchandising corporations, all of which are managed directly by a ministry.

The Insurance Corporation acquired the assets of thirteen nationalised companies, has the rights and duties one would associate with a company handling "all classes of insurance business", and must pay taxes. The Corporation must "ensure that insurance services reach the broad masses" and help to mobilise and utilise resources. Commercial Code provisions dealing with insurance, brokers and agents are declared applicable to the Corporation.[144] The Addis Bank acquires the nationalised assets (and the liabilities) of the Addis Ababa Bank, the Banco di Roma (Ethiopia) and the Banco di Napoli (Ethiopia) and "competes" with another public enterprise - the Commercial Bank of Ethiopia - under the supervision of the National Bank. The new Bank is accorded all of the functions of a commercial bank, must "disseminate banking habits" by expanding branches equitably, and follow guidelines laid down by the National Bank when granting loans.[145] A directive issued by the National Bank in mid-1976 requires the banks to give lending priority to public enterprises, cooperatives and cottage industries, in order to mobilise resources and to speed the socialisation of the economy.

An interesting innovation was introduced in November 1976, in the field of road transport. The largest company had been nationalised in February 1975 but smaller ones were left in private hands, primarily because it was feared that vital transport networks would otherwise cease to function. In 1976 a new Road Transport Authority was created

to manage nationalised transport assets and intensively to regulate
private operators, who are termed "associates". The "operation and
control" of these associates is severed from the beneficial enjoyment
of their property and transferred to a public National Transport Corpor-
ation. The Authority, which has a general manager responsible to the
Minister of Transport (there is no board), is empowered to: licence
associates; fix trip quotas, fees, fares and schedules; compel opera-
tions in areas lacking in transport; and exercise powers of eminent
domain without paying compensation. Both the Minister and the Authority
may issue regulations. Associates may: use the Corporation's repair,
spares, fuel and insurance facilities on payment of the appropriate
charges, inspect the Corporation's books at any time, and withdraw any
amount of money "necessary for own operation". Depending on how this
vague phrase is interpreted, compulsory membership in the Corporation
may constitute a nationalisation of the associates' beneficial enjoy-
ment (ability to realise a profit) as well. Associates bear the respon-
sibility for the non-provision of services required under the Corpora-
tion's schedules, and associates must cooperate with district comptrollers,
observe work directives, repair vehicles as directed and ensure driver
courtesy. The Corporation may not discriminate in the deployment of
vehicles and may suspend an associate or impose other penalties to be
specified by the Minister. A violation of the Proclamation constitutes
a penal offense.[146] As can be imagined, there have been a variety of
disputes under this scheme and a vital sector of the economy has been
periodically disrupted.

The legal forms and style used in chartering Haile Selassie's public
corporations have been adopted wholesale by the Derg, apart from: ref-
erences to socialism in the prologues of the proclamations, the innova-
tions adopted for the Transport Authority and Corporation, the applica-
tion of portions of the Commercial Code to the activities of the new
Bank and the Insurance Corporations, and a slightly higher proportion
of enterprises managed directly by a ministry. The apparent intention
is to create thirteen "sector corporations" covering manufacturing,
agribusiness and commerce and under the supervision of different min-
istries, but this scheme has only been partly implemented and many of
the legal arrangements have not been promulgated. Most of the defects
introduced during Haile Selassie's reign have been perpetuated by the

Derg, and there is a definite need for a clarification of public enterprise concepts and institutions, Many other governments use public enterprises as a means of avoiding difficult political choices, and these choices cannot long be postponed in Ethiopia. What are the precise objectives of the various businesses going to be? What role should be played by older institutions which are not going to be reformed radically? How can law be reformed, based on Eastern European and Yugoslavian experiences in particular, to reflect the suppression .of certain private economic interests and the emergence ¬ if that is the Derg's intention - of new group and public interests? How can the latter interests be defined more precisely, guaranteed more fully and linked with those of the peasants? While it is clearly too early for the introduction of an Ethiopian welfare state, can strategic humanitarian interventions be made through public enterprises without depriving the rural areas of essential resources? Despite the nationalisations, a need for fairness in the process of private business regulation remains. As the many private businesses that remain are smaller and less Westernised than formerly, the complex and technical Commercial Code should be modified to serve new needs. How is power to be organised and allocated through public enterprises? Some type of semi-autonomous framework can be the only solution; one that balances the needs for overall planning and the satisfaction of political demands with those of decentralisation, efficiency and a more rapid adjustment to reliable market signals. It is clear that better tools of managerial decision making are needed, but can enterprise forms and networks of accountability ensure adequate decisions even if ¬ as is the case ¬ bureaucrats are often not wise or public-spirited? Can a separate commercial public service, with a different training, socialisation and legal regime, circumvent some of the problems that have been mentioned ¬ in the long run?[147] These unresolved questions illustrate the problemmatic future of business in Ethiopia,

III. Labour Relations

Labour stands at the meeting points of production and distribution in the centres, and the nature of Ethiopia's labour markets and the Derg's labour policies therefore have a major impact on development prospects. Ethiopian labour markets display characteristics common to

most underdeveloped countries: paid employment accounts for only a
small proporation of the economically active; many workers lack exper-
ience of complex machinery and factory routine; and a shortage of
specialised skills necessitates a reliance on foreigners, many of
whom reside permanently in Ethiopia. Meagre employment opportunities
in the centres are the result of, inter alia, factors that are consid-
ered elsewhere in this study: retarded processes of urbanisation and
foreign economic penetration, the low productivity of traditional ser-
vices and commerce, and the small size of the manufacturing sector.
While a "target income mentality" undoubtedly influences a few workers;
it is not widespread; there are no backward-bending supply curves of
labour in Ethiopia. Like some analyses by European colonialists and
of workers during the Industrial Revolution, some Ethiopianists depict-
ed workers as 'happy natives' tending towards laziness (or a strong
leisure preference) and limited economic horizons. This picture is no
more accurate than that of an Ethiopian peasant fatalism. True, manual
labour is despised by some Ethiopian ethnic groups, and levels of work
discipline, alertness and a readiness to change work practices are often
quite low. Many of these tendenecies do, however, represent the ration-
al reactions of proud peoples to the dehumanising effects of servile
occupations or work on a Western-style assembly line. Workers are often
unhealthy, weak through poor nutrition, and poorly organised into patron-
client work relations which are translations of traditional rural prac-
tices. Low levels of productivity and incomes reflect the low levels
of living among the work force, and vice versa.[148]

A. Under Haile Selassie

A trade union movement could play a vital role in changing these
patterns of underdevelopment. The membership of the Confederation of
Ethiopian Labour Unions (CELU) did not perform such a function, however,
and the legislative framework of labour relations created under Haile
Selassie did not encourage it to do so. Gross income differentials
emerged between unionised workers and non-union workers or peasants.
These differences bore no necessary relation to differences in produc-
tivity; organised labour secured for itself a privileged position in
relation to most Ethiopian social groups. CELU functioned primarily

but not exclusively ‑ as a pressure group for a small stratum whose interests conflicted with those of the vast majority of Ethiopians.[149] It is not excessively cynical to note that the main beneficiaries of the democratic rights demanded by CELU in September 1975 (see Chapter Four) would have been the unions themselves.

Ethiopian trade unions were created initially through grassroots activity without the participation of educated elites, and many unions evolved from voluntary self-help associations. Government has always been extremely suspicious of organisations capable of challenging political authority, particularly as links between unionists and student activists grew. Strikes are viewed as acts of rebellion, even after the rights to organise, bargain and strike were accorded a limited recognition under the 1962 Labour Relations Decree (unions were legalised in Eritrea in 1958).[150] Under the 1962 Decree, employees of an enterprise could "establish and join" their own union, except that the union they joined had to be a "general" (pre-existing) union where their enterprise had less than 50 employees (Art. 20(a), (c)), to guard against the proliferation of unions. Political aims and activities were prohibited (Art. 22(c)). Collective bargaining had to be peaceable and in good faith and, except as otherwise agreed, collective agreements could not be challenged for three years (Arts. 24(a), 26-7). Strikes were a species of prohibited unfair labour practices, unless initiated peaceably by a union acting in good faith where essential public services were not disrupted. Strikes could not commence until sixty days after the dispute was submitted to the Labour Relations Board, or in violation of a final decision of the Board (Arts. 2(5), 28). While unions won many wage battles and spread an American-style ideology of unionism among their members, membership did not expand rapidly and certain unions were regarded as subservient to the Labour Relations Board.[151] An American model of labour law was followed, except for a closer supervision and control by Government, and American Federation of Labor experts advised CELU officials.

Holidays, hours of work, severance pay, the protection of minors, equal pay for women and safety standards were regulated,[152] and a Labour Inspection Service[153] was created. Enforcement of these standards was haphazard, however, and there was no legally-enforced minimum wage. In the absence of a union, the customary wage of Eth. $1 per day for

unskilled workers, and $3-$5 for the semi-skilled, was usually paid
(U.S. $1 = Eth. $2.08). This wage remained stable for many years
depite inflation, although there were variations: for example, unskilled
workers in Assab received $2.50 while coffee pickers in Kaffa Province
were paid $0.75. Other agricultural labourers in the rural areas earned
from $0.30 to $0.70 per day. These wages barely enabled an unmarried
man to survive, particularly as the availability of work was usually
seasonal or irregular. Annual wage increases during the 1960s and early
1970s averaged 4.7%, but these increases largely reflected the replace-
ment of unskilled workers by those with a few skills and failed to keep
pace with inflation.[154] There are no Civil Code rules devoted specifi-
cally to employment, and most of our criticisms of the general obliga-
tions law can thus be applied in the area of labour relations. The
Ethiopian employment contract never became objective and impersonal:
traditional criteria such as those underpinning patron-client relations
continued to dominate.[155] Neither private law nor consistently-enforced
public regulations came to the aid of the worker, whose grossly inferior
socio-economic position ensured that he would be exploited thoroughly,
in the absence of a union or, occasionally, despite it. Most workers
could not afford to purchase the things they produced, and the smallness
of markets constrained increases in production, productivity and em-
ployment.

B. Under the Derg

CELU was one of the most politically-conservative of trades union
organisations in the Third World: repudiating the union practices and
class antagonisms found in many European states, CELU followed an Ameri-
can model and largely restricted its activities to striking more favour-
able bargains in the marketplace. All of this changed abruptly after
February 1974, when CELU's leadership became heavily involved in the
creeping coup. The ensuing search for a broad political power and for
an alternative to Ethiopia Tikdem displaced CELU's narrowly economic
goals and, more significantly, direct mass action was used in an attempt
to achieve non-industrial objectives.[156]

As the major organised force in civilian society, unions expected
to play a major role in a civilian government, and they were particularly
disappointed when their authority was ultimately circumvented during the

1975 business nationalisations. Workers were simply told to "continue to work as before in accordance with the directives issued to them"[157] by the Derg and the Ministry of National Resource Development. Early in 1977, for example, employees who arrested the senior managers of their oil company were warned by the Derg not to use "revolutionary measures" to settle personal grudges. Other workers' groups have received similar warnings,[158]

Relations between the Derg and trade unions have been in a continual state of tension since the Revolution, and the International Labour Organisation has repeatedly complained about detentions of union officials. Government salaries were frozen in mid-1974, those in public enterprises were frozen – but at a higher level than under Haile Selassie – in mid-1975, and the private sector generally followed suit. Wages and salaries have also been subject to substantial "voluntary" deductions for famine relief and war efforts.[159] Through "collective bargaining", employees of nationalised industries were given moderate wage increases in August 1976, to take effect over three years and favouring those with lower salaries.

A comprehensive Labour Proclamation[160] was promulgated by the Derg in December 1975 in an attempt to augment Governmental control over the trades unions, although the overall structure of the Proclamation and many of its rules are reminiscent of Haile Selassie's labour laws. The status of the Employment Exchange was regularised (Arts. 3-5) although, as unemployment benefits are not paid, there is little incentive to register. Minimum labour conditions are largely restated (discussed in the footnote[161]) and rules concerning the employment of Ethiopians abroad and of foreigners in Ethiopia have been revised (see the footnote[162]). For the first time, contracts of employment and apprenticeship are regulated in detail.

Persons fourteen years and older may enter into an employment contract, which must stipulate the duration (including indefinite) of a specific job and the remuneration, but need not be in writing. Relevant collective agreements constitute implied terms (Arts. 6, 7(1)-(2), 8). Except in extreme circumstances, the worker cannot be required to perform a job not stipulated in the contract, and the employer must pay the costs of transport and a hardship allowance if the worker is transferred to

another place of work (Arts. 10-11). Implied obligations of employees
include: to work diligently to increase production, to observe health
and safety rules, to use carefully and return tools and equipment, and
to provide assistance in the event of an accident (Art. 12(2)-(6)).
Employers agree to provide training, tools, raw materials and health
and safety protection, and to pay the stipulated wages (Art. 13(2)-(5),
(7)). Both employer and employee constructively promise to obey the
Proclamation and any relevant collective agreements (Arts. 12(1), 13(1)).
Once a probation period of up to 90 days has passed, the employment con-
tract may only be cancelled as a result of mutual agreement, natural
disaster or war, bankruptcy, redudancy, the death of the worker or his
absence for more than six months, resignation, a failure to display
reasonable diligence, or other causes specified in a collective agree-
ment (Art. 14). Conditions similar to those found in the contract of
employment are applicable to apprenticeships, save that a definite dura-
tion is stipulated. The employer also promises to provide the stipulated
traning, and an apprentice is obliged to follow this training programme
diligently (Arts. 25(2), 28(1), 29(2)). While these provisions serve
substantially to redress an inequality of bargaining power, they are
very much in the Western mould; radical critiques of contracts of em-
ployment, such as Karl Renner's, seem to have been ignored.

"Workers shall have the right to organise" and join a trade union
(Art. 49(1)). This right is immediately qualified by Article 49(2):
a union can only be formed in an "undertaking", defined as including
public enterprises engaged in production, distribution or, where the
enterprise possesses a separate juridical personality, the provision of
services. In other words, unions cannot be formed by employees of
"Ministries which directly participate in the administration of the
State and all agencies which are under their supervision" (Art. 2(21),
(25)). These definitions are confusing when-applied to concrete admin-
istrative activities, but suggest that a greater number of public em-
ployees can now "organise" than under Haile Selassie. Unions at the
"undertaking" level and general unions - composed of employees of sev-
eral undertakings with twenty (compared to 50 under Haile Selassie)
workers or less - "may" form industry-wide unions and help to consti-
tute the new All-Ethiopia Trade-Union (AETU) without affecting their

legal status (Arts. 49(3)-(4), 51), While the language of the Proclama-
tion is permissive rather than mandatory, it seems that union membership
in the AETU is compulsory. There are no 'closed shop' provisions and
no checks on the proliferation of small unions, other than prohibitions
on individuals joining more than one union and on there being more than
one union in an undertaking (Art. 49(1)-(2)).

The elected leadership of a union is accountable to a general
assembly of its members and, in the event of "irregularities", to "the
public" (Art. 50). Unions must: "promote the collaboration of workers
with their allies", the "strict discipline" of union members and their
"economic, social and moral well-being"; accelerate national development
and cooperate with government and private organisations in raising the
level of skills and education among workers and union leaders; encourage
conscientiousness and voluntary community activities; and participate
in the formulation of new labour legislation and the enforcement of
existing rules.[163] Unions formed prior to the Proclamation had 90 days
in which to reorganise, elect new leaders and register (Art. 114(1)).

The All-Ethiopia Trade Union has a new leadership and, unlike CELU,
its functions are expressly regulated by law. In addition to the rights
and duties shared by its member unions, the AETU guides and supervises
the labour movement "in line with socialist principles", negotiates in-
ternational agreements and accepts foreign assistance under governmental
supervision, and cooperates "in the formulation of political directives
and social and economic plans of the country" (Art. 52(3)). An organ-
ization must be registered before it can carry out "union activities",
and it "shall" be registered if certain technical requirements are com-
plied with. The registrar's refusal to register an organisation can be
appealed to the Minister of Labour and Social Affairs (discussed infra),
and there is a further appeal to one of the newly-created Labour Divisions
of the High Court (Arts. 53-4).

Collective agreements must also be registered and, although the
Minister must indicate the reasons for a refusal of registration, his
refusal "shall be final" (Art. 70(3), (5)). Article 73(1) provides:
"Any collective agreement shall be legal after its registration" and,
presumably, an unregistered agreement is either void or voidable. There
are no express penal provisions concerning a failure to register.

Agreements are to last from one to three years (Art, 72(1)) and their
contents are left to the parties, although the threat of a refusal of
registration is undoubtedly an adequate safeguard against agreements
of which Government disapproves. .The parties are empowered to bargain
over, for example, the means of fulfilling targets in the enterprise's
"production plan" - a forecast, perhaps, of rigorous central planning,
and the "safeguarding of property under socialist ownership principles".
Another collective bargaining topic, "worker's participation in manage-
ment", was deleted in March 1976.[164]

Labour disputes are intially considered by a trade dispute committee
composed of workers elected by all employees and appointees of the em-
ployer in equal numbers.[165] The committee shall 'conciliate' collective
disputes and "adjudicate" individual disputes (with police assistance
if necesary), or procure the services of "a conciliator or an expert"
from the Ministry for either type of dispute (Art, 85(1), (2)), Agree-
ments resolving disputes are registered by the Minister, whose refusal
to register is, once again, final (Art, 86(1)), although the signifi-
cance of non-registration is not expressed. When a conciliator appointed
by the Minister to hear a collective dispute fails to resolve that dis-
pute, either of the disputants "may take the case to the High Court"
(Art, 94), A party who is dissatisfied with the committee's decision
in an individual dispute may appeal to an Awraja Court (Art, 87),
Additionally, the parties to a collective dispute may appoint up to
three arbitrators or request the Minister to do so, Arbitral decisions
must be registered under Article 86(1) (see Arts, 101-4), The require-
ment of registration recurs throughout the Proclamation and is presumably
the major device through which government intends to control labour
relations.

Unfair labour practices by employers and unions are accorded nebulous
definitions: the failure "to execute immediately, an agreement, decision,
or order given at any level"; the obstruction of or delays in the settle-
ment of a labour dispute; and the use of undue influence with regard to
joining a union or during collective bargaining, Employers may not in-
terfere in union affairs, change the status quo ante during collective
barganing, discriminate among workers on the basis of union membership,
"race, tribe, religion or sex", or engage in "an unlawful lock-out";
unions "may not commence an unlawful strike" (Arts, 107-8), Strikes and

lock-outs are illegal if they are not based on a collective labour
dispute, where less than 50 days has lapsed since a collective dispute
has been referred to a Labour Division of the High Court, where the
strike or lock-out is contrary to a decision of an Awraja or High Court,
and where the strike violates the union's constitution (Arts. 105-6).
These provisions would seem effectively to outlaw strikes and lock-outs
at the pleasure of the Derg, since courts function largely as administra-
tive appendages of Government and often prohibited strikes in the past.
The new Court Divisions merely step into the shoes of Haile Selassie's
Labour Relations Board. Unfair labour practices are punishable by
imprisonment up to one year and/or a fine of Eth. $1,200 (Art. 113(4)).
Although regulatory institutions are given new names and functions,
unfair labour practice provisions merely expand upon those found in
Article 2(5) of the 1963 Labour Relations Proclamation.

The Ministry of National Community Development and Social Affairs
was first empowered to regulate certain aspects of labour relations in
1963.[166] Under the 1975 Proclamation, a Ministry of Labour and Social
Affairs acquires these functions, as well as broad new ones. The new
Minister shall: establish and supervise labour exchanges; appoint a
registrar of unions and hear appeals against refusals to register; im-
pose a collective agreement on a party refusing to negotiate in good
faith and alter agreements in accordance with Government's economic
plans; prepare model collective agreements and union constitutions;
regulate vocational training, worker participation, the foreign rela-
tions of the AETU and the employment of Ethiopians aborad; and undertake
studies of manpower needs and working conditions (Art. 109).

The Labour Proclamation displays a much higher standard of drafts-
manship and represents an attempt to regulate the subject-matter in
detail, when compared to the other of the Derg's Proclamations discussed
in this and the previous Chapter. It seems that a Continental social
democratic type of labour law has been grafted onto pre-existing Ameri-
can rules; the socialist thrust of the Proclamation is subdued. The
lengthy Prologue to the Proclamation does, however, mention "the right
and obligation to work", workers contributing "their share in building
socialism", and the achievement of harmonious labour relations "through
the strict observance of socialist legality". We suspect that this
Proclamation was lying on the shelf at the end of Haile Selassie's

reign and imperfectly revised in an attempt to take account of recent
political changes. The vagueness and inconsistencies we have mentioned,
along with an 'ideological' incompatibility of the Proclamation with
other new laws, will presumably render the future development of Ethiopian
labour laws more difficult.

If the Derg had wished to introduce innovations in the centres
which exactly paralleled those adopted for peasants, a Yugoslav-style
worker participation would have been opted for. The virtual absence
of employee participation in Ethiopia is reflected by the totally sepa-
rate development of new public enterprise and labour laws. Enterprises
have been nationalised but not socialised; even if an ideological assertion
that Ethiopia's workers are now in power under a socialist regime is
accepted, the fact remains that Government is now able to exercise a
greater measure of control over workers than were private employers
prior to the Revolution. There has been an attempt to force unions into
a radically different political orientation without major changes in
organisational forms; they have not become more effective representatives
either of their own or the public's interests. This is not an altogether
bad thing: Ethiopian unions are small and extremely privileged fish in
a large pond. The application of the conventional criterion for the
evaluation of labour legislation - the achievement of social justice
by and for large groups of unionised workers - would thus distort an
analysis of Ethiopian law and development.[167]

The labour discipline required by an industrial society is lacking
in Ethiopia, and some degree of compulsion is required, particularly if
patron-client relations are to be eliminated. The Derg is increasingly
replacing implicit coercion, through market mechanisms and the threat
of unemployment, with an explicit exercise of the police power. The
levels of compulsion adopted totally exceed anything that could be de-
scribed as 'strategic' in relation to economic development, however
(see Chapter Two), since the Derg is concerned almost entirely with the
political threats posed by unions. The Derg's policies have the effect
of a more extreme form of Haile Selassie's paternalism and repression;
a high degree of social change is therefore not a likely result. There
is a desire to 'squeeze' workers in order to free more resources for
use in the peripheries, but Ethiopian workers are patently unwilling

to contribute the self-denying "labour investments" that have played so important a role in Chinese development. One effect of the Derg's policies is that the AETU has served as a focal point for violent political opposition: both the first Chairman of the AETU and his successor were assassinated during 1977.[168]

IV. The Urban Centres

Many social scientists in the Third World have been preoccupied with the urban context of underdevelopment and development, yet analyses of this topic are particularly unsatisfactory. For example, there seems to be a rough correlation between the extent of a nation's industrialisation and the numbers of people living in cities with a population of more than 100,000, but the precise reasons for this are unclear. Only about 6.5% of Ethiopians live in towns with a population of more than 20,000, and Addis Ababa accounts for about one-third of them. Ethiopia is thus an overwhelmingly rural (and non-industrial) country, even when compared to other Third World states with similar populations (see Chapter One). Urban areas are supposed to facilitate the organisation of industry and the distribution of social services, to foster social changes, and to serve as centres for the diffusion of administration and innovations, but the realities are often otherwise in the Third World. In Ethiopia and elsewhere, cities and towns fail to generate high levels of production or social change, having established a parasitic relationship with the peripheries.[169] Under such circumstances, the expansion of urban enclaves along existing lines - the policy prescription of, for example, the surplus-labour model (see Chapter One) - can only perpetuate and intensify political instability, foreign dependence and underdevelopment in general.

Ethiopian traditions of a decentralised political and Church administration, the enforced mobility of Imperial headquarters, and the absence of large-scale trade and a European colonialism have meant that urbanisation came relatively late to Ethiopia (see Chapter One). When low levels of industrialisation are taken into account, the net effect (with a couple of notable exceptions) is that towns have either been founded or fundamentally restructured fairly recently, to serve as centres of administration - the most important source of low wage and low productivity employment - and, to a lesser extent, education. Small-scale

trade is the principal commercial activity and, along with the service sector, it absorbs many urban newcomers into patterns of a disguised unemployment. The productivity in these sectors is low, living conditions are appalling and the provision of social services is minimal, even when compared to neighbouring states (see Chapter One). Nevertheless, Ethiopian urban areas have grossly inflated infrastructures and costs of maintaining facilities. In 210 municipalities (excluding Addis Ababa and Eritrean towns) in 1971, salaries and pensions accounted for 40% of Government expenditures earmarked for municipalities and the maintenance of electricity and water supplies for 11%, as against 3% for expanding these facilities (capital expenditures). The only major expansions concerned roads and bridges (15%), while "welfare" accounted for 2% and fire protection for 0.7%.[170]

These expenditure patterns did not, in other words, confer even moderate benefits on the lower urban strata; in addition to persons receiving municipal salaries and pensions, the prime beneficiaries were. Westernised elites, particularly the middle income groups who had managed to carve out a tenuous position for themselves under Haile Selassie. Towns and cities constitute expensive and relatively privileged enclaves, in which the receipt of benefits was dictated by the rural stratifications and ethnic antagonisms that have been translated into a different context; burglar-proofed fancy houses exist alongside unbearable housing conditions - a physical manifestation of malformations in the towns and in the economy as a whole. The absence of the white reserves that are an urban legacy of European colonialism in other countries, the virtual non-existence of city planning, and the rapid growth of urban populations make for chaotic housing and commercial arrangements in urban Ethiopia. High rates of migration from the peripheries - the population of Addis grows 4.6% annually as a result of inmigration - combined with the fact that traditional elites owned large chunks of urban land prior to 1975, led to land speculation and rent gouging. The "shuttle pattern" of migration back and forth between urban and rural areas, which constitutes an important centre/periphery link in many other African countries, is much less prevalent in Ethiopia. There are, however, a few reciprocal relations of differing intensity, involving traders, churchmen, lorry and bus drivers, and a few members of the military and bureaucracy.

Many Ethiopian migrants are landless peasants, divorced women, or those
with a modicum of education, and these groups have neither a measure
of economic security in the rural areas nor a desire to return there.
The male-female ratio in urban Ethiopia is 92:100, compared with 103:
100 in the rural areas an an approximate average for urban Africa of
108:100. Women in urban Ethiopia became involved in a variety of ser-
vice occupations, including those which have been described as perform-
ing wifely services for hire.[171]

Ethiopian urbanisation has also generated the kinds of tensions
that foster a political instability -- as events since 1974 bear witness.
City dwellers had less of the reverence for the Emperor noted in the
Amhara heartlands, and adopted a more pragmatic assessment of the costs
and benefits of urban life, discovered through shared experiences and
the often covert channels of communication that spread a variety of
viewpoints. Elite responses to the attitudes and actions of city dwell-
ers mirror those adopted with regard to peasants - an oscillation be-
tween regarding them as rustics (migrated peasants) requiring little
attention and the need to repress an anonymous mass embodying a great
explosive force. Under Haile Selassie, policies were oriented towards
giving the appearance of modernity in the urban areas, to attempt to
placate rising expectations and to gain international respectibility
through an Addis Ababa showcase - what Galbraith terms the "ediface
complex". As Peter Koehn argues: "Lack of commitment to change at
the center of the Ethiopian political system constituted a pervasive
obstacle to social and economic progress in urban settings." The com-
mon element linking traditional politics and urban problems is an in-
equitable distribution of political and economic resources, as reflect-
ed and reinforced by urban land ownership patterns, regressive forms
of urban taxation, inflation and the perpetual state of collapse in
public services.[172]

A. Under Haile Selassie

The concept of urban social welfare prevailing under Haile Selassie
paralleled the one he adopted for the rural areas: families were ex-
pected to care for their own, occasionally with the help of a few local
self-help projects which sometimes received small sums from Government

or the Haile Selassie I Foundation. The Foundation also supported
modest programmes for the employment of the disabled, the upkeep of
churches, and the support of theology students and favoured authors
and artists - the kinds of patronage a traditional monarch is expected
to dispense. Foreign charities and international welfare agencies
were probably hindered more than they were helped by Government, given
the bureaucratic snares that were laid. The subordinate Department of
the Ministry of Interior dealing with urban social welfare is new and
insignificant. Daniel Lerner's view of African city dwellers character-
ises Ethiopia's nicely:

> They are neither housed, nor trained, nor employed, nor
> serviced. They languish on the urban periphery without
> entering into any productive relationship with its in-
> dustrial operations.[173]

Urban areas thus generate too many costs for too few benefits, especially
when compared to relatively inexpensive and labour-intensive rural in-
vestments that have a short gestation period and serve to mobilise larger
portions of the population.

Malcolm Norris describes urban administration under Haile Selassie
in the following manner:

> Notwithstanding the potentially wide functions offered to
> municipalities, inadequate revenues and lack of expertise . .
> forced many, and indeed nearly all the smaller, to carry out
> little more than regulatory duties. These had considerable
> importance in the daily lives of the public, but could not
> be regarded as a positive contribution to social welfare or
> amenity. Notwithstanding, such administration did register
> an improvement on the arbitrary administration of the coun-
> tryside exercised by the traditional functionaries.[174]

He goes on to spell out defects in municipalities law which echo our
analyses in Chapters Three and Five:

> The Municipalities Proclamation [of 1945 - the relevant sub-
> stantive legislation until 1975, when it was modified sub-
> stantially] was a perfunctory document, imprecise in its re-
> quirements and penalties for non-compliance. Planning control
> suffered from a lack of legal authority. Regulations relating
> to operations were inadequate, and little reference was made
> to those issued. By-laws were not enforced. Government itself
> disregarded its own laws, either for convenience or from inertia
> . . . Only when court cases proliferated was any action taken. . . .
>
> In practice these deficiencies had less effect than might be
> expected. Authority was not widely regarded in legal or insti-
> tutional forms. They nevertheless undermined the establishment

of clear procedures, facilitating ad hoc decisions and
preferences. No legal force, however, could compensate
for administrative weaknesses. . . .[175]

Except for the chartered municipalities - Addis Ababa, Asmara and
Gondar - towns have no inherent legal powers and, rather, derive them
from central Government. The supervisory Municipalities Department of
the Ministry of Interior is preoccupied, like other Departments of that
Ministry, with the maintenance of order, and displayed an indifference
towards low revenues and shortages of manpower, leadership and relevant
regulations. Non-chartered municipalities have little of the financial
autonomy necessary for independent policymaking, their revenue sources
are not income-elastic, and they tend to fare poorly in competitions for
resources distributed by the Ministry of Finance. Smaller towns lack
permanent planning staffs, spend less per capita and have a smaller tax
base: in the early 1970s, per capita municipal revenues varied from
Eth. $0.64 per year in Elyas, Gojjam to $14.42 in Nazareth, a 'resort'
near Addis Ababa. While there was some transfer of revenues from rela-
tively rich to poor municipalities, most transfers served to drain re-
sources away from municipalities generally and were accomplished in
accordance with the political priorities of the moment. Little revenue
was realised through static and income-regressive property rates, owing
to the lack of accurate plot boundaries and competent personnel, and
to the ability of larger landowners to influence rating decisions or
evade payment. The little revenue that was collected was seldom spent
in its entirety: the approval of budgets was delayed, often intention-
ally, and bureaucrats who planned expenditure patterns were even less
efficient than the tax collectors. Exploitation of the public typically
took the forms of delays in and refusals to carry out services or cor-
ruption in the granting of licences and in the acquisition of land.[176]

Elaborate statutory classifications of Ethiopian municipalities
are irrelevant in practice, save as they reflected attempts by land-
owners to boost the value of their land by upgrading the status of
their town. In the smaller towns, the town officer was hired and fired
by a provincial governor, and much of municipal administration thus
represents an extension of the practices discussed in Chapter Three and
was largely immune to central control. The town officer is empowered
to divide towns lands, licence merchants, and supervise social services

and health and sanitary arrangements. He was assisted by a Municipal Council and _sefer shums_ (roughly, informal ward officers) who, like _chika shums_ in the rural areas, mediated between the bureaucracy and the people. The councils were supposed to authorise expenditures, organise social services and promulgate by-laws in accordance with regulations drafted by the Ministry of Interior, but the Ministry often intervened more directly in these processes, such as by ordering a council's dissolution. There were many irregularities in council elections, and a low voter turnout.[177] The councils did not reflect organised public pressures or demands and, in October 1974, the Derg ordered the transfer of their powers and duties to the town officers, although a Proclamation to that effect was not promulgated until February 1976.[178]

The chartered municipalities possessed a considerable autonomy, but budgets and large projects remained subject to approval by the Ministry, which could also compel performance of legal duties. Except in Asmara, Eritrea, which is under martial law, the town officer of a chartered municipality (_kantiba_ or mayor) is elected and is an important official. Addis Ababa has 1,800 employees (as against sixteen in Arba Minch, the capital of Gemu Gofa Province) and impressive administrative offices, but bureaucratic performance is far from impressive. As in so much of Ethiopian administration, internal frictions dictate the course of policy or, more commonly, inaction; there is a shortage of qualified personnel; and such problem-solving as occurs is usually outside the framework of administrative routine. Prior to the 1974 escalation in the guerrilla war, Asmara had a more coherent and efficient administration, based on patterns established by the Italians in the 1930s. Regularised schemes of accountability within municipalities were either non-existent or grossly inadequate. For example, budgets are often not made public and, owing to shortages of staff, only one-third of the municipalities receive an audit each year.[179]

Urban officialdom in Ethiopia was thus neither a stabilising nor a dynamic factor; neither competent nor dedicated, bureaucrats applied traditional methods to pressing urban needs.[180] This can be seen most clearly with regard to city planning, or rather, the lack of it. The Municipalities Proclamation empowers the councils to consider a few

matters relating to planning in an extremely vague manner. This was
supplemented, in 1960, by Civil Code Articles 1535-47, which dealt with
planning from the standpoint of a qualification on private law rights.
A town planning area is defined by decree and the relevant municipality
"shall draw up a plan", which takes effect on publication in the
Negarit Gazeta (Arts. 1535(1), 1536). Careful research has failed to
uncover any such plans, although informal plans have been prepared for
major towns, usually by foreign planners. These plans are fairly good,
given that radical changes running contrary to the interests of large
landowners were not contemplated, but they were promptly filed away and
forgotten. "In carrying out the plan", the rights of landowners could
be "restricted" or expropriated, and "compensation" is to be paid (Arts.
1538-9). Building permits are required to "construct a building" (Art.
1540) - a fertile source of corruption. Permission can be denied,
granted or granted subject to conditions (Arts. 1544-6), much as under
English law. In theory, Ethiopian planning processes are quite similar
to those of England, if public participation devices there are equated
with the consultative functions of associations composed of Ethiopians
who own land in the planning area, which are created under Civil Code
Articles 1550 and 1552.

To take but one, not untypical, example of how planning processes
operated, the defendant Municipality of Addis Ababa had demolished some
of the plaintiff's houses and had ordered the demolition of others.
The defendent admitted liability for compensation but resisted an in-
junction of additional demolitions by citing Article 4(iii) of the
Municipalities Proclamation: "A Municipal Council shall have power
to . . .[do] anything likely to contribute to the embellishment and the
cleanliness of the town. . . ." The defendant was totally unable to
justify its actions and the High Court refused to allow this extremely
nebulous provision to prevail over property rights granted under Articles
43 and 44 of the 1955 Constitution. The buildings could not be demol-
ished unless they constituted a health hazard or the plaintiff volun-
tarily accepted compensation.[181] In many other cases, however, the
courts freely permitted Government to override individual rights (see
Chapter Three), and most of those injured by planning decisions - which
were often little more than soliciations for a bribe - would not have

challenged them in court. Vague planning criteria were seldom applied -
in a development-oriented fashion, and the tendency was to use them in
a traditional fashion, as just another licensing system.[182]

B. Urban Land Nationalisations

Ethiopian patterns of underdeveloped municipal administration are
found in many parts of the Third World, and it is interesting to note
that the Derg has chosen gradually to replace rather than to reform
them; for the present, higher officials are supervised directly by
members of the military. For example, the nationalisation of urban
lands under Proclamation 47 of July 1975[183] has removed a major con-
straint on sensible city planning - land ownership by powerful tradi-
tional elites - yet planning laws and practices have not been changed.
The major effect of the Proclamation is one of an even-handed treatment
of urban and rural areas; as in the peripheries, the Derg recognises
that urban land ownership patterns (along with other factors) have
retarded the development of Ethiopian municipalities.

Urban land ownership records were chaotic in the extreme; under
an old decree, urban lands were owned 'freehold' if dispositions were
registered, but this was seldom done and courts ignored the requirement.
Even in Addis Ababa, it was impossible to determine the appropriate
boundaries and who the tenants, vendors and heirs were. The Codifi-
cation Commission's rejection of a land registry and adequate pres-
cription rules as a part of the Civil Code enabled litigants to con-
tinue to challenge titles in a traditional fashion, after the lapse of
many years.[184]

The rapid growth of Ethiopian urban areas and, in Addis Ababa, the
diplomatic activities associated with the Organisation of African Unity
and the U.N. Economic Commission for Africa, meant that urban land
ownership and the construction of villas, apartments and offices were
secure and extremely profitable investments. Foreigners could not own
land without Imperial warrant, and prominent Ethiopians owned huge
chunks of the major urban areas and exploited their monopoly ruthlessly.
In Addis Ababa, 5% of the population owned an estimated 95% of the
land; seven members of Haile Selassie's family owned eight million
square meters (sq. mtrs.); one aristocrat owned twelve million sq. mtrs;
and ten officials owned 3.8 million sq. mtrs. Some of this land was

leased to city dwellers who built their own houses, but 60% of the housing in Addis Ababa was rented from private landlords. Housing conditions reflected, on the one hand, what poor and exploited people could afford and, on the other, the luxuries demanded by traditional and Westernised elites and foreign diplomats.[185]

Investment in land and houses had the effect of denying indigenous capital to industry and agriculture. Profits from urban landholdings remained in private hands and were dissipated by luxury consumption or reinvested in land and houses. Low income and land taxes and widespread tax evasion by the powerful reduced the amount of revenue available for improving urban services and living conditions.

Proclamation 47 of 1975 provides that all "urban lands" and "trees" (within the vaguely-demarcated boundaries of a municipality or town) are nationalised without compensation (Arts. 2(1), 3, 10). "Any person or family" may continue to "own" one "dwelling house . . . of his choice" in any one urban area (but not the land under it), and is empowered to repossess this house from a tenant or occupant (Arts. 11(1), 16(1)). Business houses ("spaces" used for "running a business") will continue in private ownership in such numbers and sizes as Government shall determine, presumably by granting, denying or cancelling business licences (Arts. 2(5), 11(3), and see Art. 16(2)). Houses "used for conducting religious services" or owned by "diplomatic and consular representatives and international organisations" are exempted from nationalisation (Arts. 43-4). The recurrence of "house" in the Proclamation is probably the result of an overly-literal translation of the Amharic bet. There is a retroactive invalidation of land transfers by sale, mortgage, antichresis (a security arrangement roughly analogous to an American land contract), succession "or otherwise" (Art. 4).

Where continued ownership of a dwelling or business house is validated by the Proclamation, taxes must be paid and the building may be transferred by succession, barter or sale, although Government has a right of pre-emption in the event of a sale (Arts. 11(4), 12(1)). All "extra houses" become Government property and must be handed over within thirty days. "Fair compensation" will be paid, unless the house was "enemy property" or built with public funds (Arts. 13, 14(1), 18(1)). Government may also "expropriate for public purpose an urban house",

"by paying compensation" (Art. 19). Presumably no distinction is drawn between "compensation" and "fair compensation" by the Compensation Commission (supra).

Persons or families who do not own a house under Proclamation 47 may acquire a "possessory right" in up to 500 square meters of the land (not merely the house) which he or it holds (Arts. 5(1), 7(1)). Similar rights are granted to "organisations" (including the Ethiopian Orthodox Church) which hitherto owned land, and the appropriate size of an organisation's holding will be determined by the Ministry. A U.N. Department of Economic and Social Affairs Report cited by John Cohen and Peter Koehn suggests that, given a shortage of surveyors and the expense of land surveys, the easiest way to accomplish land reforms in the Third World is to confer "possessory titles" with inexact boundaries. These rights are to be presumed valid until challenged, with the contestant bearing the onus of proof. This seems to be the approach adopted by the Derg in both urban and rural land reforms. Many difficult redistributive decisions which require the assessment of relative land values are thus avoided, save where compensation "in kind" is offered after expropriation. Government may "expropriate for public purpose" possessory rights in urban land, "giving compensation in kind." Where urban land is not utilised within a period to be specified, however, expropriation of possessory rights is apparently without compensation (Art. 8). It is uncertain from the Proclamation whether vague Civil Code definitions of expropriation in the public interest (supra) are to be deemed relevant.

Although the "relationship between landowners and tenants is . . . abolished", the urban landholder "shall pay rent to be fixed by the Government" (Arts. 6(1), 9). The rent initially payable was the sum previously paid to the owner, except that monthly rents of Eth. $300 or less are reduced on a sliding scale which favours the most impoverished of city dwellers (Art. 20(4)). This was a fairly successful attempt to mobilise public support for the reform: a typical annual urban income is $420, and 60% of this has to be pretty firmly committed to expenditures on food. The rapid increases in rents during the late 1960s and early 1970s had thus cut deeply into the money available for clothing, fuel, public transport and tax payments.[186]

The Derg fixed new urban land rents and house taxes under Proclamation 80 in March 1976, reasoning that, as "the number of urban dwellers increases and their standard of living improves [!] from year to year", they must pay for expanded services which match an increased demand.[187] The Proclamation is brought into effect for a particular municipality by issuing regulations (Art. 17 - a technique not in common use in Ethiopia), and the only ones issued to date concern Addis Ababa.[188] Land is divided into three grades, and 'ground' rent is payable under scales ranging from $0.02 to 0.16 per square meter for dwelling houses and $0.02 to 0.06 for businesses. Separate rents on "extra houses" will, of course, continue to be paid. Taxes on urban houses (dwellings and businesses) are payable on a sliding scale of from 1% to 4.5% of the estimated annual rental value (Arts. 4, 14(2), and Sched. 2 and 3). Sports centres, cemeteries, religious institutions, non-profit schools and hospitals, other charities, and centrally-administered Government institutions are exempted from the payment of these rents and taxes; the position with regard to diplomatic holdings will be determined in the future (Arts. 14(1), 15). Rent and tax assessments are made by an agent of the Minister of Public Works and Housing, and payments are made to the municipality (Arts. 5(1), 6). An assessment may be appealed to a municipality tax appeal committee within 30 days, with a further appeal to an awraja court (Arts. 9-11). Article 12 states that the court "shall make corrections" where "an error in the interpretation of the law" is discovered; this language does not expressly preclude appeals against errors in fact-finding, although such a construction would be consistent with other Ethiopian tax laws and is therefore likely. When the Proclamation takes effect in a municipality, its rates and Government's income taxes on rents and transaction and education are abrogated (Art. 3).

Rents on "extra houses" of up to Eth. $100 per month are collected by the local urban cooperative societies (discussed infra), and are "utilised for purposes beneficial to the dwellers" (Art. 30(5)-(6) of Proc. 47). Higher rentals are collected by the Ministry of Public Works and Housing, "for the improvement of the lives of all urban dwellers and of urban areas" (Art. 20(5), (7)). As a 1967 Housing Survey showed that 93% of monthly rentals in Addis Ababa were below Eth. $100, an

extremely heavy administrative burden has been placed on the urban coops.[189] Where a nationalisation causes "special hardship" to persons, families and organisations which formerly owned urban land, they can receive discretionary payments from the rents collected, but these payments are deducted when compensation is assessed (Art. 21).

All urban land cases "pending in the ordinary courts of law" are annulled, and suits challenging the legality of actions taken under Proclamation 47 are prohibited (Art. 40). Tampering with houses or property, disturbing the peace or obstructing the implementation of the Proclamation become, by Article 41, offenses under the 1974 Special Penal Code (see Chapter Five). In addition to broad powers to 'subpoena' documents, issue regulations, implement the Proclamation, supervise urban coops and establish their boundaries, the Ministry may seek the cooperation of other ministries in establishing urban coops, promoting housing loans, and spending its rental income on house construction and the provision of essential services, in accordance with "comprehensive urban development plans and directives" which have not yet come into being (Arts. 31-3, 35-7, 45). The Ministry's functions have thus been expanded enormously, and the Derg assigned a large number of zemecha students (see Chapter Six) to the Ministry, in an attempt to resolve manpower problems. Between 1,200 and 1,400 of these students were, however, arrested at the end of August 1974, and 900 civil servants and soldiers were then transferred to the Ministry. The level of intragovernmental coordination assumed by the Proclamation has not yet been attained in Ethiopia, and the removal of the Minister in February 1976 is indicative, perhaps, of the Ministry's failings in this regard.[190]

The Ministry became so overworked that the Agency for the Administration of Rented Houses was created in November 1975.[191] The Agency acquires and maintains house renting for more than Eth. $100 a month, revises rent schedules, and can sell, buy, lease, exchange or build houses "in accordance with Government policy"(Art. 5). The Agency is "autonomous" and has a General Manager and Board -. the kind of structure that was favoured by Haile Selassie's regime and is criticised supra and in Chapter Six (see Arts. 7-10).

C. Urban Coops

Urban coops were first established under extremely vague provisions,

Articles 22-6 of Proclamation 47. Any city dweller may join his local coop, although former landlords are initially barred from standing for office and from electing coop officials (Art. 23). These provisos were fleshed out by Proclamation 104 of October 1976, designed to "consolidate the foundations laid" by Proclamation 47, to make coops "more conscious and organised", and to enable coops "to directly take over . . . municipal administration" so as to "remove bureaucratic red-tape and further facilitate the direct involvement of the people in the revolutionary process. . . ."[192] In addition to the powers and duties already mentioned, urban coops are to: enhance community development by "making the people participate"; foster shops, cottage industries, women's and other associations; and construct and rent houses, while encouraging self-help construction (Art. 6). While each coop has a distinct legal personality, they subscribe to model internal regulations and find their place in a hierarchical framework of "democratic centralism", following an "economical, simple, efficient, trustworthy and public service oriented revolutionary method of work . . ." (Arts. 3, 7). The image of a revolutionary Boy Scouts is hard to resist and, like the balance of the Proclamation, these provisions are long on ideology and short on practical guidance.

In addition to collecting rents, local urban coops (kebeles); coordinate their activities through higher and central associations (infra); build roads; protect public property; register houses and the births, marriages and deaths of residents (in place of institutions whose operation is "suspended" under the Civil Code); and establish health, recreational, postal and educational facilities, and price control, reforestation, literacy and hygiene programmes (Art. 9 of Proc. 104). Kebeles are run by policy committees composed of at least fifteen members elected "from the broad masses", who subscribe to the Derg's Revolutionary Programme of April 1976 (Arts. 4, 13). In practice, however, most kebele officials are appointed by the Derg. In April 1977 it was announced that 1,500 kebeles had been formed, 291 of them in Addis Ababa.[193] Subsidiary functions of kebeles are performed by judicial tribunals and the ominously-named public safety committees which, like those of the French Revolution, enforce tribunal decisions, catch criminals in flagrante delicto, arrest under warrant, and perform the guarding and security

functions specified by the Ministry of Interior (Art. 10). These com-
mittees formed the nucleus of the 70,000 to 200,000-strong People's
Militia that performed so poorly during fighting along the Eritrean
border in 1976 and during the 1977 invasion from Somalia. While there
is a clear need for a localised maintenance of order in the urban areas
of Ethiopia, it has been persuasively argued that some of the committees
have acted as "assassination squads", both on their own initiative and
on instructions from the Derg.

Kebele judicial tribunals hear the cases referred to them by their
kebeles. Their jurisdiction is exclusive in most civil disputes up to
a value of Eth. $500 and over the 'minor' criminal matters not heard by
Special Courts-Martial and military tribunals (Arts. 11, 27, 40). They
have, however, been imposing death penalties, which are sometimes carried
out on the spot by the safety committees; the theoretical right of appeal
to a higher urban coop tribunal can thus be negated in practice. Vague
offenses relating to the "revolutionary struggle" are among those pun-
ished, including failures to attend Government rallies. Procedural
rules are so vague and incomplete (see Arts. 28-39) that they could
hardly be held to create a judicial process. As in Tanzania and in the
peoples' courts found in many socialist states, adjudicators who are
not legally trained apply flexible standards and ideological pronounce-
ments rather than strict legal rules. While the reactions of academics
of these kinds of courts in other states are mixed, it is certain that
Ethiopian tribunal decisions do not accord with the sense of justice
possessed by most city dwellers, and that the tribunals will not,
therefore, succeed in redefining social roles, reconciling many new
conflicts or diffusing new political norms widely.

The opportunities for corruption and other forms of the abuse of
power within the kebeles is enormous: for example, Girma Kebede was
executed in April 1977, accused of murdering 24 people and torturing
many others while Chairman of the Arat Kilo Kebelle in Addis Ababa.
Some of these murders resulted from uncorroborated denunciations eight
months prior to the event. While the Derg argues that Girma's abuse
of office is an isolated instance, Amnesty International concludes that
his activities are "not untypical of several kebelle leaders."[194]

Higher and central urban coops have structures and functions which.

parallel those of the woreda and awraja peasant associations (see Arts.
13-18 of Proc. 104 and Chapter Six), and a central coop is to coordinate
activities in each municipality and possesses the combined powers of
municipal councils and town officers. Pending the promulgation of an
urban self-administration proclamation some time in the future, the
restructured Ministry of Urban Development and Housing issues regulations
and undertakes supervisory and planning tasks with regard to municipal
administration (Art. 40(1)). In July 1975, a Coordinating Committee of
735 edirs (traditional voluntary associations - see Chapter Six) in Addis
Ababa, representing 200,000 members, associated itself with the urban
coops, arguing that edirs were natural centres of self-administration
and development activities.[195]

D. Housing Policies

In November 1975 the Derg attempted to increase the availability
of credit for the construction or urban housing by establishing the
Housing and Savings Bank that succeeds to the assets and liabilities
of the Imperial Savings and Ownership Public Association and the Savings
and Mortgage Corporation under Proclamation 60.[196] While the demand for
urban housing far outstripped the supply under Haile Selassie, these
liquidated associations were providing credit for luxury consumption
and for the construction of elaborate houses, largely in Addis Ababa.
The new Bank has a paid-in capital of Eth. $6 millions and is directed
to mobilise domestic resources and decrease the wastage of resources,
accelerate the construction of houses and, generally, to coordinate and
centralise housing development policies in relation to the financial
needs of other sectors (Prologue, Arts. 5, 17).

In addition to powers and liabilities consistent with an independent
"juridical personality", the Bank and its branches accept savings and
time deposits - including insurance and pension funds - and grant long-
term purchase or construction, and short-term maintenance, loans for
"dwellings, buildings, infra-structure and community facilities". Loans
may be granted to individuals, to "cooperative housing programmes" ("on
easy terms") and to firms in the construction industry which have been
approved by the Ministry (Arts. 6, 7 and 18(1)). The management of the
Bank follows a pattern common to many Ethiopian autonomous agencies:
a General Manager is to "carry out the activities of the bank", "subject

to the general direction of the Board" of Management that is, in turn, "responsible" to the National Bank and, perhaps, to the Ministry.[197]

The Bank must give priority to coops and "low income groups" when granting loans, but the chief criterion is a conventional "capacity to repay", and the Bank "may require collateral" (Arts. 22(1), 23(1)). For individuals and coops, "the lower the income of the borrower the longer the duration of payment" up to thirty years, while public housing ("designed for low income groups") loans will be repaid over a period of at least thirty years (Arts. 2(7), 24). Monthly repayments cannot exceed 25% of an individual's or coop's monthly income, and interest rates will favour coops and low income groups (Arts. 25(1), 26(2)). While serious problems concerning the management of the Bank and the coordination of its activities can be foreseen, it ought to prove a useful adjunct to urban land reforms.

A Housing Construction Corporation was established in March 1976, in an attempt to alleviate housing shortages and avoid the exorbitant charges of private and foreign contractors.[198] The familiar management structure of Board and General Manager is opted for, but the Proclamation is vague on the specific functions of the Corporation (see Art. 4), even when compared to similar Ethiopian legislation. A policy directive issued at about the same time did, however, call for the construction of 44,000 units per year (the type of housing was not specified), plus 30,000 units to replace substandard housing. The shortage of low income housing continues; while houses renting for more than $300 per month are once again available, the homeless cannot afford them. Additional housing is urgently required, and the Derg has taken the first step - but no more than that - to meet this need.

E.   The Urban Revolution

It is only natural that the locii of most of the significant events of the Revolution - and Addis Ababa in particular - should have claimed so much of the Derg's attention. As Fred Burke argues: "Both the problem and the promise of the African Revolution are sharply posed in the life and complexities of its mushrooming cities" - "the home of political ideas".[199] So it is in Ethiopia - notwithstanding the rural orientation of many of the Derg's policies - where struggles for economic subsistence and even physical survival (against, for example, the

Red Terror) continue to inhibit development-related social changes in
urban areas.

Urban elites offered no overt resistance to the Derg's land and
institutional reforms, and Cohen and Koehn correctly conclude that,
depite the enormous confusion generated, the Proclamations strengthen
state control over property, incomes and urban physcial planning, pre-
vent the acquisition of large landholdings, foster socio-economic equal-
isation and encourage a fuller utilisation of urban resources. We
would, however, disagree with their characterisation of Proclamation 47
as "a carefully designed scheme."[200] Many of the criticisms levelled
against rural land reforms can also be applied to urban measures:
critical rules are nebulous, insufficient political and economic re-
sources and organisational foundations are conferred upon important
institutions, and attempts to coordinate the activities of various in-
stitutions are grossly inadequate. Most of the criticisms Malcolm
Norris levelled against the Municipalities Proclamation (supra) can
also be applied to the Derg's legislation for the urban areas.

It is clear that traditional urban (and, for that matter, rural)
leaders in Ethiopia lack initiative and have supported the status quo.
They had to be replaced and, ideally, the new forms of municipal admin-
istration should promote flexible responses to local problems and a
mobilisation of local energies for collective action.[201] This sometimes
proves to be the case, but there have been many 'teething' difficulties
and a virtual absence of corrdination or an overall planning of a more
centralised administration. The "democratic centralism" at work with-
in the hierarchies of urban coops looks towards a political rather than
a legal accountability, and the evidence suggests that there is no
continuous overall political supervision of the coops. A more sensi-
ble and less easily evaded revenue base has, however, been established
in Addis Ababa and, to a lesser extent, in other towns, but it is still
not particularly income-elastic.

V. The Revolution in the Centres

There is a conjunction of low levels of living, labour productivity,
industrialisation and urbanisation in Ethiopia's centres, where business
activities have not escaped traditional strictures and are pursued
through uncongenial legal forms. The costs of these centres, in terms

of the amounts of political and economic resources absorbed, far out-
weigh the benefits conferred on the bulk of the population. The Derg
has wisely chosen to attempt to bring these wasteful and parasitic
entities under control and then to restructure them, rather than con-
tinuing to expand them along existing lines.[202] In theory, the emerg-
ing patchwork of policy represents a series of sensible first steps,
but a lack of overall planning is manifest, particularly with regard
to municipal administration and the many forms of business activity,
while policy implementation is sporadic, haphazard and motivated - to
a much greater extent than in the rural areas - by the desire to pre-
serve a short-term political stability.

In Chapter Two and Part II we remarked on the many inherent con-
tradictions between policies fostering stability in the short run and
those conducive to establishing a regime's long-term legitimacy. The
Derg may yet overcome these contradictions in a fairly novel fashion:
while maintaining a short-run stability through repression in the cen-
tres, political power can be shifted gradually to the peripheries,
where a hoped-for rural development would help to confer a long-term
legitimacy. This reorientation of links between centres and peripheries
certainly has its dangers, as evidenced by the rapidity with which the
Derg dissipated the fund or urban goodwill that was built up during
the creeping coup.

The Derg's overall strategy for the centres emerges fairly clearly
from the laws discussed in the last two Chapters: instead of exploit-
ing the peripheries, the centres are, to a limited extent, being ex-
ploited in the interest of a rural development. Within the centres,
income-levelling measures have been combined with the acquisition of
state control over urban and agribusiness lands. The precise tactics
that city dwellers and bureaucrats are expected to adopt are unclear,
however. While the ideological thrust of Proclamations governing
business nationalistions and urban (and rural) land reforms is spelt
out, implementation procedures are either not stated or remain extremely
vague.[203] Like those discussed in Chapter Six, it is likely that these
kinds of Proclamations are designed to serve as 'blank cheques', sub-
ject to reinterpretations based upon shifts of power within the Derg
and other modernising elites. The Labour Proclamation, on the other
hand, is fairly clear on the means of enforcement, while conveying an

uncertain ideological content. It, like the Proclamations dealing with new chartered business corporations and the licensing of private businesses, displays a continuity with laws promulgated under Haile Selasie, and the latter Proclamations are vague both as to the detailed regulation of the subject matter and the underlying ideology. The ad hoc proliferation of laws has continued apace, and Ethiopia is no nearer to establishing a coherent legal system. As in the rural areas, law-as-institution will play an increasingly important role in the centres, with regard to urban coops and the radical restructuring of public enterprises that is far from complete. Law-as-norm will, however, play a relatively larger role in the urban areas: in labour relations, applications of the remnants of private laws, the regulation of private businesses and, we can only hope, in an overall code for public business which prescribes new standards of performance and of accountability.

What remains to be done in the centres is a massive restructuring of commerce and industry, the introduction of policies designed to foster a planned development of urban facilities and social changes - especially those which promote increases in the productivity of labour, a diffusion of innovations through improved links with the peripheries and, generally, a consolidating and integrating of steps already taken - along with a relaxation of political repression. An evident feature of such a programme is that it would impose additional strains on bureaucratic systems. Cohen and Koehn argue, for example, that the

> administrative overload experienced by . . .[the Ministries
> of Land Reform and Urban Development] in the period immediately
> subsequent to the 1974 coup d'etat is one important indication
> of the limits of a strategy that emphasizes the role of central
> government bureaucracy in social change and economic growth.[204]

We would add that the 1975 business nationalisations will constitute an ever greater bureaucratic bottleneck in the longer run. Given the Derg's commitment to an activist intervention, these kinds of bottlenecks cannot be eliminated, but they can be minimised considerably (see Chapter Five): rigid performance criteria must be rigorously enforced to reduce the amount of 'goal displacement' - corruption and irrelevant bureaucratic power struggles; administrators should be utilised in more of a technical rather than a general supervisory capacity, after such retraining as is necessary; the general and more political aspects of administration should devolve on urban and peasant associations as soon

as possible - to augment such political resources as participation,
communication and legitimacy, as well as to relieve an inefficient
bureaucracy; retain as much business activity as possible in private
hands; and transfer such nationalised businesses as the bureaucracy
cannot manage to groups in the regulated private sector, such as urban
associations or a new type of business coop which leaves room for gen-
uine worker participation. The expansion of this kind of private sec-
tor could only be made compatible with the Derg's overall aims if
development-oriented activities which pose no political threat can be
fostered, under Ethiopian Codes which have been thoughtfully modified.

It is precisely the low levels of industrialisation and urbanisa-
tion in Ethiopia that make the radical restructuring of Ethiopia's
centres possible: cultural definitions of how things ought to be or-
ganised are far less rigid at the centres than in the peripheries; and
those with a vested interest in an urban status quo have either been
neutralised or liquidated. City and regional planning can be used with
marked effect where existing patterns are still fluid, but the Derg
has failed, as yet, to take advantage of this fact. There is also a
need for ruthless enterpreneurs who will not simply attempt to pull
levers provided by the old regime. Members of this group, who are a
small minority in any society, must be identified, loosely controlled
and placed in positions of power in the bureaucarcy and the private
sector. This inevitably requires sensitive combinations of economic
incentives and coercion - as it does in the rural areas. Further,
"entry into industrial civilization is as a general rule bound up with the
access to power to the new industrial and urban masses."[205] Urban
coops may gradually help to secure such a transition, but it is clear
that trade unions, as presently constituted, will not. The Derg seems
to view the new unions as nothing more than a device for exercising
control over an elite. An important segment of the centres' population
will remain disgruntled and elitist, unwilling and unable to improve
labour productivity and discipline (when the Derg's back is turned) or
to promote social changes. The Labour Proclamation is particularly
unsuitable and ought to be recast immediately, so as to guarantee worker
participation in the management of a more decentralised system of public
enterprises.

A. Restructuring Business Activity

As things stand, larger-scale factories are located in a few centres. Despite the fact that plants are much smaller than an optimum size, they operate at below-capacity — textile factories produce at about half of their capacity for example - yet maintain monopoly positions in their markets. —A variety of factors are responsible for this state of affairs: low labour productivity, managerial incompetence, shortages of raw materials, the adoption of inappropriate technologies and small market size. Land nationalisations have resulted in a redistribution of incomes which has created new markets, in turn, by twisting demand towards lower-cost consumer necessaries and rudimentary infrastructures. It is possible to apply a labour-intensive technology to the satisfaction of these demands, thus providing badly-needed productive employment opportunities and economising on scarce capital and managerial expertise, in areas such as irrigation, road building, building construction, brick making, the assembly of goods like bicycles and radios, and an upgrading of handicrafts such as weaving, woodworking and making leather goods.[206] These small-scale and labour-intensive activities can be established in the smaller towns and in the rural areas - under the aegis of urban and peasant associations, which can provide the impetus for the mobilisation of local resources - so as to form the basis for new and localised networks of production and distribution. Such a policy would help to circumvent another Ethiopian developmental bottleneck, the primitive transport and marketing arrangements that are still largely in private hands but increasingly influenced by the Derg's policies through the Agricultural Marketing Corporation (see Chapter Six) and the Road Transport Agency.

While these kinds of policies would serve to forge numerous and strong links between and among centres and peripheries, the Derg has done little more than talk about them, although some of the means of implementation are to be found in the nationalisation Proclamations and in the low capital ceilings set by the private business licensing Proclamation. Basically, the Derg has elected to carry on with production functions established under Haile Selassie. Although the statistics are hopelessly muddled, it seems that the economic performance of the centres under the Derg is creditable: small increases in manufacturing

output have been registered in spite of radical industrial reorgani-
sations, trade union opposition, transport disruptions and wars in
Eritrea and the Ogaden. Changes in the structure of Ethiopian industry
are, however, inevitable if Ethiopian Socialism is indeed to go forward
(Tikdem). The manufacture of import substitutes for the relatively well-
off has come to a dead end, and the leading sectors of the Ethiopian
economy - textiles, food processing, cattle breeding, cotton and coffee
- have a very limited number of backward and forward linkages in the
production chain.[207]

The most fruitful lines of expansion, through a decentralised light
manufacturing and construction, are open to a fundamental objection:
inevitably, they would be pursued at the expense of creating the capital
and intermediate goods industries (e.g., iron, steel and chemicals)
which some economists see as preconditions to the structural changes
necessary for economic development.

These industries are, unfortunately, capital-intensive and possess
large economies of scale; the recent experiences of most Third World
states suggest that, in the absence of a large-scale customs union,
small market size acts as a barrier to efficiency in these industries.
Ethiopia's Akaki Steel Mills and the Assab Refinery have certainly
borne this out.[208] Assab has, in the recent past, utilised its excess
capacity by refining oil for Saudi Arabia at bargain prices - a modern-
day example of sending coals to Newcastle. The Derg would therefore be
well-advised to continue to rely on an agricultural revolution to gen-
erate the structural changes necessary for development. Expansions in
manufactures could, in fact, be linked to agricultural improvements and
with urban housing needs: through fertiliser plants and the fabrication
of steel wire, fencing, nails, piping and corrugated sheets, for example.
While capital demands tend to be fairly high in these areas, efficient
plants can be built on a smaller scale and intermediate technologies
are becoming increasingly available. The centres would, of course,
continue to facilitate the exchange of goods and services and the diffu-
sion of innovations, supply specialised skills and foster the large-
scale accumulation of capital.

B. Remoulding Ethiopian Laws

The legal basis for the reforms we have suggested - similar to

reforms advocated in the Third World by the World Bank's Robert McNamara
- revolves around an overarching concept of social ownership. It would
serve to pin down precisely who is to manage Ethiopian enterprises and
how - the central concerns of economic law in socialist countries - and
how and by whom the fruits of private and public ownership are to be
enjoyed - the material rights found in many modern constitutions.[209]
Needless to say, the evolution of such a concept presupposes a clarifi-
cation of the spheres of influence of what may still be termed Ethiopian
private and public laws. This, in turn, entails basic political choices
with regard to economic activities. The patchwork of laws presently
applied in the centres, especially with regard to public enterprises,
probably reflects a desire to postpone these kinds of decisions, with
inefficiency and incoherence as the result. Better overall planning
and bureaucratic coordination, those perennial Ethiopian shortcomings,
would serve as stop-gap measures, but the legal regime of the centres
is unmanageable in the long run.

The kind of wide-ranging comparative approach that is explored in
the first section of this Chapter ought to play a leading role in the
reform of Ethiopian laws. Our analyses of David's transplantations
illustrate many of the pitfalls to be avoided. Reforms should display
an understanding of and, where possible, links with the past. New laws
must, to state the obvious, be both concrete and seriously intended,
avoiding the excessively symbolic or fantasy aspects of law which
plagued Ethiopia in the past and which is poised to stage a return under
the banner of Ethiopian Tikdem. More people should be absorbed into the
centres' legal system. More all-embracing - but not necessarily tradi-
tional - legal values should be devised and made a part of the simultan-
eous evolution of a national culture and legal system (see Chapter Two).
While the most relevant focal point for this reform is a careful adapta-
tion of the experiences of Eastern Europe, firm guarantees of material
rights in a 'constitutional' law should also be offered by Government:
as a quid pro quo for the kinds of economic and social innovations that
the Derg would like to see adopted, and to spur the emergence of the kind
of political system foretold by the establishment of urban and peasant
associations.

Such a system assumes a meaningful transition from a manipulation

of legislation by the tiny elites benefitting from it to the utilisation
of law by the many, that politics will not be frozen at the stage where
the legal system is operated solely by the Derg, as the self-appointed
representatives of the people. At the very least, this transition
requires some form of bureaucratic accountability (see Chapter Five)
and constitutional types of guarantees which, in turn, entail the evolu-
tion of new and specifically Ethiopian juristic techniques. This is a
factor sorely neglected by the Derg, with its emphasis on isolated
military-type commands and laws drafted like ideological slogans. As
a plethora of uncoordinated peasant and urban association tribunals and
military tribunals, composed of adjudicators with no legal training,
come to hear more and more cases, the uniformity and predictability
associated with a modern legal system (properly defined - see Chapter
Two) continue to be unrealised in Ethiopia.

Basic political choices must be made, and soon, regarding the struc-
tures and functions of economic markets in Ethiopia. These choices will
also have political repercussions, as business nationalisations and an
ongoing socialisation of the economy (through urban and peasant associa-
tions) call forth an increased need for a political legitimation of
business activities. It is certain that a purely private law will not
be used to help give effect to market forces, owing to market imperfec-
tions, the Derg's predilections, and both the inevitability of and the
need for broad state intervention in Third World development processes
(see Chapter Two). Their choices will thus involve some mixture of
market-correcting policies - including new forms of business organisa-
tions, banking, taxation and an indicative planning - which integrate
aspects of private and public laws, and market-replacing actions purely
within the realm of public law - ultimately a rigid centralised plan-
ning.[210] The dilemma faced by the Derg is that many of the macro-level
benefits gained by replacing markets will never materialise in the
hands of an incompetent bureaucracy, while the micro-scale efficiencies
realised from regulated markets are purchased at the expense of retard-
ing radical changes in social stratifications and modes of production
(see Chapter Two).

As in all other states, the Derg will attempt its version of
securing the best of both these worlds and, in some areas at least,

attain the best of neither. Conflicts are already arising between laws
fostering a decentralised self-reliance and those which point toward a
thorough-planned economy and polity; the least we can say is that, for
the next decade or so, political and economic markets in the peripheries
can only be corrected rather than replaced by central Government, owing
to a lack of penetration (see Chapter Two). Despite these immense diffi-
culties, a remarkable thing has happened: the Derg has been able vir-
tually to ignore demands for compensation by those whose interest in the
scarcity of economic resources is being sacrificed to the general inter-
est of an abundance. Once private property rights are no longer recog-
nised in things not produced by man, land, natural resources and unearned
incomes generally, it becomes possible for each individual to obtain a
share of his society's output which roughly equals his input - a simul-
taneous solution to the problems of production and distribution. While
numerous practical difficulties loom large in any subsequent policy
calculus, the point is that each person - in the peripheries and the
centres - can be encouraged to use his or her own resources to the
fullest extent possible, a major goal of development.[211]

CHAPTER 8: Conclusion

At the end of her excellent book <u>Freedom and Necessity</u>, Joan Robinson argues that

> [a]nyone who writes a book, however gloomy its message may be, is necessarily an optimist. If the pessimists really believed what they were saying there would be no point in saying it.[1]

Barrington Moore, Jr. elaborates on this theme:

> A sombre view is not . . . a passive and fatalist one. One task of human thought is to try to perceive what the range of possibilities may be in a future that always carries on its back the burden of the present and the past.[2]

We have kept these dicta in mind while preparing this study. The bright prospect that was apparent during the early stages of the Ethiopian Revolution has given way to a deepening gloom, a gloom relieved only by the success of rural land reforms in the South and by a few partial victories in the areas of domestic resource mobilisation and commercial, industrial and administrative reorganisation. While much has undoubtedly changed as a result of the Revolution, much also remains the same: while the military regime is in large measure a prisoner of Ethiopia's rich history and its own traditional foundations, it also has some room for manoeuvre as an agent for conscious change. The Derg has chosen, not always consistently, a most difficult path towards development - the wholesale transformation of social structures through a nationalistic socialiam - which nevertheless offers the best chances for a long-term development in Ethiopia's present circumstance.

Our study pursues a (necessarily incomplete) understanding of the theoretical and factual bases for decisions which the Derg <u>must</u> make: all governments inevitably take a leading role in the allocation of scarce resources, if for no other reason than a refusal to intervene amounts to a decision in favour of the status quo where the power exists to change it. While knowledge about Ethiopia and the impact of her laws is remarkably meagre, incomplete and unsystematic, the urgent need for development does not permit a leisurely accumulation of additional data. The overwhelming impression conveyed by the all-but-intractable subject matter is one of unevenness: in the highly stratified and ethnically fragmented societies which are the legacy of centuries of underdevelopment under Imperial rule; in the policies devised

since the Revolution; and in the fragmented theories of law, of development and of the interrelation of law and development. Reviews of previous theorising concerning these topics, offered at various junctures in this study, indicate which lines of policy are unpromising and point the way towards a synthesis of this "rather varied intellectual precipitate" - a synthesis which is all the more necessary in "an age of unavoidable specialization and scarcely less avoidable rancor. . . ."[3] This cult of a specialised professionalism notwithstanding, a genuinely interdisciplinary approach is demanded by the complex problems of Ethiopian underdevelopment, an approach in which the various breeds of social scientist "have nothing to lose but their deductive chains."[4] The fruits of this synthesizing are presented in Chapter Two as a series of middle-range hypotheses. While analyses in subsequent chapters do not establish these hypotheses as a universally valid General Theory, they prove to be the most sensible and comprehensive set of policy prescriptions devised to date in response to the development constraints and potentials found in post-Revolutionary Ethiopia. The lengthy analyses that are grounded in these hypotheses lack the theoretical elegance associated with classical positivism or Marxism for, as Rene Dumont found while thinking through his Socialisms and Development, "the reality I try to grasp is too complex to be schematized overmuch, without distorting it out of all recognition".[5]

I.   Summary of Analyses

Development involves the progressive derivation of an "ought" (chosen from among many other "oughts" in ways which reflect cultural and political preferences) from the "is", the existing constraints imposed by underdevelopment in a particular country (see infra). In Ethiopia, these include the multiple layers of public and private laws co-existing both under Haile Selassie and the Derg, as well as most of the development constraints that have been identified in other Third World States. The kinds of value judgments a theorist makes with regard to the various "oughts" of development must be evaluated critically, for they predetermine to a large extent the means and ends which are recommended. Our adoption of the values embodied in Gunnar Myrdal's Asian Drama is defended in Chapter Two. The rigid segregation of the

"is" and "ought" attempted by positivists (e.g., in Hans Kelsen's analyses - see Chapter Five) only serves seriously to misrepresent the nature of development processes. Development can only be understood dynamically, as the broadening of subsistence and small-scale economic, political, legal and social 'markets' that effects a cumulative growth in a wide variety of resources. Inevitably, given Ethiopia's stratified and fragmented socieities, such a process involves a social, economic and political equalisation and integration - a decreasing of many different kinds of 'distances', chiefly by linking centres and peripheries. These development criteria contrast sharply with the ones advocated by many Western social scientists whose theories appear excessively simplistic when applied to the complex and harsh realities of Ethiopian underdevelopment. New processes of stratification and differentiation would undoubtedly emerge in the course of development, but they should serve to reward those economically productive people whose interests were not embodied in law under Haile Selassie - enabling them to start asserting control over life's circumstances - while penalising traditional elites, whose political and military productivity was not conducive to development.[6]

The magnitude of this structural transformation, the manifest need for an extensive and intensive development planning and, above all, the Derg's nationalisation of the means of production and distribution make it impossible to segregate economic activity from an undifferentiated mass of law, politics and administration. State intervention in the economy has become a worldwide inevitability, and this intervention will be particularly massive in Ethiopia, given the magnitude of her underdevelopment and the socialist predilections of her present rulers. Development is thus significantly constrained by an Ethiopian "soft state", in which the expectation of obedience to coherent laws is little more than a pious hope:

> the inability of governments to perform adequately the necessary functions in economic institutions represents the largest single proximate bottleneck to achieving rapid economic growth.[7]

Government's capacity to perform the economic roles of planner, regulator, entrepreneur, change initiator, provider and umpire must be expanded radically along lines suggested by Jurgen Habermas, so as to increase

the volume of goods and services (especially those essential to basic
maintenance - food, clothing and shelter), economic incentives, "action-
motivating meanings" (presumably, political mobilisation through par-
ticipation, the dissemination of a persuasive ideology, etc.), and
rational administrative decisions.[8]

Political development is thus closely bound up with economic
development, particularly as political interests (many of which concern
a short-term political survival - see infra and Part II) will be pre-
ferred over attempts to promote development where the two come into
conflict. It is unfortunate that, under both Haile Selassie and the
Derg, little if any political development has been registered and polit-
ical survival through the application of coercion has (perhaps inevit-
ably) been pursued at the expense of the more efficient and effective
use of other political resources. Under criteria suggested by Roberto
Unger, consensus, stability and order have not emerged within conflict-
prone societies; power has not been legitimated and institutionalised;
and most policies have neither been coordinated rationally nor justi-
fied persuasively to the intended beneficiaries. Political communities
in Ethiopia still lack faith in the capacity of nascent institutions
and procedures to reduce conflict or to confer other benefits,[9] and
public suspicions have been abundantly justified by the outcomes of
political controversies since the Revolution. The most that can be
said is that the Derg has repudiated many symbolic, purely formalistic,
Western-style institutions and has begun to lay the groundwork for
political development by establishing peasant and city dweller's asso-
ciations and through rudimentary reforms within a tradition-oriented
bureaucracy.

Many of Haile Selassie's political practices have been perpetuated
under the Derg: a paternalistic tutelage by elites of what are seen
as the ignorant masses; divide et imperia, shum-shur and other manipu-
lations which reflect a distrust of Western-style political processes
and an attachment to traditional proprietary notions of the state; a
spontaneous opportunism in the use of laws - isolated orders backed
by threats formulated in a rough-and-ready fashion - rather than the
even-handed enforcement of a justice based on abstract principles; a
ready resort to coercion and, more recently, to a crude terror where

manipulation fails; and the predominance of secrecy, intrigue, politics conducted through patron-client relations and, to a lesser extent, corruption. This state of affairs is not particularly surprising since the political style of a regime is fundamentally coloured by the country's social structures, and Ethiopia's have not yet changed fundamentally. While political style remains largely unchanged, the substance of many of the Derg's policies represents a radical departure from policies (and the lack thereof) under Haile Selassie. In contrast to the phased implementation of more modest reforms which occurred in, for example, Kemal's Turkey,[10] the Derg has forced the pace of the Revolution through all of the means which came to hand.

While the Revolution has clearly outpaced the ability of the Derg and the bureaucracy to consolidate the gains realised, events reflect the exercise of what is, for Ethiopia, an unprecedented choice: to build a modern nation-state through a militant, autarchic (apart from an acute dependence on foreign weaponry) and all but autochthonous socialism. Any analysis must take account of this fundamental fact, and much of the journalistic handwringing about the incompetence and intransigence of a Derg seen as the handmaiden of the Soviets is thus somewhat misleading. The Derg came to power without mass support (except, initially, in Addis Ababa) in a hostile domestic and inter-national environment. Since then, it has managed to conserve its own power and to begin to implement radical changes in the face of violent conflicts and other events which would have caused the collapse of governments in most other countries. The question remains, of course, whether the remedies applied by the Derg are worse than the suffering under such symptoms of underdevelopment as hunger and political insta-bility (see infra). In any event and as we demonstrate infra and in Chapters Five through Seven, the Derg missed many opportunities simul-taneously to promote long-term development and its own narrow, short-term political interests.

The Derg's approach to development (through the more comprehensive strategy of radical social change) is an unfamiliar one to most Western theorists: a new type of political ferment and ideology are having the effect of loosening men's minds, making them more receptive to change; alterations in power relations are relaxing the change-inhibiting factors in societies otherwise predisposed towards change; and an

emphasis on collective economic activity fosters mobilisation, social control and, ultimately, the regime's power and legitimacy, as well as social change.[11] While this approach to change, in which law plays a major role, is both interesting and fruitful, it is unfortunate that the humanistic kinds of socialist policies advocated by E.F. Schumacher, Gunnar Myrdal, Julius Nyerere and Rene Dumont obtain scant recognition in Ethiopia and many other countries. As these theorists note, development begins with people; improvements in the levels of their health, nutrition, education, dignity, self-reliance, organisation and discipline are vital preconditions to the efficient and effective utilisation of political and economic resources.[12] There are, for example, too few benefits and too many costs associated with arbitrary interventions in the daily lives of Ethiopians by an incompetent bureaucracy which is not really accountable to anyone under incoherent and underdeveloped systems of law and politics. Most theorists of law and of the other social sciences, whether of the positivist, the Marxian or some other persuasion, do not address themselves adequately to these kinds of issues which require that many delicate and programmatic balances be struck among competing considerations while the basic form and content of legal and political systems remain in dispute. Our study represents a step towards repairing this defect.

II. Human Misery and Social Justice

If Ethiopian law and politics do not consistently amount to the "capricious orders of a crazy despot", neither do they operate in the _perceived_ interest of the majority (at the centre, they represent what revolutionary soldiers think workers and peasant ought to want and have) nor can they be used to justify persuasively the gross truncations of the right to life which have occurred. The difficulties inherent in an outright condemnation of the Derg's performance since the Revolution are similar to those discovered by, of all people, Mark Twain:

> There were two 'Reigns of Terror' if we could but remember it and consider it; the one wrought murder in hot passion, the other in heartless cold blood, . . . with lifelong death from hunger, cold insult, cruelty and heartbreak. . . . A city cemetery could contain the coffins filled by that brief Terror which we have all been so diligently taught to shiver at and mourn over; but all France could hardly contain the coffins filled by that older and real Terror. . . .[13]

Relief from that older Terror constitutes an obvious part of those

attempts at achieving political, social and economic justice which we
have defined as forming the core of development processes.[14] In light
of rigid social stratifications and acute ethnic fragmentations, how-
ever, it is more accurate to say that Ethiopians (and many other peoples)
share a sense of injustice rather than of those overarching conceptions
of happiness, the good or the just[15] which form the basis of convention-
al theories of natural law.

People are scandalised and their passions aroused when avoidable
injustices - species of human misery - are added to by government or
when government does nothing to ameliorate them. In his thoughtful
Reflections on the Causes of Human Misery ...., Barrington Moore, Jr.
generalises these miseries, which are "hardly ever really enjoyed" for
their own sake, into four categories of roughly equal importance:
poverty, hunger and disease; oppressive socio-economic relations;
governmental persecution for dissident beliefs; and war, both in its
conventional and guerrilla forms.[16] The most defensible definition of
Ethiopian justice is thus one of the progressive elimination of these
miseries, all of which are avoidable through the development-oriented
policies of an activist state (see Chapter Two). While the Derg has
recorded significant successes with regard to the amelioration of the
first two categories, persecution has increased markedly, as has a
broadly-defined war - for reasons only partly beyond the Derg's control.
For those Ethiopians who have felt the reach of the Derg's power, life
continues to be nasty, brutish and (cut) short,[17] but some of the
causes underlying their misery have changed markedly.

Once again, our conception of justice lacks the formal elegance
of many of the theories which have been propounded since Aristotle. We
would, however, apply Kenneth Boulding's critique of Rawls broadly to
these theories: "the discourse of philosophers is like the stars; it
sheds little light because it is so high."[18] The meaning of justice
changes over time and the ways in which it is sought changes its mean-
ing. Marxism and contemporary Western theories of justice discuss
distributional issues in the context of an economy presently capable,
with fairly minor adjustments, of producing an abundance - an assumption
which cannot be applied in Ethiopia for the foreseeable future. There
and elsewhere in the Third World, mere survival must be accorded a high
priority through the "politics of regulated conflict and the socio-

economics of maximising individual [and group] life-chances";[19] cri-
teria of justice must be "capable of coping with men intoxicated with
the prospect of almost unlimited power and also with the apathy of the
powerless."[20] Initially, the Ethiopian Revolution markedly reduced
apathy (but not powerlessness) in the urban areas and in those rural
areas in the South where the Derg's policies came to be implemented.[21]
While "no social organisation will ever fail to leave much to be desired
from the standpoint of absolute justice",[22] the Derg's subsequent brutal
repression of its critics served to dissipate its initial fund of good-
will, provoked the violent opposition of some and the return of apathy
among others, and continues to forestall the growth of the regime's
legitimacy.

While the Derg's nationalisations of lands and businesses aim at
a distributive justice based primarily on the value of labour expended
and involving an extensive use of public law, much of the balance of its
policies reflects a penal model of law and politics, a corrective jus-
tice which does not entail the use of private law, the ordinary courts
or (contra Aristotle) the restoration of the status quo ante. Penal
laws and policies are the formal means by which control and order are
maintained in most centralised socieities, especially during periods
of rapid change, when families, religious institutions, schools and
communities are unable to exercise their stabilising influence effec-
tively. In Ethiopia, revolutionary changes render impossible a slow
and subtle constitutional process designed to frustrate the punitive
aims of politicians; initially-enacted laws fluctuate wildly and ignore
Western canons of legality in a "might makes right" situation. Even if
economic development were to be achieved in Ethiopia in the future, it
would fail to satisfy the demands of all sectors of society, for the
political and economic resources described in Chapter Two are (by defin-
ition) scarce in relation to the potentially unlimited desires for them.
Realising this, the Derg has attempted, somewhat erratically, to state
authoritatively a radical redistribution of access to power and wealth,
and to force the acceptance of it upon dissident individuals and groups.[23]

As this redistribution is, at base, conducive to development, and
as any conceivable distribution of political and economic resources
would be violently opposed by some segment of stratified, fragmented
and conflict-prone Ethiopian society, governmental coercion is justified

within <u>narrow limits</u>. The point was, however, soon reached during the course of the Revolution – perhaps as early as the end of 1974 – when coercion was no longer utilised primarily to sweep aside the <u>ancien</u> regime and the effects of its policies.[24] Many "little people" came to suffer from being arbitrarily labelled deviants, and penal policies failed to secure one of their primary goals – ensuring a secure life in society (see Chapter Five). Clearly, the Derg is exercising poor political judgement: the state of the Ethiopian "class struggle" does not warrant massive doses of the terror that has led only to temporary victories and to antagonisms fueled by injustice; the need is, rather, for integrative political strategies.

The sorry state of human rights in Ethiopia, while unjustifiable, is at least understandable. There is a long tradition of violating such basic rights as the right to life in Ethiopia, and the Derg saw a self-proclaimed state of emergency deteriorate further as a result of guerrilla rebellions, armed urban opposition and international conflagration – the effects of which were exacerbated by its own policies. It is difficult to apply conventional legal criteria under such circumstances; even so libertarian an agency as the U.S. Supreme Court has condoned massive human rights violations directed against "subversion" during wartime, and the Derg has, in any event, rejected the formalistic libertarian ethos embodied in Haile Selassie's 1955 Constitution. The word "rights" is appropriated by elites in each country for the principles <u>they</u> believe in, and the primary use of (Western-style) individual political rights in the Third World (including India, the "showcase of democracy") is as "a slogan and rallying cry to help assimilate the upwardly mobile . . . into the small political elite."[25] Such a policy does little to advance the cause of development, but Ethiopians have fared little better since the Derg espoused socialist-inspired material rights: individual and group claims to positive community actions (rather than to freedom from public interference) which correlate with State duties that have yet to materialise in Ethiopia. Western ideologies notwithstanding, rights are not inherent but are granted to people by their governments for predetermined purposes. Few such lasting concessions have been wrung from Haile Selassie or the Derg; little attention has been paid to a hitherto diffuse public opinion in Ethiopia, although rebellion or the threat of it has resulted

in temporary moderations in some governmental policies.[26]

Widely adopted legal criteria of justice - the Rule of Law in its various formulations in the West and socialist legality in communist party-states - offer little guidance for an evaluation of the Ethiopian Revolution. Recalling that the most relevant definition of justice for underdeveloped Ethiopia involves the progressive elimination of four equally-debilitating types of misery, the Rule of Law, as applied, prefers freedom from governmental persecution to the amelioration of poverty, hunger, disease and oppressive socio-economic relations; and socialist legality reverses these preferences. The bureaucratic canons of so-called welfare states have, to date, offered the worst of both these worlds. Neither the Rule of Law nor socialist legality stresses the reduction of apathy, of subtler forms of tyranny or of the fissiparous tendencies which supply the temptation to wage guerrilla war. Both criteria fail to deal with what is becoming readily apparent in the areas of, for example, race relations and welfare entitlements in the West: the private goals associated with "liberty" and the collectivist goals of "equality" are mutually exclusive at many points and ultimately irreconcilable.[27] One way out of this dilemma is to argue that, since Ethiopian governments have hitherto made no attempt to reduce the level of any kind of misery, Ethiopians have nothing to lose. Progress by the Derg towards eliminating any one category of misery is thus to be applauded. The difficulty with this argument is that any such progress has its 'opportunity costs', both in terms of a tradeoff of liberty for equality and a senseless persecution, which fails to secure additional equalities.[28]

We will therefore proceed to assemble more appropriate legal criteria of justice in a pragmatic fashion, recognising - as other criteria do not - that politicians will act to alleviate misery only to the extent that it is in their interest to do so. The enlightened self-interest of politicians and bureaucrats is not, of course, the loftiest of promptings towards justice (development), but it is the only realistic one where development inescapably requires the activist intervention of a state run by persons whose altruism is severely limited. Political and administrative interests are often narrow, personal and occupy short time horizons, reflecting limited capacities as well as an understandable desire for the survival in office that, in Ethiopia, can

amount to physical survival as well. The maintenance of order through commands backed by threats, the prime concern of most species of positivism, thus becomes of such overweaning importance that a genuine effort is required to stand back from day-to-day preoccupations in order to pursue the longer-term policies associated with justice.[29]

The Derg may be in the grip of some collective paranoia, but this group of soldiers has become a fixture in Ethiopian politics without a tenable, less repressive replacement, and it has many very real enemies too. Until its short-term survival is assured - inevitably through a strong state, given its political predilections and the nature of Ethiopian societies - no one will be able to devote anything like the efforts which the development process so obviously requires. Paradoxically, a strong state is the first step (but no more than that) towards the achievement of socio-economic justice through a politcal development. If and when the Derg's short-term goals are fulfilled, prudence and moderation would progressively replace overreaction, as politicians become more and more preoccupied with the long-term survival of their regime and their place in history. While a revolutionary regime inevitably uses the violent politics of a repressive state to establish itself, such a regime carries the seeds of its own destruction and is capable of enduring for a generation at most, unless it developes itself politically. Rousseau puts it thus:

> if force creates right, the effect changes with the cause. Every force that is greater than the first succeeds to its right. As soon as it is possible to disobey with impunity, disobedience is legitimate; and the strongest being always in the right, the only thing that matters is to become the most strong. . . . The strongest is never strong enough unless he succeeds in turning might into right and obedience into duty.[30]

An analogous justification for moderation is offered by Shakespeare:

> Force should be right; or rather right and wrong,
> Between whose endless jars justice resides,
> Should lose their names and so should justice too.
> Then everything includes itself in power,
> Power into will, will into appetite;
> And appetite, an universal wolf,
> So doubly seconded with will and power,
> Must make perforce an universal prey,
> And last eat up himself.[31]

Assertions such as these do not acquire their force through eloquence alone: apathy and the threat of rebellion constantly reinforce them,

among politicians who have something to lose. Each new programme established by the Derg carries with it an increased commitment to the perpetuation of institutions which are growing too strong and complex to be ruled directly. While bureaucracies and armies can enforce temporary decisions, long term socio-political arrangements require the cooperation of large numbers of producers, most of whom are small and isolated in Ethiopia. Public predispositions towards apathy and rebellion thus play a significant role in the struggle for social justice. As the Black American abolitionist Frederick Douglass argued in 1857,

> power concedes nothing without a demand. . . . Find out just
> what people will submit to and you have found the exact amount
> of injustice and wrong which will be imposed on them. . . .
> The limits of tyrants are prescribed by the endurance of those
> whom they oppress. . . .[32]

Isolated acts of governmental injustice may not provoke rebellion, but individuals and groups rationally balance the (sometimes irrationally perceived) costs and benefits of governmental arrangements as a whole. They first ignore and then move towards dissolving these arrangements in the face of prolonged injustice, in self-defense against arbitrariness and to compel politicians to listen to grievances. The balance is struck on the basis of judgements about the purposes of suffering, the competence of those imposing or perpetuating it (the degree of certainty of future benefits arising from present miseries), and the time scale and aftereffects of suffering (the 'discount rate' applied to future benefits).[33] The Revolution has made many Ethiopians more conscious of governmental arrangements and possible alternatives; and many of them have found the Derg's policies seriously wanting.

Whether or not morality can exist independent of society, it is clear that politics cannot. Laws, concrete rights and notions of justice - the stuff of public morality - are thus dependent upon the choices, potentials and constraints found in a given society, grounded as they are in particular political controversies rather than the abstract universal(s) devised by some natural lawyer. None of the numerous, fuzzy and mystical definitions of justice found in theories of natural law have had a significant impact on contemporary politics, for they require men to love others as they love themselves, without regard to possible rewards. Theories of justice which attempt to

reconcile positivism with the natural law tradition - H.L.A. Hart's and Lon Fuller's, for example - suffer from a familiar affliction as they rely on the empathy and benevolence of politicians,[34]

There is, nevertheless, a manifest need to counteract the positivists' (express, implied or constructive) assertion that law can have any given content. We have examined the sterility of this self-defeating approach at several junctures, particularly in an examination of Kelsen's "pure" theory in Chapter Five. The unmasking of the ideological nature of these kinds of theories by Marx and others has, paradoxically, revitalised demands for just laws and given rise to passionate debates over values and nominative preferences. The aggregation, allocation and delegation of political and economic resources (see Chapter Two) can no longer be freely relegated to some metalegal sphere. Increasingly, the goals pursued by means of a legal efficiency and efficacy (e.g., within Weber's construct of a legal-rational legitimacy - see Chapter Five) are being evaluated and questioned. Under these new theories, it is no longer enough for law merely to implement a few interests (e.g., through a social engineering which does not entail comprehensive planning - see Chapter Two); laws and legal analyses must also contribute towards an understanding, broadening and deepening of these interests which, in Ethiopia, involves a creative regulation of a wide variety of serious social conflicts,[35]

In Chapter Five, we found the cornerstone of inquiries into law and politics to be the tension between efficacy, the locus of power to issue and enforce commands, and validity, the authority (legitimated power) to do so. This tension constitutes a major "is"/"ought" dichotomy, variously described as existing between certum (authority) and verum (reason) by Vico, between arbitrary commands and rational authority by Jerome Hall, and between efficacy and morality by Lord Lloyd. H.L.A. Hart, Lon Fuller and stricter positivists such as Hans Kelsen have so multiplied the terminological confusion and so muddled their analyses of this tension as to render Western jurisprudence incapable of explaining anything other than incremental socio-legal change in the West. It has therefore become necessary to build bridges over the chasm between "is" and "ought" which they (and other social scientists) have created, utilising developmental concepts and a more

pragmatic theory of law, one which takes account of aggressiveness, greed and irrationality, as well as love, cooperation and righteousness.[36]

Species of "is" and "ought" obviously cannot be aligned in an absolute sense through any exercise in strict logic. They can, however, be brought gradually into harmony through an almost dialectical process: the daily exercise of power in ways which are designed to legitimate that power. Power and legitimacy sometimes converge (creating authority) and often diverge, but they exercise a constant influence over each other. For example, power encompasses an efficacious arbitrariness, which is almost-exclusively devoted to the pursuit of the short-term goal of order simpliciter. Vested political interests dictate the joint pursuit of a "good" order, however, prompted by fears for the regime's future and the consequent need to win support for good government.[37] It is at this point that the developmental dimension offers an important link between the "is" and "ought" of order and legitimacy; the orderly application of (more or less sensible) policies in the short run is a precondition to long term economic and political development because it helps to avoid the rapid policy swings and alternation of elites in power which perpetuate the "soft state" that is far from soft on the poor and powerless. Realistic development planning also bridges the "is" and "ought", as well as differing political timescales; this pursuit of a particular "ought" of development takes into account the "is" of existing markets, political preferences, etc. and the "can" of resources available to be mobilised. Planning, or any other political act which involves more than the temporary enforcement of isolated commands, requires at least a minimal clarity and orderliness in public organisations (see Chapter Five).[38] A commitment to bureaucratic legality in Ethiopia would help to secure this aim and to confer a significant legitimacy on the regime as well, but these benefits must seem remote and indirect to the beleaguered Derg. Bureaucratic legality could nevertheless be 'sold' to the Derg on the basis of the vital short-term benefit of helping to bring the bureaucracy under control in order that it might serve as an effective tool for the Derg's policies.

Theories of law and development must become more pragmatic than those which have hitherto dominated jurisprudence, comparative law and sociology of law. The efficacy of law should be traced in relation to

a main purpose: in our view, achieving justice programmatically, in
accordance with definitions relative to time, place and such other
givens as cultural and political preferences. Recognising that several,
equally valid alternatives will always be available, it is nevertheless
possible to identify 'bad' laws where they are based on public policies
adjudged 'bad' under criteria which are periodically redefined. In
order to make these kinds of judgements, a middle ground between the
rival rigidities of the positivist segregation of "is" and "ought" and
the natural law fusion of the two has to be found. We must, in other
words, move away from abstractions, a priori reasons (such as are found
in a "natural law with a changing content"), closed systems and pretend-
ed absolutes, and towards concreteness, a consideration of cost and
convenience, fact-and action-oriented behaviour and, most importantly,
a coming to terms with the realities of power. The endproduct is a
process of interpretation which would play a decisive role in adapting
positive laws to changing conditions, much as the ius naturale, oper-
ated in conjunction with the ius gentium, functioned in the Roman
Empire. Having discarded an assumed perfectibility and the ultimate
perfection of human nature, the most that can be expected is that worth-
while policies will be embodied in laws and actually followed in a large
majority of situations, and that the many doubtful issues which remain
will be resolved in good faith. Rules governing criminal trials can-
not, for example, give rise to a perfect procedural justice. The fair-
ness of the rules can only be "determined entirely by their conducibil-
ity in general to just results. . . ."[39]

Imperfectly, then, we can derive complex legal criteria of justice
along lines suggested by Phillip Selznick. They would be based on the
recognition that short-term political decisions to intervene in society
and the economy have long-term consequences: while the ways in which
political power are exercised may force the suspension of a legal judge-
ment, the arbitrary and/or incoherent exercise of power is never final
in law. Most laws represent some kind of attempt to bridge the gap
between naked power and a power legitimated through a discursive justi-
fication (in relation to the regime's ideology, etc.), to try to win
the consent and support of the governed. These instances of legitimated
power are then generalised and classified by a legal system capable of
doing so, in order more readily to identify arbitrary discriminations

which contradict political choices, to foster a greater certainty and
predictability in political acts.[40] Sir Ernest Barker (in his defini-
tion of the Rule of Law) describes the requisite act of political
prudence in the following way:

> The purpose of the state is . . . a specific purpose of law.
> Other purposes, so far as they concern or affect this purpose
> must necessarily be squared with it . . . . but the adjustment
> is not a matter of discretion, and it is not absolute: it is
> controlled by the purpose of the State. . . .[41]

The purposes enunciated by the Derg, in Ethiopia Tikdem and many
of its other policy pronouncements, and embodied in some (but by no means
all) of its laws can be made consistent with our definition of justice—
(supra). Inevitably, justice and equality must remain wholly synonymous,
up to the point where the basic needs of all Ethiopians are fulfilled.
Beyond that point - far into the future in Ethiopia - distributional
justice entails an explicit recognition of the contributions and efforts
of individuals and groups.[42] Even before this point is reached, how-
ever, the desire to acquire more than one's equal share would serve as
a motivation towards development activities. In order adequately to
reflect these goals, Ethiopian laws and ideologies must be infused with
a greater concern for a people-centred development. This concern was
given its most fervent expression by Martin Luther King, Jr. in his
'Letter from the Birmingham City Jail': "Any law that uplifts human
personality is just. Any law that degrades human personality is un-
just."[43]

While this call for disobedience to unjust laws had some political
impact in the U.S., it reflects a simplistic view of the interrelations
of law and politics: the justice-enhancing and -reducing aspects of
law are not mutually exclusive. They combine in various ways in systems
of law and politics which are inevitably imperfect and which respond but
sluggishly to apathy and violent or nonviolent rebellion. People must
be manipulated and compelled to live up to their potential excellence
in order to achieve development within a reasonable time span and, in-
variably, some will rebel. The compulsions used by the Derg reflect
poor political judgement, however, offering too few discursively justi-
fiable 'carrots' and too many 'sticks': exhaustive experiments demon-
strate that the only cheap and effective way to control individuals and
groups for particular purposes is to offer inducements making it to

their advantage to perform the acts required. Economically, this can
be done through the kinds of incentives that were discussed in Chapters
Six and Seven. The requisite political 'carrots' include government's
sufferance of a continuing sphere of private activity which is large
enough to ensure individual and group self-respect, as well as a pro-
gressive augmenting of the legal statuses of citizenship and a limited
group autonomy with uniform conditions of equality concerning economic
opportunity and, later, a meaningful political participation.[44]

III. A Speculative Postscript

In 1628, Sir Edward Coke wrote: "reason is the life of the law,
nay the common law is nothing else but reason. . . . [It] is the per-
fection of reason."[45] The rules Coke announced did a good deal of damage
for several hundred years and they provide much entertainment today;
will the theories presently cherished by Western social scientists es-
cape a similar condemnation from our successors? Possessing Coke's
kind of self-confidence (ethnocentrism or arrogance might be a better
word), Western lawyers such as Rene David, and other 'experts', set out
to 'develop' the people of what came to be known as the Third World.
It is quite likely that this favour will be repaid some day. A small
beginning was made during the English summer drought of 1976: a mission-
ary in the State of Madras, known for its climatic vicissitudes, raised
£100 from among his parishioners to assist English drought recovery.
What supreme irony if development studies and a developmental approach
to law in particular, created by Westerners for the Third World, were
to turn in upon themselves and help to develop those who thought them-
selves already developed.

While the constraints on an Ethiopian development are unique in
their combination, the analyses in this study can, with careful modifi-
cations, be made relevant to the problems faced in many other countries.
There is an obvious interdependence of national development efforts on
what ecologists have termed Spaceship Earth: "world poverty is primarily
a problem of two million villages, and thus a problem of 2,000 million
villagers."[46] Further, the problems of nation building described in
this study periodically re-emerge in the so-called developed states,
as problems of national repair or reconstruction. How many countries
today maintain desired levels of investment and productivity in all

sectors of the economy, avoid intense ethnic and regional differences and disputes over the distribution of wealth and power, and are blessed with citizens who cooperate with and respect each other, while respecting themselves? Development is a highly relativistic concept, a fact that is highlighted by what Oscar Lewis has termed a worldwide culture of poverty.[47]

In much of the Third World, poverty dominates, while it is almost a deviant subculture in the wealthiest of countries. Despair, apathy and low levels of group organisation are the main characteristics of this culture, which is both an adaptation and a reaction by the poor to the improbability of their attaining the successes defined by elites in stratified and individualisitc societies. Clearly, "it is more difficult to undo the culture of poverty than to cure poverty itself";[48] policies promoting a narrowly-economic growth or those of a welfare state leave untouched many of the conditions which perpetuate underdevelopment. No country can be termed developed until it succeeds in eliminating the culture of poverty within its boundaries, a process which entails major structural transformations. Theories of law and development thus have much to say that is of interest to the First and Second Worlds too, and are a subject worthy of detailed study.[49]

FOOTNOTES

PART I

1   E.g., in <u>Zapata and the Mexican Revolution</u>, John Womack takes the view that "The truth of the revolution in Morelos is in the feeling of it." A metaphysical notion perhaps, but much of the origin, content and impact of revolutions is highly metaphysical. Albert Hirschman praises Womack's superior cognitive style: his respect for the revolution and for the Mexican people counteracts an academic's propensity to see gloom and failure everywhere, stemming from simplistic historical and statistical projections into the future and the desire to reprove regimes which are felt to be repressive or unjust. We have tried to give the Ethiopian revolution a similar balanced treatment. <u>See</u> A. Hirschman, 'The Search for Paradigms as a Hindrance to Understanding' in N. Uphoff and W. Ilchman, eds., <u>ThePolitical Economy of Development</u> 64, at 64 (1972).

2   Speaking of the First and Second Worlds (Western and Communist party-states), Ralf Dahrendorf (<u>The New Liberty</u> 87, 1975) argues that

> making medium-term thinking relevant for short-term action is one of the great unresolved problems of contemporary life, and. . .. we pay heavily for not having solved it.

We would add that the preoccupation of governments with short-run political problems tends to be at the expense of a consideration of multi-faceted, long-term developmental problems. We therefore attempt to link "medium-term thinking" about development with "short-term action" and with the political preoccupations of Ethiopian governments.

Our rather complex topic has been revised several times in order to provide a meaningful analysis of what are felt to be the relevant issues. Obviously, all aspects of the topic cannot receive exhaustive treatment: the aim is to leave no major questions unanswered <u>within</u> the chosen framework of an interdisciplinary exploration of domestic Ethiopian development prospects. Ethiopia's foreign trade and relations and the various guerrilla wars in progress constitute separate topics which are being dealt with by others, and receive only brief treatment in Chapter 1. Portions of the study detail revolutionary events which began in 1974 in Ethiopia, and they suffer from the inherent drawback of the author being 'just another witness', lacking abundant documentation and reliable critical studies written long after the events. Media reports, personal experiences and interpretations are combined with the efforts of research students and reliable informants - those persons with good sources of information whose reports were consistent with other information and whose other information had proved reliable. Wherever possible the information obtained was compared with published studies, many of which, unfortunately, contain implicit biases. Every opportunity was taken to convert subjective impressions into objective judgements, after testing them in all possible ways, and to present balanced assessments.

Many facets of Ethiopian underdevelopment are not within the author's personal experience, and the research of others is therefore cited extensively. As in so much of social science research, case studies typically provide many insights without generating general

hypotheses and overall surveys tend to be superficial and too abstract. We therefore attempt to strike a balance between theoretical substance and the tendency to over-generalise. It is virtually axiomatic among contemporary students of Ethiopia that the conventional criteria employed in the analysis of other societies are highly suspect when applied to atypical Ethiopia. On the other hand, no nation in an interdependent world is _sui generis_, and Ethiopia faces many of the problems experienced by other underdeveloped states. A good set of theories ought to be applicable to specific problems in other countries, albeit in a general fashion and subject to further research. Induction and deduction have been used alternately, in order to achieve a better fit between theories and the facts. This study is basically fact-oriented: theorising grew out of facts about Ethiopia; facts were not forced into preconceived theories. The compulsion to theorise in a mindless fashion - Flaubert's _la rage de vouloir conclure_ - has been resisted.

Of course, no one collects data and descriptions without theoretical preconceptions, and 'letting the facts speak for themselves' can lead to an ahistoric acceptance of the status quo as unproblematic. This tendency has been suppressed through a continual reformulation of theory and by focusing upon the historical nature of Ethiopian development choices and constraints. A careful formulation of the issues raised by development and revolution is, in any event, an adequate safeguard against a reification of the status quo. To the best of the author's ability, the theories elaborated herein create truth as well as simply finding it, are falsifiable, general, empirically valid, parsimonious and focus upon developmental variables that can be manipulated. Variables which are not manipulable should be treated as a choice or even as a constraint, a 'given' which cannot be manipulated such as extreme views of a peasant fatalism (_see_ Chapter One).

See: J. Barzun and H. Graff, _The Modern Researcher_ 20, 126, 140-1, 146 (1962); J. Markakis, _Ethiopia_ 2 (1974); N. Mouzelis, _Organization and Bureaucracy_ 66 (1967); H. Brookfield, _Interdependent Development_ 195 (1975); G. Myrdal, 'Objectivity in Social Research', in D. Lloyd, ed., _Introduction to Jurisprudence_ 3d Ed. 6, at 6 (1973); B. Smart, _Sociology, Phenomenology and Marxian Analysis_, xi (1976); Hirschman, _op.cit._ 64, 70; G. Lenski, _Power and Privilege_ 448 (1966); and R. Holt and J. Turner, _The Political Basis of Economic Development_ 3-4 (1966).

FOOTNOTES

CHAPTER I

1. D. Crummey, 'Ethiopia: New Approaches', 9 Canadian J. of Af. Studs 340, at 340 (1975). G. Huntingford (The Galla of Ethiopia: The Kingdoms of Kaffa and Janjero 9 (1969) adds that:

> In spite of the large and varied literature dealing with Ethiopia, this country remains one of the least known regions of Africa to this.day.

In 1938, Margery Perham (The Government of Ethiopia, 2d Ed., 138 (1969) first wrote that "Ethiopia still awaits comprehensive investigation of her law and custom". This statement remains true today, despite the passage of time. John Cohen and Sileshi Sisaye ('Research Problems in Describing and Explaining Ethiopia's Socio-economic Development' 3, 1976) cite a study which demonstrates that only 2% of the research projects registered with the African Studies Association concern Ethiopia. Likewise, only 3.7% of American and Canadian Ph.D. theses about Africa are devoted to Ethiopia and only 37% of these discuss development-related topics. Similar analyses of research in the U.K. have never been undertaken, but we would predict - on the basis of the colonial orientations Crummey mentions - that there is even less interest in Ethiopia among scholars in the U.K. A small amount of valuable research has been carried out by Swedes, Germans and Yugoslavs, and several older Italian anthropological studies retain their value. Much of the relevant contemporary research is by Ethiopian scholars, although they have naturally turned to more active pursuits, in support of or, more typically, in opposition to the post-Revolutionary military Government.

2. Id., 1-2 and J. Markakis, Ethiopia: Anatomy of a Traditional Polity 2 (1974). Perham (op.cit. xiii) argues that Ethiopia's economic backwardness is peculiar to itself; the conservatism of an ancient religion and political system makes the Ethiopian economy less amenable to change than most 'tribal' economies. Gedamu Abraha ('Wax and Gold', 11 Ethiopian Observer 226, at 226, 1967) adds that "Truth . . . is an elusive quarry in Ethiopian studies"; conjecture becomes attractive and to some extent unavoidable in the absence of detailed information. Markakis's book, P. Gilkes's The Dying Lion (1975) and D. Levine's Greater Ethiopia (1974) - the leading fruits of recent Ethiopian scholarship - are criticised heavily by Crummey, op.cit. Gilkes's book, like M. Stahl's Contradictions in Agricultural Development: Three Minimum Package Projects in Ethiopia (1973) offer partial and simplified "Marxian" views of Ethiopia, while Levine's book offers a similar Parsonian treatment that is, paradoxically, metasociological, metahistorical and obscurely metaphysical. Stahl and Levine display the failings common to much of Ethiopian scholarship: ethnic stereotyping and an emphasis on cultural adaptation at the expense of analyses of economic relations and political domination (Crummey, op.cit. 341-3 and Cohen and Sileshi op.cit. 13 - an excellent critical survey of recent research). It is important to note, however, that Gilkes's and Markakis's books contain numerous important insights which will be utilised throughout this study. It was only after reading Cohen and Sileshi's study that we grasped the need to stress the interrelatedness of centres and peripheries in Ethiopia (see Part III).

3. See, e.g., H. Marcus, The Life and Times of Menelik II: Ethiopia 1844-1913, 193-5 (1975), discussed in the next Section, and S. Waldron 'Revolution in Ethiopia' (1976):

> The system of relationships between local tenant and outsider-landlord, initiated by Menelik II and perpetuated during the reign of Haile Selassie was a clear-cut case of ethnic stratification. The expression of ethnic resentment which has accompanied the land reform is part of the heritage of the monarchy, a kind of internal colonialism.

Traditional Ethiopian land tenures are discussed briefly in Chapter 6.

4. M. Ottaway, 'Social Classes and Corporate Interests in the Ethiopian Revolution', 14 J. Mod. Af. Studs (forthcoming); T. Farer, War Clouds on the Horn of Africa 2 (1976); J. Markakis and Asmelash Beyene, 'Representative Institutions in Ethiopia', 5 J. Mod. Af. Studs 193, at 193-4 (1967); Assefa Bequele and Eshetu Chole, A Profile of the Ethiopian Economy 3 (1969); and L. Bondestam, 'Notes on Multinational Corporations in Ethiopia' 5 Af. Rev. 535, at 549 (1975). We do not argue that foreign interests were absent in Ethiopia; rather, they influenced events in enclaves which are extremely small and which emerged late, in comparison with those in former European colonies (Id.) European colonialism never gained a foothold in Ethiopia: the authority exercised by Italian invaders from 1935 to 1941 was only temporary and superficial. Nevertheless, Ethiopia - like Thailand - lived in the shadow of European colonialism and contemporary Ethiopian events are very much influenced by previous colonial interventions in Somalia, Sudan, Djibouti and the Province of Eritrea. These factors are discussed in Section V, infra. Gunnar Myrdal (Asian Drama 19, Abridged Ed., 1977) states that European colonialism was of "such duration and intensity as to leave a definite imprint on almost every aspect of. . . existence". For reasons to be detailed in Chapter 2, comparisons between Ethiopia and some South Asian states are fruitful. Comparisons with several Latin American countries, based on structural transformation theories of development, are also analysed in Chapter 2. Seyoum Gebregziabher ('The Structure and Functions of the Civil Service in Ethiopian Public Administration' 8, 1960) argues that:

> For purposes of practical analysis, comparisons between Ethiopia and other African countries have only a limited utility. 1 ... The structure and legitimacy of the government has more parallels with such countries as Japan, Thailand and Iran (though with a wholly different trend and level of culture) than with the Congo or the Cameroons.

Comparisons between Ethiopia and Europe prior to the Industrial Revolution (see, e.g., Goody, Note 29, infra.) are, of course, made more difficult by the fact that the poor countries of today exist in a world where many countries have gone far beyond the Industrial Revolution. D. Levine ('Amhara Culture and Ethiopian Politics', n.d.) supports the dictum that Ethiopia is " in Africa but not of Africa" by citing numerous non-African cultural influences:

> Sabean language, script, religion and architecture; Judaic dietary and ritual observances; Greek literature, /philosophy/ and loan words; Syriac theology and religious terminology; Byzantine iconography; Arabic literature; Muslim conversions; Portuguese masonry and viniculture.

These influences are, to some extent, counterbalanced by Cushitic components, indigenous adaptations of methods of agricultural production /which probably evolved from Mediterranean production modes and land tenures - see Chapter 6/, elements of paganism, African methods of house construction and localised clitoridictomy practices.

5. C. Furtado, Development and Underdevelopment 1 (1967); J. Barzun and H. de Graaf, The Modern Researcher 149 (1962); and Schumpeter, quoted in H. Brookfield, Interdependent Development 87 (1975). Markakis (op.cit. 3) describes the Ethiopian "historical moment" in terms of the convergence of living traditions, territorial expansions and the commencement of modernisation.

6. See: S. Finer, Comparative Government 589-90 (1970) and J. Holmberg, 'Pricing Strategies. . . in Ethiopia', 16 (1976). Clive Thomas (Dependence and Transformation 286, 1974) argues that: "Even in revolutionary situations, it seems that men cannot act very far outside their historical traditions". He concludes that a consciousness of the relevant issues is therefore the best means of guaranteeing that the right choices - in terms of promoting development - will be made. Ethiopian political history is discussed infra and in Chapter 3, and historic problems of resource allocation receive a fuller discussion infra. and in Chapter 2.

7. Gibbon, Decline and Fall of the Roman Empire, Ch. xlvii, quoted by, e.g., R. Greenfield, Ethiopia ix (1969).

8. Toynbee, quoted by, e.g., S. Rubenson, The Survival of Ethiopian Independence 1 (1976). This book, and Harold Marcus's Life and Times of Menelik II: Ethiopia 1844-1913 (1975) offer excellent analyses of nineteenth and early twentieth century Ethiopian history: sources are used creatively and marshalled carefully, and conclusions are conservative, in that they are fully supported by the facts adduced. A broader but less careful view of Ethiopian history is offered by J. Doresse, Ethiopia (1959) and by Greenfield, op.cit.

9. Addis Hiwet, Ethiopia: from Autocracy to Revolution 15-6 (1975); C. Clapham, 'Centralization and Local Response in Southern Ethiopia', 74 Af. Affairs 72 , at 72 (1975); Assefa and Eshetu, op.cit. 4-6; Perham, op.cit. xiii; and Rubenson, op.cit. 2, 407. Richard Hess ('Ethiopia', in G. Carter, ed., National Unity and Regionalism in Eight African States 441, at 471, 1966) argues that:

> Ethiopia is a land of diversity. The variety of climatic conditions, land forms, ethnic groups, languages, religions, and historical experiences have contributed to the development of regional loyalties, localized economies, and generally weak national bonds.

Other factors contributing to the complex course of Ethiopian history and to processes of underdevelopment could (and have been) listed, but the point - familiar to historians - is that it is impossible to ascertain a single cause for any sequence of events and, in many cases, even the relative importance of several causal factors cannot be confidently ascertained.

Europe-centred histories of Ethiopia relying on European sources gave rise to what is arguably a myth of Ethiopian xenophobia. The complexities of Ethiopian politics and European motives make generalisation difficult, but it was the Europeans who initiated many of the contacts and who wanted the same kinds of things from Ethiopia that were obtained through colonialism in other parts of the world, plus new markets for the sale of arms. To cite but one example, in 1808 Lord Valentia advocated gunboat diplomacy and British trading monopolies in Ethiopia, projecting profit margins of up to 400% and arguing that "this may be done without the violation of one principle of right, and not only without loss, but with an incalculable profit" (Rubenson, op.cit. 43; see Id., 53, 165). This is a familiar policy but, unlike the many other parts of the Third World that succumbed to it, Ethiopia possessed a military strength, a cultural tenacity, a vague and intangible national identity, and a marked aptitude for international balance of power politics. Nineteenth and twentieth century emperors hoped to gain recognition, support and cooperation from Europe, but were often disappointed, particularly with Europe's reactions to the Italian invasions of the late nineteenth century and the 1930s (see Id., 239).

10. Myrdal, op.cit. 8, 355-6.

11. Literally, morphology means the science of form, but we adopt the usage of Donald Black and Maureen Mileski ('Introduction', in Black and Mileski, ed., The Social Organization of Law 1, at 8, 1973), who define morphology as encompassing demography, communications structures and various links and networks. They argue (Id.) that:

> Legal actions radiate into a network of social relations, and how this network is woven together determines the speed and distance of law's movements /and the movement of many other social, political and economic factors as well/.

One of our purposes is to analyse these factors in relation to Ethiopian underdevelopment and development prospects: see, e.g., the concept of penetration, discussed in Chapter 2, section iv.

12. Farer, op.cit. 1, and 6.

13. Id., 6; I. Kaplan, et al., Area Handbook for Ethiopia, 2d Ed., 168 (1971); Hess, op.cit. 514; and M. Frankland, 'An Idea to End World Poverty', Observer 4/9/77,6. Farer gives a per capita income of less than U.S. $90 per year, while J. Spencer('Haile Selassie: Triumph and Tragedy', 18 Orbis 1129, at 1139 (1975)) mentions $79. These are little more than guesses, as the last reliable measurement is that found in the 1968 U.N. Africa Survey, which derived an annual per capita GDP of $59.6 and analysed Ethiopia's deteriorating position in relation to the rest of Africa. R. Disney ('Notes on the National Accounts of Ethiopia', in G. Gill, ed., Readings on the Ethiopian Economy 17, at 22, 26, 1974) reminds us that Third World national income accounts are subject to large margins of error. He calculates that 53% of Ethiopia's GDP is non-monetary and imputed largely on the basis of questionable household consumption surveys. Disney derives a margin of error of plus or minus 15 to 17% of GDP. Despite these problems, Disney concludes that the reliability of Ethiopian statistics is above average when compared to those of

other African countries! Detlev Karsten, in (Ethiopian) 'Economy',
in <u>Africa South of the Sahara</u> 304, at 304-5 (1976), mentions another
problem:

> Since they came into power, the military rulers have embarked
> on a number of reforms. The contents of these reforms are
> not very clear, and their actual and future consequences are
> difficult to assess. Some of the following description,
> therefore, may conflict with information from other sources.

The statistics presented in this study are the latest reliable ones
a diligent researcher could obtain. Jack Shepherd (<u>The Politics of
Starvation</u> 72, 1975) estimates that a national calorie deficit of
10% could only be cured through an expansion in agricultural pro-
duction of 30-40%.

14   P. Brietzke, ed., 'A Source-Book of Ethiopian Law and Development' 36
(1974); G. Gill, 'Major Economic Indicators', in Gill, <u>op.cit.</u> 1, at
1; Gill, 'Introduction to Demographic and Urban Studies', in <u>Id.</u> 423
at 423; Karsten, <u>op.cit.</u> 305; and Kaplan <u>et al.</u>, <u>op.cit.</u> 9, 75.

15   <u>Id.</u>, 1,9,11-12; S. Gryziewicz, 'Main Determinants of Ethiopian
Economic Development Policy', 8 Ethiopian Observer 192, at 193
(1964); Shepherd, <u>op.cit.</u> 10; Karsten, <u>op.cit.</u> 304-5; Gill, 'Major
Economic Indicators', 1; Assefa and Eshetu, <u>op.cit.</u> 2; and Farer,
<u>op.cit.</u> 5. Disney (<u>op.cit.</u> 17) adds that agricultural production
accounted for 52% of Ethiopian GDP in 1972, compared to 62% in
1961, with crop production accounting for about 2/3 of the former
figure. Ethiopia's surface area can be divided into: pasture,
54%; cultivated or fallow land, 10.4%; deserts and swamps, 21%;
forests, 4%; and miscellaneous, 10.6%. On a different calculation,
69% of the land is classed as agricultural, although only 16%
is cultivated. Whatever the exact figures, it is clear that vast
areas of unutilised or underutilised land exist in all climatic
zones. An average of 3 ha. (roughly, 7.5 acres) of farmland per
family conceals the fact that most holdings are much smaller and
excessively fragmented (Brietzke, <u>op.cit.</u> and Karsten, <u>op.cit.</u> 304).
Agriculture, rural development, traditional land tenures and land
reforms are discussed in Chapter 6.

16   Gill, 'Improving Traditional Ethiopian Farming Methods', Rural
Africana No. 28, 107, at 110 (1975). <u>See</u> Note 87, <u>infra</u>.

17   P. Koehn, 'Urban Origins and Consequences of National and Local
Political Transformations in Ethiopia', in J. Walton and L. Masotti,
eds., <u>The City in Comparative Perspective</u> 155, at 157-8, 175n
(1976); Assefa and Eshetu, <u>op.cit.</u> 7; and Kaplan, <u>et al.</u>, <u>op. cit.</u>
26, 73, 156. In 1972, the populations of principal Ethiopian
cities and towns were: Addis Ababa, 912,090, Asmara, 249,100,
Dire Dawa,66,570, Dessie, 49, 360, Harar, 48,440, Jimma, 47,360,
Nazeret, 45,280 and Gondar, 38,600 (Karsten, <u>op.cit.</u> 310). Koehn
(<u>op.cit.</u> 159) notes that

> in 1963 only 21 of the 210 municipalities had piped water supplies,
>   6 had fire protection, 5 possessed slaughterhouses, 6
>
> had sanitation facilities, 4 contained parks for recreation,
> and 57 had electricity schemes. The situation improved
> only slightly in the next decade. . . .

Despite these evident drawbacks, John Harbeson ('Socialist Politics
in Revolutionary Ethiopia' 9 (1976)) correctly points out that:
"Urban Ethiopia, primarily Addis Ababa, symbolized the appearance
of modernization in Ethiopia and monopolized its fruits". Despite

the manifest inadequacy of its facilities, Addis accounts for a
wholly disproportionate share of, e.g., doctors, hospital beds,
teachers and schools. As in many Third World states, the rural
areas are thus deprived of government-sponsored services and facil-
ities, both absolutely and in relation to what is available in
Addis. Development problems associated with the processes of
Ethiopian urbanisation are discussed in Chapter 7.

18   Gill, 'Introduction to the Manufacturing Sector', 114, at 114 and
'Basic Economic Indicators 1, at 1, in Gill, op.cit.; J. Cohen and
D. Weintraub, Land and Peasants in Imperial Ethiopia 5 (1975);
Karsten, op.cit. 307; and Brietzke, op.cit. 37. Industries other
than food and textiles, in order of importance, are: metal products,
leather products, refined oil products, cement, and bricks and
tiles. Manufacturing employed only 59,000 people in 1969,
including 19,000 in the Addis Ababa - Akaki area, 12,000 in Asmara
and 10,000 on rural sugar estates. Fifteen companies accounted for
more than 50% of employment, and only 104 of the 489 manufacturing
firms were both owned and managed by Ethiopians (Id.) Legal rules
concerning Ethiopian manufacturing and commerce and problems related
to industrial development are described in Chapter 7.

19   Gill, 'Introduction to Trade', 200, at 200-3, in Gill, op.cit.
In 1972, 42% of Ethiopia's exports went to the U.S., 30% to Europe
(especially to Italy and West Germany) 20% to "Asia" (mostly
Saudi Arabia and Japan) and 7% to Africa. In comparison, 9% of
imports come from the U.S., 55% from Europe (especially from Italy,
West Germany and the U.K. in that order), 31% from Asia (particularly
Iran (oil) and Japan); and 3% from Africa. In 1971, coffee
accounted for almost 60% of exports, and other important exports
were oilseeds, 10%, fruit and vegetables, 8% and hides and skins,
9%. Import patterns reflect the growth of import-substitution
industries in Ethiopia; they display a clear shift towards machinery,
transport equipment and partly-finished and raw materials (Id.
and Karsten, op.cit. 309). Although oil price increases and export
marketing disruptions caused by the Revolution may make for problems
in the future, Ethiopia's foreign exchange reserves have continued
to rise. Some reorientation of exports and imports towards social-
ist countries is obviously to be expected. Tourism is an important
potential source of foreign exchange, although it has generated
little employment or income in the past and is unlikely to do so in
the near future. Cultural and scenic attractions could be used to
'capture' tourists on their way to Kenya (Brietzke, op.cit. 38)

20   Karsten, op.cit. 304, 307; Assefa and Eshetu, op.cit. 22; Gill,
'Major Economic Indicators', 1; Kaplan, et al., op.cit. 10, and
Brietzke, op.cit. 38. As gold and platinum mining was a secretive
monopoly of the Emperor prior to 1974, there is good reason to
believe that earnings from mining were deliberately understated.
Gill (loc. cit.) estimates that mining accounted for 1% of GDP.
Evidence suggests that the bullion mined by the Emperor is still
being stored in Swiss Bank vaults, to the (over-optimistic) estimated
value of Eth. $3000 millions. The Swiss have refused to comment and
the Swiss Ambassador's car has been repeatedly stoned by residents of
Addis Ababa (see Chapter Four). During the 1960s, the production of
electricity increased 15.5% annually.

21   Gill, 'Introduction' to 'Transport and Communications', in Gill, op.cit. 447, at 447; Karsten, op.cit. 306; and Kaplan, et al., op.cit. 10, 413-14. Ethiopian Highway Authority design standards are too high and therefore too costly in relation to the volume of traffic. Feasibility studies and planning are poorly coordinated and road transport licensing systems are corrupt and fail to achieve their stated aims (at least until 1976 - see Chap. 7 and Brietzke, op.cit. 38).

22   Karsten, op.cit. 306-7; Markakis, op.cit. 322; and Kaplan, et al., op.cit. 321, 340-1.

23   Budget Proclamation, No. 101 of 1976, Negarit Gazeta (official legislative journal) year 36, No. 2 (Neg. Gäz. 36/2), 7 Oct.; Karsten, op.cit. 308-9; Brietzke, op.cit. 38; and Gill, 'Major Economic Indicators', at 2. For purposes of comparison, 56% of domestic revenue was obtained through indirect taxes in 1969-70.

24   Hess, op.cit. 514; Karsten, op.cit. 305; Perham, op.cit. lxx; Brietzke, op.cit., and Kaplan et al., op.cit. 185-7, 201. During the late 1960s, 42% of Ethiopian primary students left school between the first and second grades, and 68% left without completing the sixth grade (Id., 190).

25   G. Lipsky, Ethiopia 148-50 (1962); Shepherd, op.cit. 4; Kaplan et al., op.cit. viii, 167-72; and Assefa and Eshetu, op.cit. 22.

26   R. Greenfield, 'The Eritreans, the Somalis and the Powers', West Africa 17/10/77, 2115, at 2116. See Note 3 supra and M. Smith, 'Institutional and Political Conditions of Pluralism', in L. Kuper and M. Smith, eds. Pluralism in Africa 27, at 60 (1969), where Ethiopia and Liberia are cited as combining "two modes of social cleavage" analogous to stratification and ethnicity as we describe them. We are not looking for a sine qua non of Ethiopian under-development but are, rather, searching for factors which relate social processes to the existing facts of underdevelopment, as we describe them supra and in Chap. 2. In this study, social systems are viewed as the products of ongoing processes of social inter-action, which can generate both stability and change. The focus is on processes which create social structures - the means by which wealth and power are distributed - rather than on the structures themselves. Although social structures in the abstract may be empty forms applying social pressure, any given set of structures applies these pressures for specific purposes; our aim is to examine these purposes from the perspective of development. See: G. Lenski, Power and Privilege 2 (1966); M. Ginsberg, 'Social Change', in S. Eizenstadt, ed., Readings in Social Evolution and Development 37, at 41-2 (1970); and B. Barber, Social Stratification 478 (1957). But see G. and M. Wilson, The Analysis of Social Change 49 (1968). "Ethnicity" is a shorthand characterisation of those feelings of group separateness that are based on perceived linguistic, religious, social and cultural differences. Our approach to Ethiopian stratification and ethnicity parallels that of William Shack, but there are significant differences, too. See Shack, 'Occupational Prestige, Status and Social Change in Modern Ethiopia', 46 Africa 166 (1976). See Note 28, infra.

27 Kaplan, et al., op.cit. 7, 81, 97; Assefa and Eshetu, op.cit. 18-19; Hess, op.cit. 475-7; and Huntingford, op.cit. 16. Kaplan (op.cit. 121-2) terms Ethiopian pariah groups "hereditary occupational specialists", one result of a caste-like division of labour which arose in response to the modes of production and distribution. Lipsky (op.cit. 51-2) contends that Ethiopians see Armenians as "moneybags" and "idolators" and feel that Italians can be "managed" and are "docile".

28 See H. Johnson, 'Stability and Change in Ethnic Group Relations', in B. Barker and A. Inkeles, eds., Stability and Social Change 311, at 312-14 (1971) and Finer, op.cit. 589-90. Following Huntington Cairns (Law and the Social Sciences 163, 1969), we define culture broadly, as

> that complex whole which includes knowledge, beliefs, art,
> morals, law, custom and many other capabilities and habits
> acquired by man as a member of society.

We follow Johnson (op.cit.) in analysing ethnicity rather than, e.g., tribalism: it is doubtful that most Ethiopian groups constitute tribes, in the sense in which that term is used in Bantu Africa. "Plural" and "pluralism" are used in their popular rather than their social scientific sense - see infra.

29 S. Messing, The Target of Health in Ethiopia 77 (1972), D. Levine, Wax and Gold 5 (1972); Markakis, op.cit. 88; Hess, op.cit. 475; and Kaplan, et al., op.cit. 5. See: B. Barber, op.cit. 7; S. Eisenstadt, 'Continuities and Changes in Systems of Stratification', in Barker and Inkeles, op.cit. 61, at 61-2; and P. Stirling, 'Con Men and Dupes?', Times Higher Educ. Supp. 9/12/77, 17. Although Kaplan et al. (op.cit. at 81) state that Amharas constitute 40% of the Ethiopian population, we believe Hess's figure of 25% to be more accurate. Markakis (op.cit. 1) views Orthodox Christianity as the Weltanschauung of the Amhara-Tigre. Levine ('Amhara Culture . . .') contends that "dichotomies" of superior and inferior, man and woman, elder and youth, Amhara and non-Amhara, Christian and non-Christian, freeman and slave, well-born and poor make for an inegalitarian society lacking in humanistic values. Kaplan et al. (op.cit. 102-3) argue that, among the Amhara-Tigre:

> The patron-client relationship is the strongest organizing
> force on any level, local or national. The sense of belonging
> to a community with shared values and privileges is virtually
> non-existent.

They add (Id. 261) that patron-client relations retard social disintegration in Ethiopia, a tendency which is otherwise fostered by the absence of stable horizontal relationships among peers. Exceptional and ad hoc cooperative work arrangements are, however, employed when certain specific problems arise. D. Korten (Planned Change in a Traditional Society: Psychological Problems of Modernization in Ethiopia 51, 57, 1972) sees an uneasy Ethiopian social equilibrium resulting from the interaction of the forces of social integration and disintegration. The integrative forces are characterised as: rigid conventions of etiquette and hospitality, a respect for privacy, strong social pressures which suppress individuality and foster conformity, a strict reciprocity in social relations, and a predisposition towards a hierarchical social structure and an unquestioning acceptance of authority. Disintegrative

forces include

> the idealization of physical and verbal aggression, the belief
> in the basically evil nature of man, the pervasive seeking of
> short-run self interest, and the securing of rewards through
> the manipulation of others.

We argue in Sec. IV, _infra_ that psychological/value analyses of
Ethiopian groups arrive at some dubious conclusions, although
Korten is more careful than most Ethiopianists. Dan Bauer ('For
Want of an Ox. . .: Land, Capital and Social Stratification in
Tigre', in H. Marcus, ed., _Proceedings of the First U.S. Conference
on Ethiopian Studies_ 235, at 236, 1975) adds that:

> Inequality is manifest in an emphasis on ranking in nearly
> all social situations and a tendency to make all significant
> social ties vertical. . . . The weakness of corporate groups
> is manifest in that few activities are carried out through the
> medium of corporations and those corporate groups which do
> exist tend to show little solidarity.

Jack Goody (cited by A. Hoben, 'Family, Land and Class in Northwest
Europe and Northern Highland Ethiopia', in _Id._ 157, at 157) argues that
the Amhara and traditional European societies have certain elements
in common: a plow-based agriculture which supports culturally-
differentiated church and state elites; an intensive use of land,
which means that control over land (rather than over kin or labour) is
the basis of social stratification; and a devolution of property
rights through children of both sexes, which leads to arranged
marriages between families of equal wealth and status. Kaplan
et al. (_op.cit._ 83) point out that, while Tigrinya is spoken by
about two million Orthodox Christians in South Tigre Province, a
related Semitic language – Tigre – is spoken by a largely Muslim
and ethnically mixed population in Eritrea.

30   D. Levine, 'Class Consciousness and Class Solidarity in the New
Ethiopian Elites', in P. Lloyd, ed., _The New Elites of Tropical
Africa_ 312, at 312-13 (1964); Shack, Note 45, infra; and Kaplan,
et al., op.cit. 6, 102. See Smith, op.cit. 58-9; and L. Fallers,
'Social Stratification and Economic Processes in Africa', in R.
Bendix and S. Lipset, eds., _Class, Status and Power_ 141, at 141
(1966), who suggests that a Marxian analysis is irrelevant to an
understanding of social stratification in Black Africa. Class
formation is rudimentary, the growth of bourgeoisies and prole-
tariats is stunted, and peasants are powerless (R. First, _The
Barrel of a Gun_ 95, 455-9 (1972)). As Mao suggested (cited in
Brookfield, op.cit. 127), a Marxist analysis of class conflict
has little relevance in countries whose proletariat and landlords/
big bourgeoisie constitute only a small minority – where most of the
people are part of the peasantry, the urban petty bourgeoisie or
other "intermediate" classes. Feudal and imperial societies contain
a large number of basic social categories (see Uphoff and Ilchman's
"suggestive inventory" in the text following Note 50, infra)
and the Marxian dichotomy of bourgeoisie and proletariat suffers
from the same defects as any other dualistic model (see Section
IV, infra). In _The Eighteenth Brumaire. . ._ (discussed in Chs.
4,6), Marx recognised the existence of differentiation and substrata
within class categories for the purpose of analysing specific hist-
orical events, yet the main thrust of Marxian analysis ignores these
complications. In any event, applications of the concept of class
often result in stereotyping, oversimplification and the

introduction .of ideological biases. It is interesting to note that Western law reflects and reinforces the interests and demands of many kinds of social groups other than classes. "Class" has different meanings for different purposes, and can mean little more than a group of persons who stand in a similar position in relation to others. (J. Hildebrand, 'The Sociology of Soviet Law', 22 Case Western Reserve L. Rev. 157, at 173, 1971; Eisenstadt, op.cit. 68; Barber, op.cit. 82; Lenski, op.cit. 74; and Black and Mileski, op.cit. 7). It is, of course, possible that Ethiopian social groups will organise themselves into classes in the future, based on common perceptions of interests which are largely latent at present, but we would agree with Ginzburg (op.cit. 49) that:

> The Marxists have concentrated on the contradictions that arise between the forces of production and the relations of production. But it seems clear that the sources of strain/within in social structures/ are many and varied, and indeed hardly reducible to system.

Marxists might see this assertion as an example of C. Wright Mills's "safe, colorless, 'multiple-factor' view of causation", and as a hindrance to radical change, but it is also an appreciation of the complexity of social systems, and of the ways in which societies resist the reduction necessary to fit them into tidy models (see Ch. 2, Sec. III).

.31 See: Levine, Wax and Gold 275; Hess, op.cit. 496; and Markakis op.cit.32. The nature of the Ethiopian state is discussed in this Section, infra and in Chaps. 3-5. Separatist groups are analysed in Sec. V, infra.

32 J. Trimingham, Islam in Ethiopia 215 (1952); Kaplan et al., op.cit. 83, 229, 249, 252; Hess, op.cit. 476; Lipsky, op.cit. 35-6; and Herbert Lewis, 'Neighbors, Friends and Kinsmen', in Marcus, Proceedings . . . 193, at 203. Lewis studied Galla groups in Ethiopia (Konso and Dassanetch) and in Tanzania (Iraqu), and found that these groups reflect both pastoral and sedentary Islamised, Amharicised and pagan lifestyles. He found that the characteristics of social life we cited in the text were common to all of these peoples and predicts that, more often than not, Ethiopian peoples for whom detailed information is lacking will have a similar lifestyle.

Kaplan et al. (op.cit. 249-53) point out that, among Ethiopia's Muslims, only the Shahada - "There is no God but Allah and Mohammed is his Prophet" - must be observed. The other four Pillars of the Faith - prayer, fasting, almsgiving and pilgrimmage to Mecca - can be modified in accordance with the believer's situation. Mosques are found only in the larger towns, and it is therefore uncertain whether most professed Muslims pray daily. Traditionally, Gallas believe in a sky god (Wok) and a pantheon of minor deities. Other Ethiopian 'tribal' religions have been analysed as fertility cults.

The 500,000 Gurages who live in Southern Ethiopia have been classified as both Semitic and Cushitic peoples, although the latter classification is probably correct. Their social life is closer to that of the Gallas than the Amharas. See: W. Shack, The Gurage (1966); Hess, op.cit. 475; and Greenfield, op.cit. 99.

33   Hess, op.cit. 477; Kaplan et al., op.cit. 83, 92-3, 95; and Lipsky, op.cit. 36.

34   Gilkes, op.cit. 260 and Waldron, op.cit. See: J. Robinson, Freedom and Necessity 39 (1970); G. Myrdal, 1 Asian Drama 569 (1967); W. Wertheim, Evolution and Revolution 238-9 (1974); Fallers, op.cit. 145; E. Wolf, Peasant Wars in the Twentieth Century xiii (1969); N. Uphoff and W. Ilchman, 'Development in the Perspective of Political Development', in Id., eds., The Political Economy of Development 75, at 85 (1972); T. Shanin, 'Introduction' in Id., ed., Peasants and Peasant Societies 11, at 14-5 (1971); Lenski, op.cit. 241, 272; Barber, op.cit. 93; and J.Kautsky, 'An Essay on the Politics of Development', in Id., ed., Political Change in Underdeveloped Countries 15 (1962). Kautsky (Id.) notes that

> the peasant, simply because he is a peasant in a wholly agrarian society,is generally poor and always ignorant – by the standards not only of industrialized societies but also of his own aristocracy. He is likely to be poor because of his primitive technology, because of population pressure, and because the aristocracy may take from him whatever he produces in excess of his basic needs.

There is little class consciousness among Ethiopian peasants, as the precondition to its emergence is lacking:

> Consciousness requires distance, the capacity to imagine onesself outside a circumstance and to wonder about how one ought to deal with it. (R. Unger, Law in Modern Society 172 (1976)).

Christopher Clapham (Haile Selassie's Government 79, 1969) argued that the conventions governing legitimate political activity in Ethiopia are severely limited. Farmers are left with the alternatives of quietism, partial assimilation into the dominant Amhara political system or revolt, although political consciousness is growing (especially in urban areas), as a result of education, external influences /and, more recently, the Revolution7.

35   See K. Deutsch, 'The Growth of Nations', in R. Jackson and M. Stein, eds., Issues in Comparative Politics 129, at 129 (1971).

36   G. Mosca (The Ruling Class 70, 1939) argues that:

> in fairly populous societies that have attained a certain level of civilization, ruling classes do not justify their power exclusively by de facto possession of it, but try and find a moral and legal basis for it, representing it as the logical and necessary consequence of doctrines and beliefs that are generally recognised and accepted. . . . This legal and moral basis . . . on which the power of the political class rests, is what we . . . call the "political formula" /- what jurists call the"principle of sovereignty"7.

This view parallels the tendency,noted in pre-industrial societies by A. Touraine ('Sociology of Development', in S. Eisenstadt, Readings in Social Evolution and Development 337, at 345, 1970), for profoundly legitimating and meta-social guarantees of the social order to override fundamental opposition between groups. People do not view society as the fruits of their own labour; traditional rulers seem to be the upholders of society and the beneficiaries of a natural

order of things. Rubenson (op.cit. 2) argues that the obvious
contrast between settled highland agriculture and the surrounding
arid areas produced feelings of an Amhara-Tigre separateness which,
when combined with the legendary roots of the monarchy and the
common faith and culture of the Church, led to the formation of
a /fairly minimal/ national and political consciousness essential
to survival.

37 Doresse, op.cit. 90, 115, 180; Hess, op.cit. 447-9; Greenfield,
'The Ogaden - Province or Colony? 1: Before the Scramble', West
Africa 26/9/77, 1965, at 1968; and Greenfield, Ethiopia 52-6. The
era of the Judges (Zamena Mesafent) refers to the last verse in the
Old Testament Book of Judges: "In those days there was no king in
Israel: every man did what was right in his own eyes" (Id. 70).
See Rubenson, Note 36, supra. Kaplan et al. (op.cit. 37) argue that,
during the mediaeval period:

> The writ of the Emperor did not depend fundamentally upon
> force but, rather, upon the obedience rendered to a monarch
> ordained by God to rule the country. Forces supplied by
> subordinates were the major determinant of the scope and
> extent of power, but at the center was an idea rather than a
> physical force.

38. See: Mosca, op.cit. 50-1; R. Williams, Jr., 'Change and Stability
in Values and Value Systems', in Barker and Inkeles, op.cit. 123, at
158; E. Charle, 'Political Systems and Economic Performance in
Some African Societies', 18 Ec. Development and Cult. Change 575,
at 581 (1970); C. Furtado, Development and Underdevelopment 41 (1967)
Lenski, op.cit. 44-5; and Addis Hiwet, op.cit. 18.

39 Markakis and Asmelash, op.cit. 195 and Kaplan et al., op.cit. 32.

40 Prologue, No. 31 of 1975, Neg. Gaz. 34/26, discussed in Ch. 6. Other
sources referred to are: A. Hoben, 'Social Anthropology and Develop-
ment Planning - a Case Study in Ethiopian Land Reform Policy',
10 J. Mod. Af. Studs 582 (1972); H. Dunning, 'Land Reform in
Ethiopia', 18 U.C.L.A. Law Rev. 271 (1970); P. Schwab, 'Haile
Selassie: Leadership in Ethiopia', 6 Plural Societies 19, at
21 (1975); G. Sawer, Law in Society 50 (1965); F. Ganshoff, Feudalism
xv (1964); Unger, op.cit. 182; Perham, op.cit. 277-8 and Gilkes,
op.cit. 101-2,170, 255. As Amhara and Tigre peasants were not
legally bound to the land, they cannot technically be termed serfs
(Id. at 121-2), although economic pressures usually made it extremely
difficult for peasants to leave their land (See Maurice Dobb,
quoted in Addis Hiwet, op.cit. 25). A. Hoben (Land Tenure Among the
Amhara of Ethiopia 243-6, 1973) describes a "competitive and fluid
feudal polity" established by the Amhara, in which numerous inter-
mediary gradations between lord and peasant existed.
We argue that the following five descriptions of feudalism can
be validly applied to the Amhara-Tigre Empire (but see Addis Hiwet,
op.cit. 24-6 on descriptions one and two).

> 1. M. Block, Feudal Society (quoted in Id., 25):
> A subject peasantry; widespread use of the service tenement
> (i.e. the fief) instead of a salary, which was out of the
> question; the supremacy of a class of specialised warriors;
> ties of obedience and protection which bind man to man and,
> within the warrior class, assumed the distinctive form
> termed vassalage.

2. Ganshoff, op.cit.:

/The features of feudalism/ may be summarized as follows: a development pushed to extremes of the element of personal dependence in society. . .; an extreme subdivision of the rights over. . ./land and/ a graded system of rights . . . created by this subdivision and corresponding in broad outline to the grades of personal dependence just referred to ; and a dispersal of political authority amongst a hierarchy of persons. . . .

This characterisation is analogous to Hoben's "competitive and fluid feudal polity".

3. Interesting parallels can be drawn between the emergence of feudalism within the Amhara-Tigre Empire and in Poland, Russia, India (see Mosca, op.cit. 53-6) and Western Europe generally (Furtado, op.cit. 95):

Feudalism had become the most practical way of maintaining collective security after the collapse of Roman power. In the stationary feudal world social relationships developed within a clearly circumscribed field which reduced to the minimum the need for government exercising power capable of establishing norms suitable for new occasions.

4. Sawer, op.cit. 50, 52:

Of all the historical societies, the one in which social structure and legal structure have the most obvious relation is the feudal one.

/Feudalism/ tended to be regressive. . . because the dignity and passions of feudal chiefs would not brook containment in a system of fair judgement based on objective laws and rational evidence. . . .

5. O. Kahn-Freund, 'Introduction' in K. Renner, The Institutions of Private Law 1, at 7 (1949):

The legal order of feudalism deliberately allocated the control of land and goods, established the hierarchy of power and imposed the duty to work. . . . The function of the legal institutions corresponded to their normative structure. Capitalist society, however, pretended to be able to forego a functional organisation of possession and of labour. It covered the order of goods with a legal concept of property defined in the abstract, it avoided, in the name of personal freedom, a legal formulation of the duty to work. . . . Society pretended to abdicate in favour of the will of the individual. . . .

In Chap. 7 we shall argue that, during the 1960s and as a result of the importation of foreign laws, Ethiopian national laws were undergoing a transition between these two legal orders.

On the basis of the evidence cited, we confidently reject the main thrust of arguments such as those of Gene Ellis ('The Feudal Paradigm as a Hindrance to Understanding Ethiopia', 14 J. Mod. Af. Studs. 291 (1976)), without taking refuge in the many over-generalised descriptions of feudalism (e.g., G. Sjoberg, 'Folk and Feudal Societies', 58 Am. J. of Sociology 234 (1952)).

41   Rubenson, op.cit. 172; Greenfield op.cit. 72-9; Hess, op.cit.
456; Baro Tumsa, 'Decentralization and Nation-Building in Ethiopia'
36 (1973); Doresse, op.cit. 90; Markakis, op.cit. 47-8; and Marcus,
Menelik 1-2, 64. See K. Griffin, Underdevelopment in Latin America
34 (1969), for comparisons with European colonialism. Brookfield
(op.cit. 3, 13) suggests that the objective of all empires is the
enrichment of the metropole and, more particularly, its rulers. This
objective was only barely concealed by a civilising and proselytizing
mission based on a racial arrogance which implied the crudest form
of hypocrisy. This viewpoint finds some support in Marcus's des-
criptions:

> Naftañña /soldier-settlers left in place while Menelik's armies
> pressed on/, whether or not Amhara in origin, saw the Amhara as
> honest, frank people, more religious than others, more constant
> in allegiance, braver and more ambitious than, for example,
> Gallas, and more constructive. . . . The subject peoples in
> the empire were generally seen as primitive, without culture
> or effective government, and lazy, dirty or warlike: they
> were naked or dressed in skins; they were heathen who needed
> the word of God. The naftañña also tended to have paternal-
> listic attitudes towards their wards. . . . In their isolation
> from their homeland, the settlers felt more common cultural
> identity than ever before (Menelik 193-4).

> . . . Excluding Jimma and Harar, where taxes were obtained
> from commerce, the revenues returned to Addis Ababa were
> apparently derived largely from the asrat, a 10 per cent
> charge in kind on crop yields. Some of this produce was
> stored in local granaries against famine, but most was sold
> to obtain money or other goods. . . . An additional tax, to
> support the garrisons in the south, was paid by the local
> peasantry directly to the military. (Id. 191)

Marcus (Id. at 193) concludes that this harsh and demanding system
was probably the only way to govern late nineteenth and early
twentieth century Ethiopia /a reflection of low levels of political
development/.

42   J. Cohen and P. Koehn, 'Local Government in Ethiopia' 1 (1974);
J. Hamer, 'Cultural Diversity and National Integration in Ethiopia:
the Sidamo Case' (1966); Markakis, op.cit. 36, 325-6, 337, 373;
Baro Tumsa, op.cit. 47; Shack, The Gurage 199-200, 203; Farer,
op.cit. 7; and Clapham, Note 34, supra. That there was an important
but limited amount of assimilation (Gilkes, op.cit. 15) is commented
upon by Marcus (Menelik, 194):

> Politically and socially ambitious people became Christian,
> took appropriate names, learnt Amharic and began to dress and
> even to eat like Shoans . . . . Further assimilation occurred
> frequently as a result of /intermarriage and analogous
> 'irregular' unions/.

Kaplan et al., op.cit. 98 add that, while there was an initial
awareness of the need for a working partnership between Amharas and
Gallas, this policy was seemingly forgotten during the twentieth
century (prior to the Revolution).

There are similarities between the experiences of the conquered
peoples of Ethiopia and those of other countries:

In general, a conquered population on its "own" territory is slow to take over the culture of the conquerors or to accept its subordinate position gracefully. Although its culture and social system may be badly disrupted they do remain as sources of solidarity . . . . (Johnson, op.cit. 319).

43 H. Wheeler, Democracy in a Revolutionary Era 20,24,27 (1971). See Cohen and Weintraub, op.cit. 14. "Despotism" connotes the exercise of an absolute authority which Haile Selassie never possessed. Wheeler is probably using this word in its figurative sense.

44 See: Id., at 12-13; Addis Hiwet, op.cit. 77; Clapham, Haile Selassie's Government 66, 91, 112; H. Scholler, 'Ethiopian Constitutional Development', 25 Jahrbuch Des Offenteichen Rechts der Gegenwart 499, at 526 (1976);Markakis, op.cit. 32; Kaplan et al., op.cit. 301; Marcus, Menelik 199; and Eisenstadt, Modernization, Protest and Change 76-7 (1966). Kaplan et al. (op.cit. 114) note that the hereditary landholdings and the provincial power base of a noble could be used to obtain an important position in Addis Ababa — where he had an opportunity, which others lacked, to display political prowess.

In Wax and Gold (160,167), Levine remarks that the overlapping of the titles used among the Ethiopian nobility indicates the unspecialised nature of their roles. The nobility constitutes "a plurality of proud centres of rank – partly inherited, partly achieved – enjoying virtual autonomy". Clapham (Haile Selassie's Government 65) describes a "transitional elite", a fusion of an old-style entourage with a small group of better-educated bureaucrats. There are similarities between Haile Selassie's regime and the centralising monarchies of France at the end of the feudal period: see Barber, op.cit. 34. Haile Selassie's distaste for cultural pluralism was in evidence in 1956 when, while visiting the Ogaden, he expressed dissatisfaction with using a Somali interpreter and urged his listeners to learn Amharic (Farer, op.cit. 83).

45 E.g., W. Shack, 'Occupational Prestige, Status and Social Change in Modern Ethiopia', 46 Africa 166, at 174 (1976): "Social classes and formal political alignments" have "yet to be fully crystallized in urban Ethiopia . . . ."

46 Bondestam, op.cit. 549; Gilkes, op.cit. 170; Assefa and Eshetu, op.cit. 14; and Clapham, Haile Selassie's Government 186-7. See: B. Moore, Jr., Social Origins of Dictatorship and Democracy xiii (1973); J.Kautsky, 'An Essay in the Politics of Development', in Id., ed., Political Change in Underdeveloped Countries 3, at 23, 59 (1962); R. Seidman, 'Constitutions in Anglophonic Sub-Saharan Africa', 1969 Wisconsin Law Rev. 83, at 124 (1969); Unger, op.cit. 151; and Furtado, op.cit. 96. Greenfield (Ethiopia 3) notes a marked gulf between young and old ("radical" and conservative) members of the Ethiopian elite, the result of the systematic assassination of many of the 'first fruits' of Western education by the Italian invaders. There are, in other words, few elderly, educated and less conservative ("liberal") Ethiopian elites.

Farer (op.cit. 11) argues for the existence of a "small but critically positioned middle class of industrial workers, civil

servants and soldiers". Markakis (op.cit. 182) defines an Ethiopian
middle class as consisting of those persons who have completed
secondary school, and contends that this

> emerging middle class is performing a familiar historical
> role in seeking to fashion instruments of government which
> itself alone can dominate. (Id. 351).

For reasons expressed in the text, supra and infra, we are unable
to accept these views. A more accurate characterisation is offered
by J. Cunningham ('So Who are the Trots?', Guardian, 4 Feb. 1977,
9):

> Trotsky's picture of nineteenth century Russia is remarkably
> similar to the one many people have of certain Third World
> countries today. He depicted a strong centralist state,
> borrowing heavily from abroad, following protectionist
> policies and encouraging the development of (state) capitalism
> . . . As Deutscher summarises it, "the economic preponderance
> of the state, the numerical weakness of the middle class, the
> predominance of foreign capital in industry, the absence of
> a middle class tradition —all combined to make Russian
> bourgeois liberalism still-born.
>
> /In/ the Third World today, the middle class is firmly on
> the side of autocracy and reaction.

We have chosen to analyse an "emerging" or numerically weak middle
class as not constituting a middle class at all, in the sense in
which that concept is used by Western political scientists.

47 P. Schwab, Decision-Making in Ethiopia 148 (1972); B. Thomson,
Ethiopia 24 (1975); Clapham, Haile Selassie's Government 91;
Koehn, op.cit. 165-6; Gilkes, op.cit. 250; and Markakis, op.cit.
6, 358-60. See Kautsky, loc. cit. Writing of the tiny educated
Ethiopian elite in 1947, David Mathew (Ethiopia 247, 1947) found that:
"Before them and their companions there stretches out under a leaden
sky a great wide prospect". Despite changes in people and circum-
stances, this image still retains its validity. Ethiopian students
are more radical and revolutionary than students in most other
African states: see R. Dumont, False Start in Africa 252-4
(1966). Modernising intellectuals display a fair degree of group
solidarity, in Ethiopia (but see Ch. 4) and many other Third World
states:

> Above all, they are an urbanised group, showing distinctive
> styles, sets of values and symbols, and views of the future.
> The consciousness of corporate distinctiveness gives them a
> certain coherence, solidarity, and facility for rapid commun-
> ication. (M. Esman, 'The Politics of Development Adminis-
> tration', in J. Montgomery and W. Stiffen, eds., Approaches to
> Development 59, at 68, 1966).
>
> /In/ agrarian societies, young people were largely integrated
> into the adult world and separated from one another, while in
> advanced industrial societies, owing to the spread of public
> education, young people tend to be . . . thrown into a narrower
> world made up almost exclusively of their age peers.
> (Lenski, op.cit. 407).

/The/intellectual of underdeveloped countries retains the
need for incorporation into some self-transcending authori-
tative entity. Indeed, the greater his struggle for emanci-
pation from the traditional collectivity, the greater his need
for incorporation into a new, alternative collectivity.
Intense politicization meets this need. (Edward Shils,
quoted by E. Wolf, Peasant Wars in the Twentieth Century 289,
1969 - see Chap. 4).

48   See Lenski, op.cit. 210-29, and S. Eisenstadt, 'Processes of Change
and Institutionalization of the Political Systems of Centralized
Empires', in G. Zollschan and W. Hirsh, eds., Explorations in
Social Change, 432, at 432-45 (1964), who indicates similarities
between the Ethiopian Empire and the Ancient Chinese, Persian, Byzan-
tine Ottoman, Hindu and Mogul Empires. Ethiopia could also be said
to be undergoing a transition from Jurgen Habermas's "primitive
social formation" to his "traditional social formation": see
Legitimation Crisis 18 (1976).

49   See: Eisenstadt, loc. cit. 445; Lenski, op.cit. 210-14, 229, 244;
and Kautsky, loc. cit. 13-15.

50   See N. Uphoff and W. Ilchman, The Political Economy of Change 40
(1969). Their category of moneylenders can be applied meaningfully
in Ethiopia if moneylenders are thought of as middlemen and crop
wholesalers who advance credit to peasants.

51   B.-O. Bryde, The Sociology of African Legal Development 40 (1976).
See G. Soares, 'Economic Development and Class Structure', in
Bendix and Lipset, op.cit. 190, at 190-2. Unger, op.cit. 156 notes
the existence of two basic cleavages in feudal societies: between
mass and elite, and between different social ranks within the elite
on the one hand and princely power on the other.

52   See: D.Lane, The Socialist Industrial State 184, 210 (1976);
W. Schwab, 'Social Stratification in Gwelo', in A. Southall, ed.,
Social Change in Modern Africa 128, at 138 (1969); Shack, 'Occu-
pational Prestige . . .' 173-4; and Barber, op.cit. 268. Bauer (op.
cit. 237) finds additional status criteria among Tigreans:
"spirituality", effectiveness in litigation, age, generosity and
self-sufficiency.

53   E.g., E. Lefever, Spear and Sceptor, 132 (1970), who argues that
nation-building problems in Ethiopia are similar to those of newly-
independent states. J. LaPalombara ('Values and Indologies. . .',
in R. Bribanti, ed., Political and Administrative Development 166,
at 183, 1969) argues that "developed" states were never troubled
by "the simultaneous onset of all nation-building problems,
including identity, legitimacy, penetration, participation and
distribution". The meaning of these terms and their significance
in the context of development are discussed in Chap. 2.

54   See: Markakis, op.cit. 389; A. Mazrui, 'Current Socio-political
Trends', in F. Arkhurst, ed., Africa in the Seventies and Eighties
48, at 58 (1970); and Note 66, infra. Lane, op.cit. 177, argues that

"the acceptance of manifest inequality is more characteristic of human society than is a rejection of it", but inequalities do not necessarily lead to "conflictual relations." Typical ratios of maximum to average industrial earnings are 15 or 20 to 1, even in Eastern Europe and China (Id., 178).

55 R. Dahrendorf, Class and Class Conflict in Industrial Society 157-61 (1959); L. Warshay, The Current State of Sociological Theory 60, 134 (1975); B. Smart, Sociology, Phenomenology and Marxian Analysis 58-9 (1976); R. Applebaum, Theories of Social Change 65-7 (1970); W. Lamouse-Smith, 'Complexity and African Development Administration', in E. Morgan, ed., The Administration of Change 131, at 156 (1974); R. Jackson and M. Stein, Issues in Comparative Politics 120 (1971); Lenski, op.cit. 16-17; and Unger, op.cit. 31, 33. On the relevance of Parsons' theory to legal analysis, see: L. Mayhew, 'Stability and Change in Legal Systems', in B. Barker and A. Inkeles, eds., Stability and Social Change 187 (1971); J. Stone, Law and the Social Sciences 39-41 (1966); and Chap. 5, infra. There are many other models of society (see, e.g., Smart and Warshay, passim) but they have not gained sufficient prominence to warrant discussion in our brief survey. Examples of the application of the consensus model include John Horton's argument (cited in Warshay, op.cit. 61) that deviance, riot and poverty can be defined as the inability to realise social values, and Godfrey and Monica Wilson's The Analysis of Social Change, Based on Observations in Central Africa (1968); e.g., at 132, 134: "Disequilibrium is both a state of society and a force of change . . . . /It/ must always press towards its own resolution, towards equilibrium", unless further changes are introduced prior to this resolution. Disequilibrium results in cultural maladjustment, unavoidable inefficiency, immorality, heresy and ugliness. The fullest elaboration of Parson's schema is found in The Social System (1951)

56 Stone, op.cit. 41.

57 Dahrendorf, op.cit.; Lenski, op.cit.; Applebaum, op.cit. 82; and Wertheim, op.cit. 96.

58 H. Jaguribe, Economic and Political Development 19 (1968). See: W. Moore, 'A Reconsideration of Theories of Social Change', in S. Eisenstadt, ed., Readings in Social Evolution and Development 123, at 131 (1970); Unger, op.cit. 30; Wertheim, op.cit. 105; and Alvin Goulder, cited in Smart, op.cit. 10.

59 Myrdal, Asian Drama 360 (1977). See Assefa and Eshetu, op.cit. 3.

60 Unger, op.cit. 175. See: Id. 143; C. Dodd, Political Development 34 (1972); and Barber, op.cit. 7, 259-60.

61 See L. Friedman, The Legal System 163 (1975), and Barber, op.cit. 228-30. Many of the types of conflicts and class relations Dahrendorf (op.cit., 173, 237-9 and passim) describes as characteristic of industrial societies are absent in Ethiopia. This should not surprise us, as it is yet another, not altogether unfavourable, aspect of Ethiopian underdevelopment. The group conflicts that Griffin (op.cit. 65) found in many Latin American countries can also be found in Ethiopia: landless tenants versus "latifundistas",

minifundistas" versus monopsonistic middlemen, unemployed city-
dwellers versus a relatively privileged organised labour, and
agricultural exporters versus domestic industrialists who demand
tariff protection for their products. A list of conflicts in
post-Revolutionary Ethiopia would include those between

> high-pitched aspirations and the bitter experience of a harsh
> reality, between the desire for change and improvement and
> the mental reservations and inhibitions about accepting the
> consequences and paying the price. (Myrdal, Asian Drama
> 15-16 (1977))

These conflicts occur both within and among individuals and groups.
Ethiopian voluntary associations are discussed in Chaps. 6-7.

62 See: T. Parsons, 'A Paradigm for the Analysis of Social Systems
and Change', in N. Demrath, III and R. Peterson, eds., System,
Change and Conflict 189, at 197 (1967); L. Coser, 'The Functions of
Conflict', in Id. 307, at 307; L. Kuper, 'Plural Societies', in
Kuper and Smith, op.cit. 7, at 17, 20; and Friedman, op.cit. 169.

63 Dahrendorf, op.cit. 163. See: Id., 164; J. Hurst, Law and Social
Order in the United States 224, 267 (1977); and Wertheim, op.cit.
106, 108. Lenski's (op.cit.) and Van den Berghe's attempted
syntheses of the conflict-and consensus models are discussed by,
e.g., Warshay, op.cit. 60-5 and Smart, op.cit. 56 and passim.
While a few of the criticisms of Dahrendorf's theories are well
taken, they do not affect the substance of his approach as we
apply it to Ethiopia (see, e.g., Id. 46-52 and Wertheim, op.cit. 105-8).

64 See: I. Horowitz, "Consensus, Conflict and Cooperation", in
Demrath and Peterson, op.cit. 265, at 268, citing Hobbes, Socrates
and Plato (!); Lenski, op.cit. 24-5; Warshay, op.cit. 63; Wertheim,
op.cit. 106-7; and Unger, op.cit. 167.

65 See: D. Black, 'The Boundaries of Legal Sociology', in Black and
M. Mileski, eds., The Social Organization of Law 41, at 48 (1973);
R. Tucker, The Marxian Revolutionary Idea 93 (1970); Lamouse-Smith,
op.cit. 156;and Dahrendorf, op.cit. 284.

66 See: K. Lowenstein, 'Reflections on the Value of Constitutions in
Our Revolutionary Age', in A. Zurcher, ed., Constitutions and
Constitutional Trends Since World War II 191, at 208 (1951);
F. Riggs, Administration in Developing Countries 184 (1964);
C. Anderson, et al.,Issues of Political Development 91 (1967);
Uphoff and Ilchman, The Political Economy of Change 25, 216;
and Dahrendorf, op.cit. 316. As Mosca (in Lenski, op.cit. 13)
argues, human societies cannot function without political organ-
isations, which necessarily require inequalities in the distribution
of political power. These inequalities give rise to what Mosca
terms the "ruling class". G. Heeger (The Politics of Underdevelop-
ment 80, 1974) adds:

> The real question is not whether social cleavages will manifest
> themselves but, rather,along which lines of cleavage will
> salient political divisions appear.

67   Clapham, Haile Selassie's Government 80; W. Weisslender, 'The
      Political Ecology of Amhara Domination' 324-6 (1965); Markakis,
      op.cit. 335; Levine, Wax and Gold 57 and 'Class Consciousness . . .'
      314-15; and Kaplan, et al., op.cit. 389-90. See: F. Hayek,1 Law,
      Legislation and Morality 8 (1973); M. Medler, 'Stability and Instab-
      ility', in Jackson and Stein, op.cit. 212, at 212-13; Finer, op.cit.
      20-1; and Heeger, op.cit. 8-9. Many governments, including that of
      the U.S., attempt to deal with conflict by suppressing some demands
      and under-representing others: see Hurst, op.cit. 227.

68   See: E. Hagen, On the Theory of Social Change 183 (1962);
      Wertheim, op.cit. 134-5; Lane, op.cit. 198; and Smith, op.cit. 38.
      Citing Moore, Eisenstadt ('Social Change and Development', in
      Eisenstadt, Readings in Social Evolution and Development 3, at 4)
      argues that all societies are inherently predisposed to change
      because of fundamental "problems" which lack overall and continuous
      solutions. These problems include the uncertainties of social-
      isation, the scarcity of resources relative to aspirations, and the
      contrasting types of social orientation or principles of social
      organisation coexisting within society.

69   See: A. Diamant, 'Political Development' in J. Montgomery and W.
      Siffen, eds., Approaches to Development 15, at 35 (1966); G. and
      M. Wilson, op.cit. 168-9; W. Hield, 'The Study of Change in Social
      Science', in Demrath and Peterson, op.cit. 251, at 251-2; Smart,
      op.cit. 22; and Medler, op.cit. 215. Wertheim (op.cit. 9)
      suggests that, when social phenomena are interpreted as functions of
      a system in equilibrium, it is difficult to imagine how radical
      change can come about; conflict becomes a part of existing systems.
      Paradoxically, this seems to have been the state of affairs in
      Ethiopia prior to the Revolution.

70   See: T. Ocran, 'Law, African Development and Social Engineering',
      3-4 Zambia Law Rev. 16, at 24 (1971-2); Unger, op.cit. 254; and
      Note 71, infra. For examples of the kinds of analyses of Ethiopian
      peasants discussed in the text, see Assefa and Eshetu, op.cit.
      10-13 and Levine, Wax and Gold, passim, and 'Amhara Culture. . .':
      "its fatalism, its patriarchalism and its "realistic humanism" —
      dispose people to look askance at innovation." For development-
      oriented analyses of the relationship between the values of indiv-
      iduals and social change which have little overall relevance to
      Ethiopia, see, e.g.: G. and M. Wilson, op.cit.; D. McClelland
      and D. Winter, Motivating Economic Achievement (1969); and Hagen,
      op.cit., who argues, at 56, that a "traditional society . . . tends
      to be custom-bound, hierarchical, ascriptive and unproductive."
      Peasants lack the capital, knowledge and personality necessary for
      innovation (Id., 61).
         The most extreme view of the "peasant fatalism" thesis to gain
      some credence is the one promoted by E. Rogers ('Motivations, Values
      and Attitudes of Subsistence Farmers', in C. Wharton, Jr., ed.
      Subsistence Agriculture and Economic Development 112, 1969). In
      this study, "psychological tests" were administered to Luo, Ganda and
      Zulu tribesmen, and these tests supposedly established the existence
      of a "peasant subculture". (The Luo and Zulu peoples should not
      be classified as peasants: see Note 34 and the text following Note 33,

supra). Rogers's subculture consists of mutual distrust, lack of innovativeness, fatalism ("lack of aspiration"), an inability to defer gratification, limited time perspective, familism, dependence on government authority, "localiteness" and "lack of empathy". This study is a perfect example of the fact that the choice of methodology can predetermine virtually any result. The dangers of basing policy recommendations on these kinds of findings are enormous. It is doubtful that peasants possess many of these personality traits, assuming that the complex personalities of numerous individuals can be meaningfully generalised in this fashion. Would we accept findings concerning the personalities of American or English farmers which were grounded on this kind of methodology?

Careful observers of Amharas and Tigreans - Alan Hoben and Dan Bauer - have noted that social mobility is both an ideal and a reality in these societies, where social status is both ascribed and achieved (Hoben, Land Tenure Among the Amhara, passim, and 'Family, Land and Class. . .', 161; and Bauer, op.cit. 237). Bauer adds that a "poor man once headed one of the richest households in the village and now works as a plowman for his son-in-law." (Id.) While Ethiopian peasants may perceive the likelihood of an upward mobility, the overall reality must be otherwise, at least in economic terms, for declining living standards, rapid population increases and the fragmentation of landholdings (see Sec. I, supra and Chap. 6) mean that an 'average' peasant is unlikely to live as well as his father or his grandfather. The numbers of poor and/or landless people have been growing rapidly during the past 20 years, and an increasing socio-economic inequality and generally downward social mobility have not been conducive to social change and development. Upward socio-economic mobility for large numbers of people can only come about through economic growth, an expansion in the "scale" of social relations away from isolated communities, a growth in the number of positions in the upper strata, technical and organisational advances and/or effective contraception. These conditions do not obtain in Ethiopia, although the Revolution has altered the situation somewhat. Under the Emperor, there was a fairly rapid expansion of positions available to urbanised educated elites, but access to these positions was monopolised by children of existing elites. Perceptions of upward mobility based on a few prominent local examples are significant, however, as people tend to defend a system from which they expect to benefit. As Stanley Baldwin said, if you want people to be conservative, give them something to conserve. See: Lenski, op.cit. 413; Myrdal, Asian Drama 62 (1977); Bryde, op.cit. 45; G. and M. Wilson, op.cit. 98, 105; and A. Southall, 'Introduction', in Id., ed., Social Change in Modern Africa 2, at 21 (1969).

71   C. Hutton and R. Cohen, 'African Peasants and Resistance to Change' (1973). See: Levine, Wax and Gold 51; Lane, op.cit. 46-7; and Myrdal, Asian Drama 42, 361-3 (1977). As in South Asia, an Ethiopian stereotype of a spiritual, less materialistic and fatalistic people bears little resemblance to reality. The popularity of litigation and an observed propensity for a narrow materialism in all strata is not surprising, in light of a general poverty and inequality (see Id. 39).

72 K. Renner, The Institutions of Private Law 3-4 (1949). See: Unger, op.cit. 49; Wertheim, op.cit. 119; and Barber, op.cit. 55-7.

73 M. Barkun, 'Law and Social Revolution', 6 Law and Soc. Rev. 113, at 120 (1971); T. Parsons, 'The Law and Social Control', in W. Evan, ed., Law and Sociology 56, at 71 (1962); A. Podgorecki, 'Law and Social Engineering', in R. Seidman, ed., 'Law and Modernization in the Developing World' 1:55, at 1:56-7 (1971); Mayhew, op.cit.; Dahrendorf, op.cit. 291; and Renner, op.cit. 48. For an interesting discussion of the ways in which American law deals with the issues posed by consensus and conflict, see Hurst, op.cit. 216-27. Leon Duguit ('The Law and the State' in e.g., D. Lloyd, ed., Introduction to Jurisprudence, 3d Ed., 105, at 105-6, 1972), an influential Continental jurist, argued that the jural principle (la regle de droit) is not anterior to society but rests on Durkheim's social solidarity. The similarity of individual needs creates bases of solidarity through mechanical interdependence or similitude. Differences in needs and aptitudes gave rise to the necessity for an exchange of services, and social solidarity came to be based on an organic interdependence - a division of labour. Law must therefore be used to foster this social interdependence. Similar views are brought more firmly within the ambit of consensus theories and modern sociology of law concepts by Jerome Hall (Comparative Law and Social Policy 79, 1963) :

> Certain important sectors of social action reflect wide agreement on basic values from which many of the state's rules can be derived, and still others are found as logical implications or extensions from them. There are also lacunae filled by creative legislators and judges, influenced in varying degrees by social conditions. There are the technical rules and so on.

Under such a legal system, however,

> it is all too easy to sanctify the existing order rather than to reveal those interests that are pressing for recognition. Identification of the two presupposes a social structure which enables the legislative and judicial arena to be used as fora for the legitimation of claims without let or hindrance. (M. Freeman, The Legal Structure 71, 1974).

74 These tendencies are also found in Western legal systems; See: P. Stein and J. Shand, Legal Values in Western Society 27, 52 (1974); Z. Bankowski and G. Mungham, Images of Law 9, 80-2 (1976); Habermas, op.cit. 20-1; and Friedman, op.cit. 285. The concept of a "positivised" legal system is discussed in Ch. 2.

75 Id. 147-8; Stein and Shand, op.cit. 24; J. Finnis, 'Revolutions and Continuity of Law', in A. Simpson, ed., Oxford Essays in Jurisprudence 2d Series 44, at 66 (1973); and F. Davis, et al., Society and the Law 71 (1962).

76 K. Boyle, et al., Law and State: The Case of Northern Ireland 1 (1975). See: Id., passim.

77   H. Bredemeier, 'Law as an Integrative Mechanism', in Evan, op.cit.
      73, at 74; J. Goldthorpe, 'Social Stratification in Industrial
      Society', in Bendix and Lipset, op.cit. 648, at 648-9; Davis
      et al., op.cit. 73; Griffin, op.cit. 66; and Friedman, op.cit. 156.

78   Dahrendorf, op.cit. 211-13, 223-39 and Mazrui, op.cit. 335. See:
      L. Coser, op.cit. 309 and 'The Termination of Conflict', in Eisen-
      stadt, Social Evolution . . . 141, at 142-3; H. Such, 'Main Lines in
      the Development of Economic Law in East Germany', in G. Eorsi and
      A. Harmathy, eds., Law and Economic Reform in Socialist Countries
      167, at 172-3 (1971); and Boyle et al., op.cit. 10. Dahrendorf
      (op.cit. 217) argues that, in some parts of the Third World, the
      violence of conflict increases when social conditions fall below a
      physiological subsistence, but such conflicts are eventually
      replaced by apathy and lethargy - the symptoms of bodily weakness.
      Mazrui (op.cit.) adds:

          the whole experience of jointly looking for a way out of a
          crisis, of seeing your own mutual hostility subside to a
          level of mutual tolerance, of being intensely conscious of
          each other's positions and yet sensing the need to bridge
          the gulf - these are experiences which, over a period of
          time, should help two groups of people move forward into
          a relationship of deeper integration.

      The regulation of conflict becomes possible through the cumulative
      power of precedent and experience in overcoming crises, the aware-
      ness of mutual dependence and the formulation of a shared ideology
      (Id. 336).

79   Shack, The Gurage 204 and Assefa and Eshetu, op.cit. 4. See: L.
      Fallers, 'Social Stratification and Economic Processes in Africa',
      in Bendix and Lipset, op. cit. 141, at 146-7; Fallers, cited in J.
      Coleman, 'The Resurrection of Political Economy', in Uphoff and
      Ilchman, The Political Economy of Development 30, at 35; Furtado,
      op.cit. 79-81, 89; Robinson, op.cit. 47; and Griffen, op.cit. 53.

80   Markakis, op.cit. 335 and Shack, 'Occupational Prestige. . .' 174.
      See: Fallers, op.cit. 148-9; Furtado, op.cit. 85-6; and Myrdal,
      Asian Drama 22 (1977). The beginnings of a transition from closed
      and inclusive social hierarchies to a variety of open and partial
      hierarchies can be observed in Ethiopia, although there are few
      points of contact between these two types of social structure
      (see Unger, op.cit. 171).

81   See: L. Binder, 'Crises of Political Development', in Id., et al.,
      eds., Crises and Sequences in Political Development 1, at 61
      (1971); Bryde, op.cit. 49; Smith, op.cit. 60; Dahrendorf, The New
      Liberty 25 (1975); Unger, op.cit. 173; and Lenski, op.cit. 308.

82   J. Cohen, 'Ethiopian Provincial Elites and the Process of Change',
      11 J. Ethiopian Studs. 93, at 93 (1973).

83   Markakis, op.cit. 388.

84   Assefa and Eshetu, op.cit. 14. Clapham (Haile Selassie's Government
      182) adds that traditional political activities continue undisturbed
      behind a modern institutional facade.

85   Karsten, op.cit. 305, 308. In Chapter 2 and supra, we argue that
      the "development" perceived by Karsten amounted to a modest economic
      growth in small sectors rather than major alterations in processes
      of underdevelopment.

86   J. Boeke, Economics and Economic Policies of Dual Societies, quoted
      by, e.g., Meier, op.cit. 126, at 126-7.

87   See: P. Cohen, 'Economic Analysis and Economic Man', in R. Firth,
      ed., Themes in Economic Anthropology 95, at 112-3 (1970); H. Brook-
      field, Interdependent Development 53-4 (1975); B. Higgins, 'A
      Critique of Boeke's "Dualistic Theory"', in Meier, op.cit. 128, at
      128-38; and J. Furnivall, 'The Plural Society', in Meier, op.cit.
      138, at 140-41. Furtado (op.cit. 141) offers a contemporary appli-
      cation of Boeke's theory when he defines an "underdeveloped struc-
      ture" as
              one in which full utilization of available capital is not
              a sufficient condition for complete absorption of the working
              force at a level of productivity corresponding to the tech-
              nology prevailing in the dynamic sector of the system.
      On the basis of Gill's assertion (see text accompanying Note 16,
      supra), we could conclude that Ethiopia fulfills Furtado's criterion
      of underdevelopment, but what is "the dynamic sector" and how - if
      at all - does it relate to presumably non-dynamic sectors?

88   See: Meier, op.cit. 156-62 ; R. Nurkse, 'Labour Surplus on Land',
      in Id. 146-9; J. Viner, 'The Concept of "Disguised Unemployment',
      in Id. 151-6; A. Seidman, in R. Seidman, loc. cit. iv: 27-8;
      Griffen, op.cit. 19-25; and Higgins, op.cit.

89   See J. Nettl, 'Strategies in the Study of Political Development',
      in C. Leys, ed., Politics and Change in Developing Countries 13, at
      24-5 (1969) and A. Gunder Frank, Latin America: Underdevelopment or
      Revolution 5 (1969).

90   Cohen and Sileshi, op.cit. 10. See: Uphoff and Ilchman, 'Development
      in the Perspective of Political Development', 93; L.Kuper, 'Plural
      Societies', in Kuper and M. Smith, eds., Pluralism in Africa 7, at
      11 (1969); C. Geertz, 'The Integrative Revolution', in Id., ed.,
      Old Societies and New States 105, at 112-13, 119 (1963); H. Wriggens,
      'National Integration', in M. Weiner, ed., Modernization 181, at
      182-4 (1966); and Furnivall, op.cit. 140-2. P.G. Casanova (cited in
      Brookfield, op.cit. 156-7) describes "internal colonialism" as a
      process through which "poles of growth" hold sway over and grow at
      the expense of more tradition-oriented areas. Emerging elite groups
      are tied to foreign consumption patterns and, as they only serve to
      implement the policies of more traditional rulers, a growth in the
      power of these elites augments the strength of the rulers. There is
      no identity of interest between urban workers and peasants, as the
      former gain higher incomes largely at the expense of the latter.

The phenomenon of distance is not, of course, restricted to
Ethiopia or the Third World generally:
> Working-class children grow up at a considerable social
> distance from institutions of higher learning, a distance of
> information, a distance of motivation, a distance of culture.
> (R. Dahrendorf, 'Inequality, Hope and Progress' 4 1976).

91   Worku Tafara, 'Judicial Administration in Ethiopia . . .' 10 (1972).
See F. Riggs, Administration in Developing Countries 181 (1964) and
Friedman, op.cit. 198. On the appropriateness of the term customary
law, see Sawer, Note 103, infra.

92   See, e.g.: Shack, The Gurage; H. Lewis, A Galla Monarchy (1965);
Hoben, Land Tenure among the Amhara . . .'; Billilign Mandefro,
'Agricultural Communities and the Civil Code', 6 J. Eth. Law 156
(1969); A. Morton, 'Mystical Advocates', in Marcus, ed., Proceedings
. . . 73; and N. Singer, 'The Use of Courts as a Key to Legal
Development . . .', in Id., 365. W. Howard (Public Administration
in Ethiopia 78 (1955) states that: "Little light has been thrown on
the variegated patterns of Ethiopian customary law". Many of the
earlier Ethiopian studies were undertaken either by travellers or
professional or amateur cultural anthropologists who gave (usually
static) descriptions of life, work and survival and viewedconflicts
and changes as "disturbances" (see Myrdal, Asian Drama 3 (1977)).

93   J. Paul, 'Problems of Public Law and Political Development', in
Marcus, ed., Proceedings. . . 323, at 331.

94   Worku, op.cit. 74; Morton, op.cit. 84; Lewis, A Galla Monarchy
63-4, 111; Syoum Gebregziabher, 'The Structure and Functions of the
Civil Service in Ethiopian Public Administration' 26-7 (1960);
Howard, op.cit. 79-80; C. Walker, The Abyssinian at Home, passim
(1933); Kaplan, et al., op.cit. 292; Perham, op.cit. 144; and Shack,
The Gurage 165. See E. Johnson, An Introduction to the Soviet Legal
System 13 (1969). Or Islamic Law, see, e.g.: J. Anderson, 'The
Adaptation of Muslim Law in Sub-Saharan Africa', in H. and L. Kuper,
eds., African Law 149 (1965); M. Smith, 'The Sociological Framework
of Law', in Id. 24; and Bryde, op.cit. 119.

95   Scholler, op.cit. 503. Article III, I, states that:
> If a king dies they would put his dead body in the Grand
> House. They would bring out one of his sons or brothers
> chosen by the late king and his army, and they would enthrone
> him. (Id. 514)
An important statute of Emperor Za Dengal of 1603-4 reads: "Let
all the men be soldiers and the land pay the tribute" (Id.) - the
beginnings, perhaps, of more specifically feudal arrangements.

96   J. Vanderlinden, 'Civil Law and Common Law Influences on the Developing
Law of Ethiopia', 16 Buffalo Law Rev. 250, 251-2 (1966); A. Paulos
Tzadua (transl. from Ge'ez), Fetha Negast iv (n.d.); N. Marein, The
Ethiopian Empire: Federation and Laws 151 (1955); Sedler, op.cit.
568; Messing, op.cit. 112; Doresse, op.cit. 119, 160;and Scholler,
op.cit. 509. The relationship between the Fetha Negast and customary

laws is similar to the one existing between Islamic and customary
laws in many Islamised countries: see J. Anderson, op.cit. 153.
G.Krzeczunowicz ('Code and Custom in Ethiopia', 2 J. Eth. Law
425, 428, 1965) adds:

> Ethiopia cannot be considered in a purely African customary
> context. Its tradition embodies elements of Mediterranean
> civilization, with its Judeo-Christian and Greco-Roman com-
> ponents. . . . The /Ethiopian/ Kingdom of Axum was an ally
> of Justinian.

97   Quoted by e.g., Worku, op.cit. 2-3. This statement could be unreser-
     vedly accepted as true up to the promulgation of the 1931 Constit-
     ution, and was subject to fairly minor qualifications after that
     date and prior to the Revolution: see Ch. 3.

98   Sedler, op.cit. and Perham, op.cit. 139. See E. Johnson, op.cit.
     14 and R. Unger, op.cit. 119.

99   No. 31 of 1975, Neg. Gaz. 34/26 - see Ch. 6.

100 J. Ross and Zemariam Berhe, 'Legal Aspects of Doing Business. . .',
     J. Eth. Law Occasional Paper No. 1, 11-14, 19-20, 35-9 (1972);
     Shack, The Gurage 163, 165; Hoben, Land Tenure Among the Amhara. . .
     157; Marein, op.cit. 249-50; Worku, op.cit. 34; Singer, op.cit.
     372; and Bauer, op.cit. 244. See: A. Von Mehren, The Civil Law
     System 10 (1957); Hayek, op.cit. 98; and K. Bentsi-Enchill,
     'African Law: Development and Reform', in Arkhurst, op.cit. 130,
     at 137, who argues that litigiousness is a symptom of, for example,
     administrative neglect and the absence of a systematic determination
     of land boundaries and rights.

101 A. Schiller, 'The Changes and Adjustments. . .', in A. Tunc, ed.,
     Legal Aspects of Economic Development 193, at 200 (1966). The impact
     of the attitudes towards customary laws adopted by the draughtsmen
     of Ethiopia's Civil and Commercial Codes is discussed in Ch. 7.

102 Unger, op.cit. 58. E.A. Hoebel ('The Functions of Law', in Grossman
     and Grossman, op.cit. 13, at 14) utilises an approach similar to
     Unger's:

> Purposive definition of personal relations is the primary law
> job. /T/he law derives its working principles (jural postulates)
> from the postulates previously developed in the nonlegal
> spheres of action. However, the law's important contribution
> to the basic organization of society as a whole is that the
> law specifically and explicitly defines relations. It sets
> the expectancies. . . In its essence it is what the social-
> contract theorists recognize as the foundation of the social
> order.

103 Barkun, op.cit. 130. See H. Berman, Justice in the U.S.S.R. 268-9
     (1963). Reviewing anthropological studies carried out in New
     Guinea by Salisbury and by Reay, Sawer, op.cit. 36-7, argues that
     legal rules in "primitive" societies resemble in content (as opposed
     to the excessive concern with form displayed by many anthropologists)
     the laws of many Western systems. Rules are discussed and taught to

the young, their content and implications are argued about, and past disputes are recalled and summarised in proverbs and myths. "Custom" connotes an unvarying content and mechanical repetition - an unsatisfactory word for observances that are verbalised and subject to interpretation. In the same vein, Unger (op.cit. 49) maintains that

> every act leads a double life: it constitutes obedience or disobedience to custom at the same time as it becomes part of the social process by which custom is defined.

Bryde, op.cit. 102 adds:

> All known societies have developed some notion of abstracting general norms from behaviour; all know differences between general principles and more specific rules; and all have "rules of adjudication", i.e., general procedural rules that determine how a variety of different substantive cases are disposed of.

All of law represents experiences in settling problems in more or less just and rational ways (see Hall, op. cit. 67-8).

104   B. Malinowski, quoted by, e.g., T. Elias, The Nature of African Customary Law 69 (1962).

105   See: J. Stone, Social Dimensions of Law and Justice 743-5 (1966); Friedman, op. cit. 204; and Sawer, op.cit. 48. While smaller social groups are better able to develop informal social controls and sanctions, all relatively large communities are based on some kind of coercive order: "primitive" and international communities only lack specialised and centralised organs for the creation, application and enforcement of laws. In all societies, law is concerned with defining relationships and permitted, encouraged and proscribed activities, taming naked force and directing it towards the maintenance of order, the allocation of authority, and the disposition of "trouble" cases. (R. Schwartz and J. Miller, 'Legal Evolution and Societal Complexity', in L. Friedman and S. Macaulay, eds., Law and the Behavioral Sciences 976, at 982, 1969; H. Kelsen, cited in Lloyd, op.cit. 269, at 274-5, 1972; and Hoebel, op.cit. 13).

106   For examples of conventional anthropological analyses touching on law but irrelevant to development studies, see: E. Evans-Pritchard Witchcraft, Oracles and Magic Among the Azande (1937); B. Malinowski, Crime and Custom in a Savage Society (1976); M. Gluckman, The Ideas in Barotse Jurisprudence; (1972); and P. Bohannan, 'The Differing Realms of the Law', in Friedman and Macaulay, op.cit. 47. The great pains taken to distinguish law and custom is in part the result of Malinowski (loc. cit.) having confused the two (E. Schur, Law and Society 74, 1968). Similar confusions can be noted in the writings of Rene David, which adversely affected the Civil Code he drafted for Ethiopia (see Chap. 7). With notable exceptions such as Alan Hoben's work in Ethiopia, anthropologists exaggerate differences between social groups and are interested in describing and preserving an ethnic museum uncontaminated by "disturbing" social changes and the policies of central governments. Many Third World politicians see these academic aims as hindering attempts at development and integration and as affronts to national dignity. Anthropology of law and anthropology

generally are preoccupied with insular theoretical concerns, particularly
the issue of whether structure (the alignment of corporate groups
vis à vis each other), function (distinguishing among principles of
social control and the ways in which sanctions are used) or ideation
(interpretation of notions of justice, rights, property, etc.)
ought to dominate anthropological studies. (See H. and L. Kuper,
'Introduction', in H. and L. Kuper, op.cit. 3, at 3-4). From the
perspective of law and development, all three approaches are of
roughly equal importance, and placing an excessive emphasis on one
of them will only serve to distort the analysis. Anthropological
studies are nevertheless interesting because they constitute some
evidence - but no more than that - of the immense variety of normative
ideals and practices that necessitate the reformulation of theories
of jurisprudence, comparative law and sociology of law. See Bryde,
op.cit. 3 and Ch. 2.

107 See: M. Rheinstein, 'Problems of Law in the New Nations of Africa', in
Geertz, op.cit. 220, at 224-5; R. Seidman, 'Law and Economic Devel-
opment. . .' 1966 Wisconsin Law Rev. 999, at 1042; E. Johnson, op.cit.
23-4; Sawer, op.cit. 52; and M. Smith, op.cit. 25-6.

108 G. Constanzo-Beccaria, 'Traditions, Legislations and Customary Laws
in Ethiopia', 3 Proceedings of the Third International Conference of
Ethiopian Studies 175, at 180 (1970);Marein, op.cit. 250; and Sedler,
op.cit. 588. Intimacies found in the extended family and village
are obstacles to the establishment of dealings on a straightforward
commercial basis (L. Fuller, 'Human Interactions and the Law', in
R. Wolff, ed., The Rule of Law 171, at 207 (1971). The Wilsons
(op.cit. 162) add:
> Any attempt to bolster up a legal system based on kinship is
> doomed to failure in an expanding society,for it is part of
> a small-scale system. Wide-scale law is a necessary part of
> wide-scale society.

109 See K.-F. Koch, 'Law and Anthropology', 4 Law and Society Rev. 11,
at 21 (1969) and Schur, op.cit. 128.

110 See text accompanying Note 71, supra.

111 The arguments sketched in this paragraph are more fully developed in
Ch. 2. They parallel Worku's (op.cit. 2) call for an Ethiopian legal
reform which can be implemented from today if goodwill in overcoming
constraints is assumed - rather than for the creation of an ideal law
for a remote future (see Chap. 7).

112 Cohen and Sileshi, op.cit. 12.

113 See: Id. and, e.g.: Gunder Frank, op.cit.; C. Thomas, Dependence
and Transformation 51 and passim (1974); Griffen, op.cit. 9 and
passim; D. Apter, Political Change 204 (1973); and Brookfield, op.cit.
203-4. Gunder Frank's central argument, echoed by Griffen and
Thomas, is that developed states may once have been undeveloped, but
never underdeveloped. Underdevelopment is a recent state of
affairs brought about by the "imperialist" structure of world capit-
alist development. Prior to the nineteenth century, much of the

Third World saw the spread of the money economy, the primitive
accumulation of capital, the technological improvements and the
growth of trade networks that are the rough equivalents of European
experiences. Europe's advantages stemmed largely from more modern-
ised social conditions and were made decisive through the conquest,
plunder and slavery that destroyed indigenous social forces working
for a developmental transformation. (Thomas, op.cit. 58, Griffen,
op.cit. 9 and Gunder Frank, op.cit. x-xii, 4-6). Gunder Frank
(Id., xi) says that he

> examines the North American Emperor's social scientific
> clothing and exposes the scientific nakedness behind his
> ideological sham.

In general, dependence theorists are stronger on diagnosis
than on the cure, which often involves breaking off relations with the
capitalist world in favour of autarchy or an increasing dependence
on socialist states - policies which do not seem to advance the
cause of development markedly. A few modest successes have, however,
been registered in the areas of international commodity marketing
and development project funding. Their pre-colonial Arcadias of
nascent development and socialism are usually grossly overdrawn as,
for example, our brief review of Ethiopian history suggests. (See
also our analysis of African Socialism in Chap. 4). We agree with
Barrington Moore, Jr. (see his Reflections on the Causes of Human
Misery. . . .44 1972) that, while the attempts by developed states
to obtain crucial raw materials, the cultural effects of domination
and repression (particularly by the U.S.), and the blindness to
social alternatives inherent in according primacy to technology do
made a contribution to misery in the Third World, a convincing case
has never been made that dependence is the determinate cause of these
miseries.

114 C. Thomas, op.cit. 30, 60, 63.

115 Cohen and Sileshi, op.cit. and Shack, 'Occupational Prestige. . .'
174. See: Furtado, op.cit. 129-30; Note 18, supra; and Bondestam,
op.cit. 539, 549.

116 Id., 539.

117 Conflicts within the Derg and its urban opposition are discussed in
Chs. 5 and 7, and rural revolts related to land reforms in Ch. 6.

118 Gilkes, op.cit. 185-6, 257-9 and passim. See Ch. 6.

119 'Bandits, Others Surrender to Ethiopian Authorities', Radio Addis
Ababa, 9 Oct. 1975, referring to incidents in Borana, Wollo.

120 'Les Militaires Invitent la Population a se Mobilizer Face aux
Risques de Secession dans le Nord', Le Monde, 10 Apr. 1976, 3;
C. Legum, 'Dergue Suffers Another Defeat', The Observer(London -
hereinafter Observer) 23 Jan. 1977, 6; M. Owen, 'Feudal Duel',
The Guardian (London - hereinafter Guardian) 22 Dec. 1975, 17;
P. Niesewand, 'Anthropologist Stabbed to Death by Troops', Guardian,
8 Oct. 1975, 3; M. Dobbs, 'A Bloody Farewell to Feudalism', Guardian,
22 Nov. 1976, 4; D. Torgerson, 'Afars Describe Ethiopian Uprising',
International Herald Tribune, 21-2 June 1975, 1-2; W. Lee, 'Ethiopia:
A Review of the Derg', 22 Africa Report 7, at 8 (March 1977);

J. MacManus, 'Ethiopia's Armed Rabble Ready for Front', <u>Guardian</u>
21 May 1977, 1; 'No Time for Compromises', <u>Africa</u> No. 67, 19 at
20 (March 1977); Gilkes, <u>op.cit.</u> 214; Kaplan, <u>et al.</u>, <u>op.cit.</u> 99;
and Clapham, <u>Haile Selassie's Government</u> 81-2. In our opinion, the
effectiveness of the EDU has been exaggerated by, <u>e.g.</u>, C. Legum,
'Fighting on Three Fronts in Ethiopia', <u>Observer</u>, 12 Oct. 1975,
6, which largely reproduces a self-serving Press Release issued in
London by the EDU on 9 Oct. The execution of a rebel leader, Brig.
Gen. Teferra Yehayes, was said to be carried out by local "residents
who regard the Revolution as the apple of their eye" (Radio Addis
Ababa, 8 July 1975). A former District Governor and large landowner,
Fitewari Bekele Ogoto, was "put to the sword of the broad masses",
a reminder that others

> who cannot see that the sun of truth has begun to rise will
> be similarly dealt with. . . . The people who want to rein-
> state the old regime will be exposed by the light of Ethiopia
> Tigdem and eliminated by the sword of Ethiopia Tigdem. (Radio
> Addis Ababa, 8 Oct. 1975).

See the 1974 'Declaration of the ENDU', reproduced in H. Scholler
and P. Brietzke, <u>Ethiopia: Revolution, Law and Politics</u> 151-3 (1976)
and Chaps. 4-6.

121   G. Morrison, 'Eritrea and the Southern Sudan', Rev. Ed., 3-5
(1976) - an extremely balanced survey; C. Legum, 'Ethiopia's Legacy
is Poverty and Instability', <u>New York Times</u>, 31 Aug. 1975, E3;
Federation of Eritrea Proclamation, No. 124 of 1952, <u>Neg. Gaz.</u>
12/1; Termination of the Federal Status of Eritrea. . . Order,
No. 27 of 1962, <u>Neg. Gaz.</u> 22/3; Hess, <u>op.cit.</u> 503; Markakis, <u>op.cit.</u>
362; Kaplan, <u>et al.</u>, <u>op.cit.</u> 64-5; and Farer, <u>op.cit.</u> 24-9. See <u>Id.</u>,
21 and Gilkes, <u>op.cit.</u> 179.

122   Morrison, <u>op.cit.</u> 5-9; Lee, <u>op.cit.</u> 8; and Farer, <u>op.cit.</u> 31-2.

123   Proc. 22 of 1975, <u>Neg. Gaz.</u> 31/18, which was changed slightly by
Proc. 102 of 1976, <u>Neg. Gaz.</u> 36/3. The powers of the Special Courts-
Martial, created in November, 1974, are discussed in Chap. 5.
A nation-wide state of emergency was declared on 30 September 1975
(Proc. 55, <u>Neg. Gaz.</u> 35/4) and repealed on 5 Dec. (Proc. 63,
<u>Neg. Gaz.</u> 35/10).
     See P. Enahoro, 'Ethiopia Tikdem', <u>Africa</u> No. 44, 10, at 10
(Apr. 1975) and R. Uwechwe, 'Editorial: Eritrea', <u>Africa</u> No. 53,
7 (Mar. 1975):

> To neutral observers it has appeared all along that what the
> majority of Eritreans really wanted was a more democratic
> regime in Addis Ababa, which recognised their special
> circumstances and which offered them a squarer political and
> economic deal. . . . But since the shooting last November of
> Gen. Aman Andom, himself a respected Eritrean and known
> conciliator, opinion. . . has sharply hardened in favour of
> the ELF's demand for independence. (See Chap. 4).

124   E.g.: M. Dobbs, 'Eritrean Guerrillas in New Offensive', <u>Guardian</u>, 18
November 1976, 4; D. Ottaway, 'New Ethiopian Drive Against Eritrea
Likely', <u>Guardian,</u> 13 Oct. 1976, 4; Temene Asmare, 'Peasant March
Halted for Talks with Eritrea Rebels', <u>Guardian</u>, 8 June 1976, 3;

D. Connell, 'Ethiopian Army Retreats', <u>Guardian</u>, 22 May 1976, 4;
M. Owen, 'Ethiopia Recruits a Peasant Army to Crush Rebellion',
<u>Guardian</u> 13 May 1976, 2; 'Teferi Banti's Speech', Addis Ababa Radio,
12 Sept. 1975:

> bandits - drunk with the dollars of some enemies of the
> Ethiopian people - have become an obstacle to the Eritrean
> people, preventing them from sharing the achievements of the
> Revolution.

The Derg's foreign affairs spokesman argues:

> since Ethiopia's unity and territorial integrity are not
> negotiable, the only alternative left. . . is to crush the
> treacherous successionist movements ('Ethiopia to Crush
> Rebels', <u>Guardian</u> 28 May 1978, 9).

We have found the reportage of David Ottaway, "Tamene Asmare" and
Peter Enahoro to be consistently accurate and perceptive. Since the
Derg does not permit foreign journalists to enter Eritrea, the few
first-hand reports of separatist activities come from those who
travel with Eritrean spearatists and are surprisingly uninformative
(e.g., R. Trench, 'Just Blow Yourself up if we are Caught', <u>Observer</u>,
10 July 1977, 6 and S. Dring, 'Behind the Scenes with the Patient
Guerrillas', <u>Observer</u>, 26 June 1977, 6). Peasant associations are
discussed in Chap. 6.

125   Quoted by H. Pick, 'Shaba Invasion not in Cuba's Interests',
<u>Guardian</u> 19 June 1978, 6. <u>See</u> also, e.g.: M. Wells, 'Between the Devil
and the Deep Red Sea', <u>Guardian</u> 20 Jan. 1978, 11; V. Brittain,
'Ethiopia Launches Full-scale Offensive in Eritrea', <u>Guardian</u>,
17 May 1978, 6 and 'Mengistu Defies Cuban Advice on Eritrea Offensive',
<u>Guardian</u> 29 May 1978, 6; C. Legum, 'Now Eritreans in Firing Line',
<u>Observer</u> 12 Mar. 1978, 11; 'Siege of Massawa', <u>Guardian</u>, 31 Dec.
1977, 4; 'Eritrean Guerrillas Claim New Victories', <u>Guardian</u>, 23
Feb. 1978, 6; and 'Addis Bombs Eritrea', <u>Guardian</u> 20 Apr. 1978, 6.

126   E.g., J. Markakis and Nega Ayele, <u>Class and Revolution in Ethiopia</u>
64-5 (1978); 'Eritrea Guerrillas Confident They Can Seize Asmara',
<u>New York Times</u> 7 Mar. 1975, 4; R. Trench, 'Eritreans Link Up in
Fight for Own Country', <u>Observer</u> 1 May 1977, 6; D. Ottaway,
'Eritreans Fear Victory by Rebels will Bring Civil War', <u>Guardian</u>,
2 Feb. 1977, 2; J. Randall, <u>op.cit.</u> and 'Eritreans Unhappy in
Victory', <u>Guardian</u>, 10 Aug. 1977, 6; Morrison, <u>op.cit.</u> 9; and
Uwechwe, <u>op.cit.</u>

127   E.g.: Kaplan et al., <u>op.cit.</u> 321, 66-7; J. MacManus, 'Somalia
Goes Softly. . .', <u>Guardian</u>, 15 Sept. 1976, 3 and 'Peace Talks
Start on Ogaden Dispute', <u>Guardian</u>, 5 Aug. 1977, 6; 'Britain Ready
to Increase Somalia Aid', <u>Guardian</u>, 19 Jan. 1978, 6; 'War on the
Horn of Africa', <u>New Internationalist</u> No. 62, 8, at 9 (Apr. 1978);
C. Smith, 'Somalia: We Send Army into Ogaden', <u>Observer</u> 12 Feb.
1978, 1; Markakis and Nega, <u>op.cit.</u> 172-3; and I.M. Lewis, 'Has the
Dergue Had its Day?', <u>Guardian</u>, 15 Aug. 1977, 11. While Prof. Lewis
is an extremely perceptive observer of Somali affairs and while there is
much that is valuable in the article cited, we find it to be unduly
biased in favour of the Somalis. In particular, he argues that
the basic Somali "political problem" is "to extend the state front-
iers to embrace the whole nation". This sounds like the Sudetenland
argument that has never been recognised under international law.

Ethiopia is "rapidly returning to the anarchic eighteenth century era of the princes which preceded the making of the modern state by Emperor Menelik", he argues, suggesting that such modernisation as has occurred in the interim is reversible. We have argued, supra, that a "modern state" has never existed in Ethiopia and can only now, perhaps, be created. The Somali invasion certainly does not further this process.

128 E.g.: J. MacManus: 'New Weapons for Old Rivalries', Guardian, 13 Sept. 1976, 11; 'Outright War Looms in the Horn', Id. 11 Aug. 1977, 4; 'Ethiopia Rebels take Desert Towns', Id., 26 July 1977, 6; 'Ethiopia Angry at Moves to Create "Arab Lake"',Id., 28 July 1977, 7; and 'Major Tank Kills Claimed in the Desert', Id., 30 July 1977, 4; D. Ottaway, 'Ethiopia Charges Somalia is Preparing for War', International Herald Tribune,2 Nov. 1976, 1-2; 'Kenya and Somalia Hold Border Talks', Guardian 21 July 1977, 5; 'Somalia Raids Desert Convoys',Id., 22 Feb. 1977, 2; V. Brittain, 'Ogaden Has Been Overrun', Id., 10 Aug. 1977, 6; R. Wilkinson, 'Somalia Accused of Invasion by Addis', Id., 25 July 1977, 6; E. Rogers, 'Ethiopia Shows Somalia Battle Claim False', Id., 15 Aug. 1977, 7; and Farer, op.cit. 101. At a press conference some two months before the invasion, the President of Somalia stated: "We don't believe that bloodshed, torture and killing is Socialism" (quoted by D. Ottaway, 'Somalia sees Change in Soviet Policy', Guardian, 17 May 1977, 7).

129 E.g.: M. Woollacott, 'Two of the World's Poorest Countries. . .', Guardian 6 Mar. 1978, 14 and 'Trapped Asmara is Ethiopia's Weakest Spot', Guardian, 22 Feb. 1978, 5; H.Pick, 'Somalia Pulls Out of the Ogaden', Guardian, 10 Mar. 1978, 1; J. MacManus, 'Somalis to Fall Back on Guerrilla Tactics' Guardian, 14 Feb. 1978, 1; V. Brittain, 'Somalia Hit by Revenge Raids'. Guardian, 23 June 1978, 1; C. Legum, 'Now Eritrea in the Firing Line', Observer, 12 Mar. 1978, 11; and 'Russian Buildup Shocks the West', Observer, 22 Jan 1978, 7; 'Key Town Falls. . .', Guardian, 6 Mar. 1978: 1; 'Another Town Falls. . .', 9 Mar. 1978, 10;'Troopships Head for Ethiopian War', Guardian, 8 Feb.1978, 1; 'Ethiopia Retakes Railway', Guardian, 13 Mar. 1978, 6; 'Ethiopia Denies Ceasefire', Guardian, 11 Mar. 1978, 6; and 'Somali Leader Stronger', Guardian, 11 Apr. 1978, 6.

130 E.g.: M. Woollacott, 'Dismal Trade of the Gun Runners', Guardian 15 Feb. 1978, 6 and 'Ethiopia Talks of Break With West, Id. at 1; J. MacManus, 'Russia Raises the Stakes', Guardian, 22 Feb. 1978, 15; J. Steele, 'US Studies Arms Supply to Somalians', Guardian, 21 Jan. 1978, 4; V. Brittain, 'Somalia Closes Door to Russia', Guardian 14 Nov. 1977,1; Legum, loc. cit.; 'Somali Leader Visits Khaled for Talks', Guardian, 14 Sept. 1977, 8; 'Kenyans Ground Egyptian Arms Lift', Guardian,16 Feb. 1978, 7; 'Somali Arms Halted', Guardian, 20 Oct. 1977, 6; 'Arab Countries Behind Major Arms Shipments to Somalis', Guardian,17 Feb. 1978, 6.

131 E.g.: J. Borrell, 'OAU Dispute on Djibouti Declaration', Guardian, 29 June 1976, 2; J. MacManus, 'Scenario for an African Nightmare', Id., 14 Sept. 1976, 3; P. Webster and J. MacManus, 'Confusion Reigns as France Stops Ruling', Id., 22 Mar. 1977, 2; and I. Lewis, 'The Key to the Horn of Africa', Id., 22 June 1977, 12.

132. E.g.: 'Airlift Plans by Rebels', Observer, 20 July 1975, 6;
D. Ottaway, 'Numeri Ready for Conflict', Guardian, 27 Jan. 1977,
3 and 'Lagu Home Rule Takes Root', Id., 7 Apr. 1977, 9; F. Bridgeland,
'Khartum Talks Aim to Heal Rifts', Id., 14 Oct. 1977, 9; 'Ethiopia
and Sudan Settle', Id., 20 Dec. 1977, 6; 'Ethiopia Accuses Sudan
Militia', Id., 13 Apr. 1977, 8; 'Moscow Backs Wrong Horses', Id.,
2 June 1977, 6; and Kaplan, et al., op.cit. 316. We disagree with
Lee (op.cit. 11), who argues that Sudan poses the most dramatic
threat to the Derg's existence.

133 J. Spencer, 'Haile Selassie. . .' 18 Orbis 1129, at 1129 (1975);
P. Schwab, op.cit. 97; Kaplan, et al., op.cit. 307-8, 318; and
Scholler and Brietzke, op.cit. 34. See Wheeler, op.cit. 54-5.

134 For contradictory analyses of the U.S.S.R.'s strategic interests in
the Horn, see, e.g., C. Legum, 'The Gorshov Strategy', Observer, 20
Mar. 1977, 13 and Farer, op.cit. 105-19. Subsequent events seem
to have validated Farer's arguments, rather than those of Legum.

135 E.g.: 'Ethiopia Warned by U.S.', Guardian, 20 May 1976, 2; J. Steele,
'U.S. Cuts Aid on Rights Grounds', Id., 26 Feb. 1977, 2; Lee, op.cit.
11; Farer, op.cit. 143-4; Ottaway, 'Ethiopia Attempts to Improve
its Poor Relations with the U.S.', Guardian, 23 Sept. 1977, 8;
Woollacott, 'Ethiopia Gets U.S. Supplies', Id., 24 Feb. 1978, 1;
S. McBee, 'Compromise by Carter Saves the Foreign Aid Bill',
Id., 14 Oct. 1977, 9; and A. Brummer, 'Anti-Aid Lobby Threat to
Carter', Id., 3 July 1978, 6. Human rights in Ethiopia are discussed
in Chaps. 5 and 8. A senior Ethiopian Foreign Ministry official
has said:

> America has suddenly invented the code phrase "human rights"
> with which to slander those countries it does not like. The
> phrase means no more than the other great cliche we heard from
> Washington in the sixties, the need to make the world one. I
> see no difference between Jimmy Carter and his predecessors
> . . . . For us, it remains a most inhuman country. (Quoted by
> J. MacManus, 'Ethiopia Stands Firm on Djibouti', Guardian,
> 24 May, 1977, 5).

It seems that, for a variety of reasons, including the Derg's social-
ist inclinations and internal struggles, the felt need to engage in
bloody repressions, and increased friendship with the U.S.S.R.,
the U.S. lost influence in Ethiopia. (see MacManus, 'Big Power
Scramble for the Horn', Guardian, 16 Sept. 1976, 4).

136 E.g.: B. Loudon, 'Russia to Rearm Uganda Forces and Save Amin',
Daily Telegraph (London) 20 Aug. 1976, 4; J. MacManus, 'Russia's
Red Sea Strategy', Guardian, 30 May 1977, 21; D. Ottaway, 'Moscow
in a Dilemma over its African Role', Id., 8 July 1977, 2; 'Cubans
Move into Ethiopia', Id., 25 May 1977, 8; and C. Legum, 'Russia's
Crime on the Horn', Observer, 29 Jan. 1978, 10. See: J. Steel,
'U.S. Presses for End of Arms Sales to Ethiopia', Guardian, 17
December 1977, 5; A. Antonovsky, 'Why Russia is Throwing in its Lot
with Ethiopia', Id., 6 Aug. 1977, 15; D. Tiranti, 'The Barrel of a
Gun', New Internationalist, No. 51, 5, at 6 (May 1977); and Note
134, supra.

137 E.g.: 'Sudan Tells Russians to Leave', Guardian, 20 May 1977, 7;
P. Keatley, 'West Rallies to Arm Barre', Id., 29 July 1977, 6;
'Ethiopia Admits Double Setback', Id., 16 Aug. 1977, 4; J. Andrews,
'Somalia Takes Issue on Eritrea', Id., 20 May 1977, 5; J. MacManus,
'Ethiopia Angry at Moves to Create "Arab Lake"', Id., 28 July 1977,
7; C. Legum, 'Saudi Arabia Blamed for Plot', Observer, 13 Feb.
1977, 6 and 'Russia Tries to End Horn War', Id., 29 Sept. 1977, 4;
C. Harrison, 'Amin Threat to States Boycotting OAU Talks', Times
(London), 22 July 1975, 7; R. Stephens, 'Murder Time in Yemen',
Observer, 2 July 1978, 5; 'Kenya Backs Ethiopians',Guardian,
10 Sept. 1977, 6; 'U.S. Pledge to Kenya', Id., 3 Mar. 1978, 7;
Tamene Asmare, op.cit., and Farer, op.cit. 99. See MacManus,
'Arabs Make their Weight Felt at Kampala Talks', Guardian, 23 July
1975, 2.

138 E.g.: D. Torgerson, 'Drought Aid Hampered by Disputes', Guardian,
17 July 1975, 4; D. Ottaway, 'Crosscurrents of a Revolution',
Id., 12 Oct. 1977, 8; J. Ezard, 'Panic Reports on Ethiopia Refuted',
Id., 6 June 1975, 2; 'Israel's Sale of Arms to Ethiopia a Risky
Move', Id., 8 Feb. 1978, 6; H. Jackson, 'On the Brink of Starvation',
Id., 25 Feb. 1977, 15. The famine and related maladministration
are discussed in Chaps. 3 and 4.

139 J. Shepherd, The Politics of Starvation 70, 75, 80-3 (1975) -
an excellent study; D. Ottaway, 'Credibility Perils Ethiopian Famine
Relief', International Herald Tribune, 30 Apr. 1976, 3; H. Jackson,
'Famine Looms Again', Guardian, 25 Feb. 1977, 1; D. Willey, 'Locust
Plague Threat to Africa Follows War', Observer, 2 July 1978, 6;
I. Guest, 'Ethiopia Gets U.N. Famine Relief', Id., 24 May 1978,
5; and M. Walker, 'Eritreans Now Hold 4,000 Prisoners', Id. 23
Dec. 1977, 4. See C. Thomas, op.cit. 69 and,e.g.: J. Dimbleby,
'Time Passed. . .', Guardian, 23 Feb. 1977, 12; L. Adamson, 'Prompt
Response', Id., 24 Feb. 1977, 13; and L. Garner, 'Hunger and After',
Id., 9 Apr. 1977, 12.

140 Greenfield, 'The Eritreans. . .', at 2117; D. Grieg, International
Law 3 (2d Ed. 1976); D. Lloyd, 'Positivism, Analytical Jurisprud-
ence and the Concept of Law', in Lloyd, op.cit. 152, at 167;
I. Duchacek, Rights and Liberties in the World Today 247 (1973);
P. Fitzgerald, ed., Salmond on Jurisprudence 12th Ed. 27-33 (1966);
and Shepherd, op.cit. 84.

141 See: Bryce, cited in Hurst, op.cit. 200-1; John Wisdom, quoted by
R. Dias, Jurisprudence 208 (4th Ed. 1976); and Farrar, op.cit. 52,
150.

142 Unger, op.cit. 170.

CHAPTER 2

1   See International Legal Center, _Law and Development_ 15 (1974).

2   'Record of the First Development Decade', in G. Meier, ed., _Leading Issues in Economic Development_ 2d Ed., 34, at 34-5 (1970).

3   Seers, in N. Uphoff and W. Ilchman, 'Development in the Perspective of Political Development', in Uphoff and Ilchman, _The Political Economy of Development,_ 75, at 75 (1972). Tawia Ocran, 'Law, African Development, and Social Engineering', 3 and 4 Zambia Law Journal 16, at 17, 1971-2 adds: "It is indeed an error to think of development merely as a campaign of production, to be fought with budgets and monetary policies, and to be measured by indices of output and income. The development process is much wider and deeper . . . ." Ralf Dahrendorf (_op.cit._ 14, 22) stresses the need for qualitative rather than quantitative development in the First and Second Worlds, and reminds us that it "is not the human condition which is at fault; rather, it is real conditions created by human beings, and they can therefore be changed." In other words, Ethiopia is not underdeveloped because her people are stupid, immoral or lazy, often described at a higher level of analytical sophistication as a high pre-ference for leisure or the existence of a backward-bending supply curve of labour.

4   International Legal Center, _op.cit._ 23; H. Brookfield, _Interdependent Development_ X (1975); A. Klinghoffer, 'Modernisation and Political Development in Africa', 11 J. Mod. Af. Studs. 1, at 1-2 (1973); C. Thomas, _Dependence and Transformation_ 48 (1974); and N. Uphoff and W. Ilchman, _The Political Economy of Change_ 20-1 (1969). Brookfield (_op.cit._ 2) adds: "No Melanesian cargo-cult prophet has been more emphatic in his assertions of revealed truth than have some of our development economists." The impact of the social mythology of the observer's culture is described by Igor Kopytoff ('Socialism and Traditional African Societies', in W. Friedland and C. Rosberg, eds., _African Socialism_ 53, at 54, 1964): "A certain type of communal organisation suggests "backwardness" to a laissez-faire Victorian or to a Marxist and the model for an ideal society to a Utopian socialist."

5   "Elites" can be defined as groups who possess power and influence and who attempt to preserve or enhance their own values and position (L. Mayhew, 'Stability and Change in Legal Systems', in B. Barker and A. Inkeles, eds., _Stability and Social Change_ 187, at 193, 1971). The traditional Ethiopian nobility, supported by much of the peasantry, supported values related to governmental non-interference in daily life. So long as subsistence is secured, these groups wish traditional life-styles to continue, and the prospect of development is never really considered. Businessmen, the urbanised nobility and middle-income groups among unionised employees and the bureaucracy seek a facilitative framework for personal gain. They might argue that personal enrichment generates development when benefits trickle down to the less advantaged. More radical elements among the military, bureaucracy, students and workers support the active state promotion of a substantial redistribution of wealth. The legal postulates

corresponding to these categories are those of the traditional laws, the private laws of contract, business organisations and collective bargaining, and the forceful use of public law. <u>See</u> R. Seidman, 'Law and Development in . . . Africa', 1966 Wisconsin Law Rev. 999, 1015 - 19, and Chaps. 1 and 5. Conflicts among the interests asserted through these different types of law are bound to lead to difficulties in developing, communicating, implementing and enforcing legal rules, and give rise to such 'deviant' activities as corruption. Obviously, this classification represents a fairly high level of generalisation, and the more specific interests of Ethiopian social groups are discussed throughout this study, particularly in Chap. 1.

6   B.-O. Bryde, <u>The Politics and Sociology of African Legal Development</u> 1 (1976); International Legal Center, <u>op.cit.</u> 15; and H. Jaguribe, Economic and Political Development 4 (1968). W. Wertheim (<u>Evolution and Revolution</u> 41 (1974) uses an analogous Hegelian definition, relevant to all countries:

> Progress can be expressed as the process of human emancipation – either from the forces of nature or from the fetters of social hieraachy and domination by man; it generally implies an increase in the rate of human cooperation.

7   Brookfield, <u>op.cit.</u> xi.

8   Habermas, <u>Legitimation Crisis</u> 49 (1976). The relevance of his first two "crises" is obvious, and the somewhat jargonistic third and fourth crises will be analysed in Part II.

9   See <u>Id.</u>, 5, 8. A related conceptualisation is Dahrendorf's "new liberty": the "politics of regulated conflicts and the socio-economics of maximising individual life chances" (<u>op.cit.</u> 6).

10   Meier, <u>op.cit.</u> 5-7. In <u>Asian Drama</u> (356, abridged Ed., 1977) Myrdal explains that "upward movement" means in the direction of a greater desirability from the development standpoint. With respect, this still begs the question.

11   Uphoff and Ilchman, 'Development in the Perspective of Political Development', 76-7.

12   E.g., N. Smelzer, 'Processes of Social Change', in <u>Sociology</u> 647, at 718 (1967) and G. and M. Wilson, <u>The Analysis of Social Change</u> . . . 46-7 (1968).

13   Focusing on demand, low incomes mean small markets for products, which offer few inducements to invest, low production levels result, which generate low incomes levels; and the circle is complete (E. Hagen, <u>On the Theory of Social Change</u> 41, 1962). A more complex projection that is less strictly cyclical is offered by E. Whetham and J. Currie, <u>The Economics of African Countries</u> 223 (1969):

> Low incomes mean small markets for industrial goods, low savings for investment and lack of education and health. Small markets give little scope for business enterprise and for economies of scale in industries whose technology now demands large units of production. Low savings, out of low

incomes, restrict investment in productive capital and also
the yield of loans from which governments can finance the
provision of public services such as transport and education.
Poor transport and education in turn imply limited markets and
scarcity of the many skills required for the growth of
industries and services, including the skill of teaching.

14   Marx, in an 1877 letter to the Russian socialist journal <u>Otechestvenniye</u>
<u>Zapiski</u> (quoted in S. Avineri, ed., <u>Karl Marx on Colonialism and</u>
<u>Modernisation</u> 6, 1969. Avineri adds (<u>Id</u>. at 5, 28):

> Despite the explicit dynamism of Marx's dialectical model,
> it seems an uneasy combination of two sets of disparate
> elements: a sophisticated, carefully worked out schema
> describing the historical dynamism of European societies,
> rather simple-mindedly grafted upon a dismissal of all non-
> European forms of society under the blanket designation of the
> . . . "Asiatic mode of production" , which appears static,
> unchanging and totally non-dialectical.

Marx and Engels saw modernisation coming about only through a
Western expansion that would obliterate this "Asiatic mode of
production." <u>See</u> Thomas, <u>op.cit</u>. 35.

15   B. Davidson, 'Marx in Africa', <u>New Society</u>, 20/10/77, 114. <u>See</u>
G. Myrdal, 'The "Soft State" in Underdeveloped Economies', 15
U.C.L.A. Law Rev. 1118, at 1120 (1968) and C. Furtado, <u>Development</u>
<u>and Underdevelopment</u> vi (1967): "its /Marxism's/ philosophical
postulates, accepted as dogmas, lent a teleological character to
economic analysis."

16   Assefa Bequele and Eshetu Chole, <u>A Profile of the Ethiopian Economy</u>
24 (1969); Furtado, <u>op.cit</u>. 47; and P. Streeten, 'The Frontiers of
Development Studies', 4 J. of Development Studs. 2 (1967).

17   <u>See</u>: <u>Id</u>.; S. Robinson, 'Theories of Economic Growth and Development',
21 Economic Development and Cultural Change 54, at 54-6 (1972);
J. Nettl, 'Strategies in the Study of Political Development', in
C. Leys, ed., <u>Politics and Change in Developing Countries</u> 13, at 16
(1969); Brookfield, <u>op.cit</u>. 20-2, 130-6;Hagen, <u>op.cit</u>. 36; Myrdal,
quoted by Uphoff andIlchman, 'The New Political Economy' , in <u>The</u>
<u>Political Economy of Development</u> 1, at 18 (1972); I. Swerdlow,
'The Administration of Economic Growth', in E. Morgan, Jr., ed.,
<u>The Administration of Change</u> 59, at 60-1 (1974); H. Cairns,<u>Law and</u>
<u>the Social Sciences</u> 92 (1969); Myrdal, <u>Asian Drama</u> 53 (1977);
Furtado, <u>op.cit</u>. v, 39, 115n; and Thomas, <u>op.cit</u>. 128-9.

18   D. Levine, <u>Wax and Gold</u> 50 (1972). <u>See</u>: A.Seidman, Comparative
Development Strategies in East Africa 5-10 (1972); S.Robinson, <u>op.cit</u>.,
56; J. Robinson, <u>Freedom and Necessity</u> 108 (1970); Uphoff and Ilch-
man, 'Development in the Perspective of Political Development',
91-2; and Thomas, <u>op.cit</u>. 84-7. The extent to which Ethiopian
societies were and are feudal is discussed in Chap. 1.

19   A. Touraine, 'Sociology of Development', in S. Eisenstadt, ed.,
<u>Readings in Social Evolution and Development</u> 337, at 337 (1970).
<u>See</u> Myrdal, <u>Asian Drama</u> 298 (1977).

20   Mayhew, op.cit. 193. The concepts of political modernisation and
      penetration will be discussed in Part II, and penetration is analysed
      in Sec. IV of this Chapter.

21   Smelzer, op.cit. 717 and R. Applebaum, Theories of Social Change
      38-9 (1970).

22   See: Id. 17, 36; Brookfield, op.cit. 76, 79-80, 82-3; A. Peshkin
      and R. Cohen, 'The Values of Modernization', 2 J. of Developing
      Areas' 7, at 8 (1967); Nettl, op.cit. 17-19; and Swerdlow, op.cit.
      60-1.

23   Id. 72. See Id. at 63, and R. Seidman, 'Law and Stagnation in
      Africa', 5 Zambia Law J. 39, at 39 (1973). As to whether the implicit
      criticism of U.S.A.I.D. is fair, see J. Shepherd, The Politics of
      Starvation (1975).

24   Quoted by Brookfield, op.cit. 126.

25   Id. 145-51; Uphoff and Ilchman, 'Developing in the Perspective of
      Political Development', 86; D. Carney, 'Requirements for African
      Economic Growth', in F. Arkhurst, ed., Africa in the Seventies and
      Eighties 176, at 177, 182 (1970); and Nettl, op.cit. 25. Additional
      aspects of structural transformation theories are analysed in
      Chap. 1, supra.. B. Hodder (Economic Development in the Tropics
      119, 1968) argues that it is easy to overemphasise institutional
      and structural transformations, such as land reform, at the expense
      of improving agriculture efficiency; present institutional frames
      are usually adequate, improved technology is the crucial development
      variable and land reform is unlikely to improve productivity.
      Chap. 6 demonstrates that this view cannot be validly applied in
      Ethiopia.

26   Myrdal, Asian Drama 20 (1977). See Furtado, op.cit. 83.

27   K. Griffen, Underdevelopment in Spanish America 175 (1969);
      Brookfield, op.cit. 159n, 161, 171; R. Unger, 'Law and Development'
      in R. Seidman, ed., 'Law and Modernization in the Developing World',
      1:42, at 1:47 (1971); Myrdal, Asian Drama 372-3 (1977); Furtado,
      op.cit. 162; and S. Robinson, op.cit. 58. Given famines and under-
      nourishment, it is doubtful that Ethiopia has substantial amounts of
      surplus labour.

28   Phillips Raupp, quoted by Wertheim, op.cit. 266.

29   Id., 84.

30   Griffen, op.cit. 50. See Applebaum, op.cit. 52-3. Eshetu Chole
      ('Taxation in Ethiopia' 118, 1968) adds: "A semi-feudal government
      which thrives on the existence of inequities cannot be expected to
      vigorously prosecute a redistributive policy. . . ." This idealistic
      young Marxist, the first Ethiopian academic to be detained after
      the Revolution, was later released and is now missing and feared dead.

31 See D. Apter, Political Change 1, 4 (1973).

32 See: Id. 4-5, 7; J. Cohen, A. Goldsmith,and J. Mellor, Revolution and Land Reform in Ethiopia: Peasant Associations, Local Government and Rural Development, 105 (1976); Furtado, op.cit. 40; J. Robinson, op.cit. 106; and J. Holmberg, 'Pricing Strategies. . .' 17 (1976).

33 See: S. Tangri, 'Economic Systems and Economic Efficiency' in G. Ness, ed. The Sociology of Economic Development 423, at 423, 426-8 (1970); Nettl, op.cit. 16-17; and R. Dumont and M. Mozayer, Socialisms and Development 104 (1973).

34 See: Id. 325; J. Gray, 'The Chinese Model', in Nove and Nuti, eds., Socialist Economics 491, at 499-504 (1972); and Cohen, Goldsmith and Mellor, op.cit. 114. Dumont and Mozayer (op.cit. 260) add: "It has to be accepted now, as an unavoidable fact, that the African refuses to accept the bleak, harassing and anonymous effort involved in 'labour investments' of the Chinese type". African regimes must play upon patriotism, activism and self-interest in order to expand production quickly enough to pay the high costs of a modern trading economy.

35 See C. Wilber, The Soviet Model and Under-developed Countries 76-81 (1969). It is important to distinguish the accidental from the essential aspects of the Soviet experience. E.g., so long as necessary levels of compulsion are maintained, a communist party-state need not be adopted. As in Ethiopia, the Soviet peoples had gained few freedoms which were lost after the Revolution; they had been forced to bear the costs of underdevelopment - famine and disease - however. Both before and after the revolutions in both countries, dissent from the regime's policies is tantamount to treason. See Id. 118, 125, 222 and Thomas, op.cit. 35.

36 P. Koehn, 'Urban . . . Political Transformation in Ethiopia', in J. Watson and L. Masotti, eds., The City in Comparative Perspective 155, at 57 (1976); Cohen, Goldsmith and Mellor, op.cit. 97, 103, 105, 112; and Holmberg, op.cit. 17. See: G. Papanek, in G. Meier, ed., Leading Issues in Economic Development 289-90 (1964); Myrdal, Asian Drama 82 (1977); and Streeten, op.cit. Rene Dumont (False Start in Africa 32 (1966) argues that underpopulation (evident in many parts of Ethiopia) makes for high transportation costs over vast empty areas and slows the spread of the money economy.

> Without industrialization, without resources of energy except manpower, without modern methods of cultivation and consequently without high yields, without buying power for the products of future industries, a new vicious circle forms. It should be attacked by industrialization, certainly, but it can be broken more effectively and quickly through agriculture.

37 See P. Self, Administrative Theories and Government 14 (1972).

38 L. Friedman, The Legal System 99 (1975).

39   Bryde, op.cit. 189. See Friedman, op.cit. 20.

40   J. Stone, The Province and Function of Law 16 (1950). See C. Friedrich, The Philosophy of Law in Historical Perspective 7 (2d Ed., 1963) and J.W. Hurst, Law and Social Order in the United States 24 (1977).

41   Quoted by D. Lloyd, Introduction to Jurisprudence, 12 (3d Ed., 1972).

42   See J. Hall, Comparative Law and Social Policy 49-50 (1963).

43   See, e.g.: J. Nyerere, Freedom and Socialism 8-9 (1968); Y. Ghai and J. McAuslan, Public Law and Political Change in Kenya (1972); R. James, Land Tenure and Policy in Tanzania (1970); Bryde, op.cit.; and the work of Robert Seidman, cited in the Bibliography, infra.

44   See T. Kuhn, 'The Structure of Scientific Revolutions' in Lloyd, op.cit. 25, at 28. Although the 19th century positivist John Austin limited his speculations to "maturer" legal systems, many legal theorists do not include such a disclaimer. Austin does not appear to define maturer systems, except to say that they are "pregnant with instruction" and, presumably, he would also require them to fulfill his theoretical predictions. See J. Austin, 'The Uses and Study of Jurisprudence', in Lloyd, op.cit. 21, at 21. This amounts to saying that " my theory applies to those legal systems to which it applies". Arguably, Third World legal systems are also pregnant with instruction, particularly as they often adopt the form, but not the substance of 'maturer' systems.

45   See J. Vanderlinden, 'An Introduction to the Sources of Ethiopian Law. . .', 3 J. Ethiopian Law 227, at 227 (1966). Yash Ghai, 'Notes Towards a Theory of Law and Ideology: Tanzanian Perspectives', African Law Studies, No. 13, 31, at 34 (1976) argues that: "A definition of law is itself ideological and hence controversial".

46   A. Southall, 'Introductory Summary', in Id., ed. Social Change in Modern Africa 2, at 14 (1969). See: J. and M. Grossman, 'Introduction', in Law and Change in Modern America 1, at 7 (1971); J. Farrar, Introduction to Legal Method 62 (1977); and Friedman, op.cit. 18, 24. For an analysis of Ethiopian customary and traditional laws, see Chaps. 1 and 6 and passim.

47   M. Galanter, 'The Modernization of Law', in M. Weiner, ed., Modernization 153, at 164 (1966).

48   A. Honore, 'Groups, Laws and Obedience' , in A. Simpson, ed., Oxford Essays in Jurisprudence 1, at 1-2 (2d Series 1973). See E. Schur, Law and Society 53 (1968).

49   R. Dias, Jurisprudence, 3d Ed. 381, 388 (1970) and G. Paton, Jurisprudence, 3d Ed. 70-4 (1969). While Austin intended his studies to serve as preconditions to a critical evaluation of law and he distinguished laws from other commands on the basis of their generality, this is not

how his theories (which draw heavily on the work of others) have been used. See P. Fitzgerald, <u>Salmond on Jurisprudence</u> 25-8 (12th Ed., 1966).

50   See: J. d'Entreves, <u>Natural Law</u>, 102 (2d Ed., 1970); Hall, <u>op.cit.</u> 51, 74; and Lloyd 'Positivism, Analytical Jurisprudence and the Concept of Law', in Lloyd, <u>op.cit.</u> 152, at 152.

51   <u>See</u> R. Pound, 'The Scope and Purpose of Sociological Jurisprudence', 24 Harvard L. Rev. 591, at 594-8 (1911). The "at least four levels of Ethiopian law" are discussed in Chap. 1.

52   See D. Black, 'The Boundaries of Legal Sociology', in Black and M. Mileski, eds., <u>The Social Organization of Law</u> 52, at 52 (1973).

53   Lloyd, 'Introduction', <u>op.cit.</u> at 9. <u>See</u> M. Freeman, <u>The Legal Structure</u> 123 (1974).

54   Quoted by <u>Id.</u>, 1.

55   W. Harvey, 'The Challenge of the Rule of Law', 59 Michigan Law Rev. 603, at 606 (1961). <u>See</u> Freeman, <u>op.cit.</u> at 1.

56   Harvey, <u>op.cit.</u>

57   <u>See</u>: O. Kahn-Freund, 'Introduction' in K. Renner, <u>The Institutions of Private Law</u> 1, at 2-3 (1949); Fitzgerald, <u>op.cit.</u> 25; Farrar, <u>op.cit.</u> 151; R. Seidman, 'Law and Development: The Interface. . .' 13 J. Mod. Af. Studs. 641, at 646 (1975); and Schur, <u>op.cit.</u> 35.

58   See: P. Stein and J. Shand, <u>Legal Values in Western Society</u> 8-9 (1974); Schur, <u>op.cit.</u> 51; Paton, <u>op.cit.</u> 94-113; d'Entreves, <u>op.cit.</u> 13-15; and D. Lloyd, 'Natural Law' in Lloyd. <u>op.cit.</u> 74, at 76, 81-3. Celso Furtado (<u>see</u> <u>op.cit.</u> 14) adds that the labour theory of value is rooted in the natural law doctrine, developed primarily by Locke, that property is a reward for the creative application of labour to movables and immovables.

59   <u>Id.</u> 74.

60   Quoted by Dias (1970) <u>op.cit.</u> 550. <u>See</u>: d'Entreves, <u>op.cit.</u> 74; Lloyd, 'Natural Law', 88; Pound, <u>op.cit.</u> 604-11; and P. Selznick, 'Sociology and Natural Law', in Black and Mileski, <u>op.cit.</u> 16, at 16.

61   Quoted by <u>Id.</u>, 26.

62   <u>See</u> d'Entreves, <u>op.cit.</u> 153, 160. Lord Denning argues that the lawyer's purported concern with law as it is rather than as it ought to be is like a mason laying bricks without regard for the resulting building. (G. Marshall, <u>Constitutional Theory</u> 88, 1971).

63   See: J. Stone, <u>Social Dimensions of Law and Justice</u> 491-2 (1966); H. Kelsen, <u>The Communist Theory of Law</u> vii, 14, 21 (1955); E. Fisher, <u>Marx and His Own Words</u> 150 (1973); and Ghai, 'Notes. . .', 32.

64 See: Pashukanis, 'The General Theory of Law and Marxism' in A. Babb, transl., Soviet Legal Philosophy 111, at passim (1951); J. Stalin, in Id. 235, at 235; Stone, Social Dimensions of Law and Justice 491-4; M. Barkun, 'Law and Social Revolution', 6 Law and Society Rev. 113, at 113, 120-1, 135 (1971); Kelsen, op.cit. 106, 110; and Ghai, 'Notes. . .', 33.

65 O. Ioffe and M. Shargorodskii, 'The Significance of. . .', in Lloyd, op.cit. 675, at 676.

66 See Myrdal, Asian Drama 368 (1977).

67 See: H. Berman, Justice in the USSR, 157, 166, 366 (Rev. Ed., 1963); J. Hazard, Communists and Their Law 521, 524 (1969); and R. David and J. Brierley, Major Legal Systems in the World Today 167 (1968).

68 Unger, op.cit. 232.

69 Hall, op.cit. 8, 33, 45. See A. Von Mehren, The Civil Law System xi (1957).

70 H. Gutteridge, Comparative Law, 2d Ed. 73 (1949). See: B. Azkin, 'Codification in a New State', in B. Schwartz, ed., The Code Napoleon and the Common-Law World 298 (1975); Friedman, op.cit. 9, 199-200; and Hall, op.cit. 4.

71 See: O. Kahn-Freund, 'On Uses and Misuses of Comparative Law', 37 Modern Law Rev. 1, at 8-10 (1974); Friedman, op.cit. 208; and Von Mehren, op.cit. 3.

72 B. Russell, History of Western Philosophy 581 (New Ed. 1961).

73 See C. Thomas, op.cit. 14, 37-9. Citing M. Dobb and E. Mandel, Thomas argues that the bankruptcy of Western economics became obvious from 1929 onwards, and it was "unfortunate" that Marxism made a pragmatic turn at this juncture, offering purely descriptive statements and ex cathedra pronouncements surprisingly empty of content. As a result of these analytical shortcomings, socialist states in the Third World often adopt or modify Western analysis (Id. 37-9).

74 See H. Berman, op.cit. 268-70 and Berman, 'Soviet Perspectives on Chinese Law', in J. Cohen, ed., Contemporary Chinese Law 312, at 312-14 (1970). The "basic principles" Berman has in mind, such as the completeness and theoretical supremacy of law, are too general to be of much use to a serious comparativist. In 'Transplantation of Legal Systems: An Early Report on the Reception of Western Laws in Ethiopia' (21 American J. of Comparative Law 557 , at 558 (1973) J. Beckstrom argues that: "The identification of performance indicators for a transplanted legal system is a perplexing business at best".

75 Myrdal, Asian Drama 8 (1977).

76   J.W. Hurst, 'Law and the Regulation of Social Change', in Grossmans, op.cit. 17, at 17.

77   See: S. Diamond, 'The Rule of Law Versus the Custom of Order', in R. Wolff, ed., The Rule of Law 115, at 117 (1971); J. Crabb, 'The Role of the Legal System in the Congolese Economy', 3 J. of Law and Economic Development 42, at 42-3 (1968); and Unger, op.cit.

78   Like many of the other theories we have considered, sociology of law has no standardised philosophy or epistemology, although most theorists perceive a limited human free-will and an irreducible determinacy of human affairs at the macro level. James Hildebrand states a traditional view of law as performing three social roles: an institutional role of allocating authority or power, ascertaining accepted rules of behaviour and delimiting socio-legal relationships; a conflict resolution role involving the orderly application of rules; and an interpretational role which includes providing for socio-legal changes and redefining human relationships. Davis's definition of law as a formal means of social control, using rules interpreted and enforced by the courts of a political community, is far too narrow both for our purposes and for the American legal systems it purports to encompass. Most of sociology of law ignores values or reduces them to psychological attitudes or matters of fact, while many lawyers would see these values as principles of the social order which lend meaning to norms and status-roles. Difficulties inherent in dealing with values are discussed in the next Section. William Evan finds five distinct types of analysis - role, organisational, normative, institutional and methodological -, subsumed under sociology of law. Occupational sociology concerns itself with the legal professions and their values; organisational studies emphasise the structures created by public and private law systems and their relation to the social structures of public and private organisations; normative perspectives involve the analysis of rules in relation to underlying values and objects of social groups; institutional approaches are discussed in the text of our study, supra; and methodology concerns the classification and individuation of socio-legal phenomena. Although these approaches are relevant to law and development analyses and several of them are discussed in this study, the methodology, policy prescriptions and theoretical conclusions reached by Western theorists are largely irrelevant to the Third World. Like development theories, sociology of law often derives simplistic conclusions from simple models. Currie represents the views of many younger theorists when he terms sociology of law "bourgeois, liberal, pluralist and meliorist". Some alternative approaches to the subject (e.g., Z. Bankowski and G. Mungham, Images of Law (1976) contain a few meaningful criticisms, but their rather shrill struggle against Western orthodoxy has little to say concerning Third World problems. C. Sawer, Law in Society 5 (1965); J. Hildebrand, 'The Sociology of Soviet Law . . .', 22 Case Western Reserve Law Rev. 157, at 160 (1971); F. Davis et al. Society and the Law 41 (1962); W. Evan, 'Introduction; in Evan, ed., Law and Sociology, at 2-8 (1962); D. Black, 'The Boundaries of Legal Sociology' in Black and Mileski, op.cit. 41, at 42; and Hall, op.cit. 92.

79 Friedman, op.cit. 17. See: Id. 161; Black and Mileski, 'Intro-
duction', op.cit. 4-5; Dias, Jurisprudence, 25 (4th Ed., 1976); and
F. Davis et al., op.cit. 138.

80 Social control can be defined as the conscious domination of man by
society, and law can usually (but not always) be distinguished from
other forms of social control by its connection with the political
organisation of society. Law attempts to define the conduct expected
from individuals and groups explicitly, rationally and systemat-
ically, in order to facilitate predictability. The amenability of
activities to legal control varies widely, as does the sensitivity
and directness of application of the controls themselves. O. Hiner,
Business Administration 212 (1969); Stein and Shand, op.cit. 43;
and Davis et al., op.cit. 14, 65. E.A. Ross (quoted by Sawer, op.cit.
12) sees social control as an activity of the "wise minority" or
organised elements of the population: "It is obedience that art-
iculates the solid bony framework of social order".

81 See Jaguribe, op.cit. 20 and Mayhew, op.cit. 188.

82 Hall, op.cit. 80.

83 Id.; D. Lloyd, 'Sociological School' in Lloyd, op.cit. 340, at
340; Friedman, op.cit. 154; Black, op.cit. 51; Evan, op.cit. 5;
and H. Cairns, op.cit. 141-2.

84 K. Llewellyn, 'The Effect of Legal Institutions upon Economics',
15 American Economic Rev. 665, at 666 (1925). See: C. Allen, Law
in the Making 34-9 (1964); N. Uphoff and W. Ilchman, The Political
Economy of Change 43 (1969); R. Seidman, 'Contract Law. . .',
7 J. Economic Issues, 553, at 572 (1973) and 'Law and Development in
. . . Africa' 1015; and Lloyd, 'Sociological School', 342-9.

85 W. Gaylin, 'Skinner Redux', Harper's 48, at 53 (Oct. 1973).

86 F. Hayek, 1 Law, Legislation and Liberty 2-3 (1974).

87 Alvin Gouldner, cited by Seidman, 'Law and Development: The Inter-
face. . .' 646. See: R. Pound, 'The Scope and Purpose of Socio-
logical Jurisprudence' 25 Harvard Law Review 140, at 146 (1912);
J. Robinson, op.cit. 120; Unger, op.cit. 193-6; Black, op.cit. 45;
Friedman, op.cit. 213; Ocran, op.cit. 31; Lloyd, 'Sociological
School', 343; and C. Thomas, op.cit. 17.

88 See L. Warshay, The Current State of Sociological Theory, 135-6
(1975) and Y. Ghai, 'Control and Management of the Economy: Tan-
zanian Perspectives', 9 Verfassung und Recht in Ubersee 157, at
171 (1976).

89 E.g., J. Nyerere, Freedom and Socialism 8 (1968):
        The purpose of socialism is to enlarge the real freedom of
        man, to expand his opportunity of living in dignity and well-
        being. An obviously essential part of this is that the laws
        of the society shall be known, be applied equally, and that
        people shall not be subject to arbitrary arrest or persecution

. . . . By itself the Rule of Law does not bring socialism; but you cannot have socialism without it, because it is the expression of man's equality in one facet of social living. . ..

90   See S. Moore, 'Law and Social Change . . .', 7 Law and Society Rev. 719, at 719 (1973) and Friedman, op.cit. 222. But see R. David, 'A Civil Code for Ethiopia', 37 Tulane Law Rev. 187 (1963). In Chap. 7, we shall argue that the fiasco of private law transplantation in the Ethiopia of the 1960s resulted from the misunderstandings of David et al. concerning the nature of traditional politics, customary law and legal modernisation processes.

91   In The Institutions of Private Law (1949), Renner applies a Marxist critique to European civil law systems, focusing on the concept of property and its "complementary institutions" found in obligations (contract) law. Although law and economics appear indissolubly bound together, he argues that they undergo an uneven development during the course of history. The social substratum knows only slow evolution and not revolution, and the legal order can be far ahead or behind the substratum. So far so good, given Renner's chosen analytical framework. We begin to part company with him, however, when he argues that legal leads and lags create repercussions in the substratum but cannot change it fundamentally. Renner argues that extensive changes in the nature and use of property in a relatively short time show that a fundamental social change is possible without corresponding changes in the legal system. He even goes so far as to suggest that the collectivisation of all property through law would not alter the nature of the economic system; property and contracts would retain all of their capitalist functions. In one sense, Renner suggests nothing more than a commonplace: law may be a condition of capitalist development but does not create it. This is consistent with our argument that two country's laws and the manner in which they are applied can differ considerably from a lawyer's viewpoint, yet have a similar impact on development. Criteria other than those used in traditional legal analysis ought therefore to be devised. Three examples can be offered to illustrate the limitations inherent in Renner's views. First, it cannot be denied that contemporary English land law is influenced both by feudal concepts of tenures and estates and the laissez faire spirit introduced by judges in the eighteenth and nineteenth centuries. Nevertheless, contemporary judge-made rules and statutes have effected considerable changes in the law of property. It can even be argued that the Rent Acts of 1968 and 1974 (regulating some rents and conferring security of tenure on certain tenants) and the Community Land Act, 1975 (authorising local governments broadly to acquire all land they may wish to use for "relevant development") have operated so as to change the English property 'substratum' markedly. Second, an old concept such as that of a trust can be given new meanings. In the U.S., when elections fail to provide an adequate safeguard against abuse of office by a labour union official, the court will impose fiduciary responsibilities in favour of the members upon the official. In the U.K., a fiduciary relationship has recently been imposed in favour of the "deserted mistress" for purposes of property distribution, in certain circumstances. The law is probably changing in advance of community mores, since some

mistresses are treated like wives for property distribution purposes.
Today, Renner might argue that the basic idea of a trust (which
exists only imperfectly in civil law) has not changed, but certainly
the range of fact situations to which the concept applies has ex-
panded markedly since it was first devised. Applications of the law
thus change to meet changing ideals of justice and empirical theories
of temptation. Third, the Soviet Union had a quasi-feudal or prim-
itive capitalist economic system prior to the gradual collectiv-
isation of property that created enormous changes in the 'substratum'.
As Chaps. 6-7 show, the same kind of process is occurring in Ethiopia
today. It can be argued that these are primarily political changes,
but we would argue that law also plays an important role. In sum,
we cannot foreclose the possibility that meaningful socio-economic
change can be achieved through law, and other arguments are developed
in this regard in Chaps 6-7. Renner develops many other arguments
which are useful to our analysis and are discussed in Chap. 7.
See Renner, op.cit., 251-61 and passim, and Selznick, op.cit. 35.

92   Other one-dimensional modernisation theories related to law and not
included in the text are: from endogomy to exogamy; from feuds to
punishment by organised political society; and Dicey's growth of
statute-making, representing the increased articulateness and power of
public opinion. See: R. Schwartz and J. Skolnick, Society and the
Legal Order 4-5 (1970); R. Schwartz and J. Miller, 'Legal Evolution
and Societal Complexity', in L. Friedman and S. Macaulay, eds.,
Law and the Behavioral Sciences 976, at 976 (1969); M. Mead, 'Some
Anthropological Considerations Concerning Natural Law', in Lloyd,
op.cit. 144, at 146; R. Pound, 'The Scope and Purpose of Sociological
Jurisprudence', 25 Harvard Law Rev. 140, 144 (1912); Hall, op.cit.
24; Habermas, op.cit. 86; and Friedman, op.cit. 288-9.

93   Sawer, op.cit. 29. Schwartz and Miller, op.cit. 978, argue for
the criteria of specialised counsel, non-kin mediation and police.

94   Seidman, 'Law and Modernization in the Developing World', 1:77.
See Galanter, op.cit. 153. Contrast Galanter's criteria with those
of J. Nyhart ('The Role of Law in Economic Development', 1962 Sudan
Law J. Rev. 394, at 400-2): predictability - "men come to guide
their own actions in relation to others and to have confidence in
their assessment of how others will act"; procedural capability -
increased efficiency and decreasing arbitrariness; the habit forming
force of education; the definition and clarification of the
status of people and property; the maintenance of balance and a sense
of proportion in society's goals; and the accommodation of change
that permits a return to a state of equilibrium. The last two
criteria assume a high level of social consensus which is typically
lacking in Third World states. Nyhart notes, however, that modern-
ization criteria necessarily embody the value judgements of the
theorist rather than the ones inherent in the law itself.

95   Unger, op.cit. 135.

96   See: A. Sereni, 'The Code and Case Law', in Schwartz, op.cit. 55, at
73-4; Bryde, op.cit. 96; Ghai, 'Notes. . .' 35-6; Friedman, op.cit.
208; and Nyhart, op.cit. 403-4.

Two of the celebrated paradoxes of the law are: law must be
general and abstract, but justice requires attention to the
individual case and its concrete detail; law must be stable
and yet it cannot stand still. (Sawer, op.cit. 141).

Meir Heth (The Legal Framework of Economic Activity in Israel 251, 1967)
concludes that, in Israel, the "neglect of comprehensive planning and
the confusion of guiding principles have led to the uneven development
of the legal framework of economic activity". As Chaps. 3 and 7
indicate, these criticisms can be applied to Ethiopia also.

97   R. Sedler, 'The Development of Legal Systems: The Ethiopian Exper-
     ience', 53 Iowa Law Rev. 562, at 564 (1967).

98   R. Baldwin, Social Justice 3 (1966). See P. Harrison, 'Gunnar
     Myrdal: Relying on Human Goodness', Times 19 July 1976, 5.

99   Barzun and Graff, op.cit. 217–18. To cite but one example, consider
     Black's argument (op.cit. 54):

         A legal problem is a problem of value and is forever beyond
         the reach of sociology. Jurisdictional conflict arises only
         when the sociologist makes policy recommendations in the name
         of science: In matters of legal policy, the lawyer must rely
         on his own wits.

     Economists and political scientists (and politicians) might be heard
     to argue that policy questions belong to them. Note that if law is
     not viewed as a science, recommendations made in the name of another
     "science" are perceived as a threat to law's competence – which cannot
     be too great if it must rely merely on its "own wits". Characterising
     a problem as one of "jurisdictional conflict" tends to predetermine
     the result, for it is just this sort of problem that the lawyers are
     usually called upon to resolve.

100 See Id. 143 and Friedman, op.cit. vii.

101 See: R. Bribanti, 'The Role of Law in Political Development', in
     R. Wilson, ed., International and Comparative Law of the Commonwealth
     6, at 6 (1968); A. Gegenav, in 'Georgian Conference on Law', in
     Lloyd, op.cit. 667, at 667; Lenski, op.cit. 23; T. Cowan, 'What Law
     can do for Social Science', in Evan, op.cit. 91, at 108–9; Seidman,
     'Law and Modernization in the Developing World' 1:122; and Friedman,
     op.cit. 10, 43. According to Myrdal (Asian Drama 15, 1977), the
     problem of objectivity cannot be solved by attempting to eradicate
     valuations, as every study of social problems is necessarily a study of
     valuations. Research becomes objective – in the only sense in which
     that term can be used – when value premises are expressly incor-
     porated.

102 T. Arnold, 'The Symbols of Government' in M. and F. Cohen, eds.,
     Readings in Jurisprudence and Legal Philosophy 836, at 837
     (1951). See Russell, op.cit. 190–1.

103 See: G. Sartori, Democratic Theory 306 (1962); H. Berman and R.
     Gendarme, quoted in Seidman, 'Law and Modernization in the Developing
     World', 1:60; and Hall, op.cit. 117–18.

104 See: David Riesman, quoted by Schur, op.cit. 6; Sawer, op.cit. 15,
     126; Cairns, op.cit. 126–7; and Unger, quoted by P. Brietzke, ed.,
     A Source-Book of Ethiopian Law and Development 89–90 (1975).

Schwartz and Skolnick, ('Introduction' 3, at 3) add:

> Sociology is committed to the understanding of the social
> order; law provides the framework of formal norms within which
> complex societies function. Sociology concerns itself with
> the processes of social control and social change; legal
> institutions comprise a major agency through which society
> seeks authoritatively to exercise its control function and to
> limit or direct social change. Sociology studies the forms
> of organization through which men seek to accomplish their
> purposes; legal organization provides a fascinating mixture of
> purposive action and unintended consequence.

Unger, op.cit. 250 adds: "A society's law constitutes the chief
bond between its culture and its organization; it is the external
manifestation of the embeddedness of the former in the latter".

105 The author was advised to delete this footnote because of the threat
of a libel action. For those who are familiar with writings about
Ethiopia, the references will be immediately apparent. If the statement
in the text cannot be accepted on this basis, it should be disregarded.

106 See e.g., Thomson, Ethiopia: The Country that Cut off its Head (1975).

107 While Marx equated law and ideology, Western jurisprudence finds
that the two are in conflict, as a result of the arbitrariness of
ideology and its disregard for the procedures, pluralism and consensus
formation alleged to be the essence of law. We describe these
attitudes as a part of the ideology of legalism, and an ideologist
is bound to view legalism – but not necessarily law itself – as a
constraint on necessary action. See: Ghai, 'Notes. . .', 32;
Chap. 4; and text following Note 112, infra. Related ideologies of
law, such as the Rule of Law, are discussed in Chap. 5.

108 See: D. Riesman, 'Law and Sociology', in Evan, op.cit. 12, at
16-17; Seidman, 'Law and Stagnation in Africa', 43-4; D. Trubeck,
'Max Weber on Law and Capitalism', 1972 Wisconsin Law Rev. 720,
at 740; Farrar, op.cit. 149, 170; Mayhew, op.cit. 209; Freeman, op.cit.
116-7; and J. Shklar, 'Legalism' , in Lloyd, op.cit. 33, at 33-4.
That legal education in the West perpetuates legalism is illustrated
by a UNESCO study (C. Eisenmann, The University Teaching of Social
Science – Law 10, 1973):

> The training of lawyers today. . . is in a state of crisis, as in-
> deed is the science of law itself. Many lawyers think that
> the remoteness of that science from the social, political and
> moral realities of law. . . , which had been denounced at the
> end of the nineteenth century, still exists, and declare that
> they will no longer accept it. The practicing profession
> demands purely technical knowledge, teaching methods divorce
> law from social reality, and theorists fear that an integration
> of law and social sciences could endanger the Rule of Law.

109 Bankowski and Mungham, op.cit. 33. See: N. Chomsky, cited in
Id. 36-7; Id., 39; A. Hunt, 'State and Class Struggle', Marxism Today
178, at 185 (June 1976); Shklar, op.cit. 34, 36; and Friedman, op.cit.
vii. The mystifying professionalism of Western lawyers has been
best described by W.H. Auden (quoted by Bankowski and Mungham, op.cit.
37):

Law is as I've told you before,
Law is as you know I suppose,
Law is but let me explain it once more,
Law is the law.

The cult of legal professionalism is widespread in socialist countries as well, with the exception of China and a few other countries. There are differences, however: in the Soviet Union, for example, there is a greater appreciation of social control through social relations based on group membership, and large areas of public life, including politics and policy-making processes, are viewed as within the realm of coercion and the preservation of common unity rather than reason and law. See Berman, *Justice in the U.S.S.R.* 268-70.

110 See: Seidman, 'Law and Stagnation in Africa', 45; R. Wasserstrom, quoted by H. Zinn, 'The Conspiracy of Law', in R. Wolff, ed., *The Rule of Law* 15, at 31 (1971); D. Lloyd, 'Meaning of Law' in Lloyd, *op.cit.* 39, at 39; Kahn-Freund, 'Introduction', 8-9; Freeman, *op.cit.* 108-9; Hayek, *op.cit.* 66; and Shklar, *op.cit.* 34, 36-7. Shklar argues that English judges and practitioners have "almost leant over backwards" to adapt to English "socialist legislation". This argument is only partly true: the appellation "socialist" is debatable, Bench and Bar have vitiated some important statutory provisions (*e.g.*, the Housing Act 1957, s. 32 and the Rent Acts generally) and Parliament often circumvents the traditional legal system by establishing non-judicial tribunals in which legal aid cannot be obtained.

For Austin and Kelsen, law is no more than the rules of the litigation game; they begin by postulating the nature of law and deducing conclusions instead of creating a definition of law as a rational generalisation in relation to the subject matter. See Seidman, *loc.cit.* 45 and Lloyd, *loc. cit.* 45.

111 See P. Merkl, *Modern Comparative Politics* 425 (1970) and Smart, *op.cit.* 167.

112. Sawer, *op.cit.* 15. Sawer's last point serves an effective criticism of Renner's views concerning property. (See Note 91, *supra*).

113 G. Keeton, personal communication.

114 Unger, *Law in Modern Society* 251. See: J. Finnis, 'Revolutions and Continuity of Law', in Simpson, *op.cit.* 44, at 66; Lloyd, 'Sociological Jurisprudence', 350; E. Hoebel, 'The Functions of Law', in Grossmans, *op.cit.* 13, at 16; 'Introduction to Part II', in Schwartz and Skolnick, *op.cit.* 113; and F. Davis *et al.*, *op.cit.* 142.

115 P. Self, *Administrative Theories and Politics* 210-13 (1972). See: W. Gellhorn, *Ombudsmen and Others* 423 (1966); Evan, *op.cit.* 7, 9; Fitzgerald, *op.cit.* 23; Kelsen, *op.cit.* 88; H. Shepherd and B. Sher, *Law in Society: An Introduction to Freedom of Contract* 2 (1960); and T. McCarthy, 'Introduction' in Habermas, *op.cit.* vii, at xi. Myrdal (quoted in Furtado, *op.cit.* 5n) approaches the issues discussed by Self from a different perspective. When economists advance their views of social imperatives in the name of their science, their

conclusions unmistakably imply the notion that economic analysis
is capable of yielding laws in the sense of norms and not merely
laws in the sense of demonstrable recurrences and regularities
of actual and possible events.
We would argue that this tendency gives rise to competition between
lawyers and economists for the power to create norms.

116 J. Robinson, op.cit. 122. See: J. Cohen and Sileshi Sisaye,
'Research Problems in Describing and Explaining Ethiopia's Socio-
economic Development' 2 (1976); Russell, op.cit. 645-6; Friedrich,
op.cit. 7, 172; McCarthy, op.cit. x; Selznick, op.cit. 18; Kuhn,
quoted in Lloyd, 'Introduction', 5; Apter, op.cit. 190; and Warshay,
op.cit. 157. Legal positivism, and other social science positivisms,
cannot achieve the precision found in the natural sciences, yet they
cannot escape the limitations inherent in scientific thought either.
They can only study phenomena rather than essences. For the positivist,
ideas require concrete empirical referents and concepts such as
justice, the rule of law and due process can only be studied to the
extent that they are grounded in concrete experience. Value judge-
ments supposedly have no cognitive meaning in science, which cannot
discover them in the empirical world. See Black, op.cit. 46-7.

117 See: Friedman, op.cit. 149. Keynes (quoted by, e.g., A. Ewing,
Industry in Africa xvii, 1968) argues that:
> The difficulty lies, not in new ideas, but in escaping from the
> old ones. . . . Madmen in authority, who hear voices in the
> air, are distilling their frenzy from some academic scribbler
> of a few years back. I am sure that the power of vested inter-
> ests is vastly exaggerated compared with the gradual encroach-
> ment of ideas.

Yash Ghai ('Notes. . .' 31) adds that ideologies operate at the level
of ideas which influence consciousness and, ultimately, behaviour.
By way of contrast, law is thought to operate more concretely in the
West, changing behaviour through the application of sanctions. Else-
where, Ghai notes numerous interrelations of law and ideology. See
Note 107, supra and the text following Note 112.

118 Hall, op.cit. 82-3. See: Selznick, op.cit. 19; Myrdal, in Lloyd,
op.cit. 17; and J. Robinson, op.cit. 123. "The legal system is at once
an embodiment of high ideals and a means by which men can deal with the
quite mundane and often messy conflicts and problems that arise in
everyday living". (Schur, op.cit. 202). "Legal rules, save the most
technical or procedural, are value-loaded precepts par excellence"
(Ocran, op.cit. 23). Lawyers only practice a trade while they are
settling disputes, but a "fuller professional development" occurs when
law is used as "an embodiment of values /albeit in a stratified
society/ rather than as sheer social technique". (Nonet and Carlin,
quoted in 'Introduction to Part III', Schwartz and Skolnick, op.cit.
263, at 263). Neil MacCormick (quoted by Stein and Shand, op.cit.
258) contends that
> principles express the underlying purposes of detailed rules
> and specific institutions, in the sense that they are seen as
> rationalising them in terms of consistent, coherent and desir-
> able goals. Thus legal principles are the meeting-point of rules
> and values.

Unlike scientists, lawyers cannot repeat experiments to verify their hypotheses, but the principles they create decide cases, while scientific 'cases' are part of the material from which a scientific principle is drawn. Legal principles change in response to changed moral and and policy considerations, as well as to changes in fact situations. Lawyers reason by analogy and choose from among competing analogies, while scientists cannot use analogies (Dias, Jurisprudence, 4th Ed. 208 1976). The process of legal reasoning is closer to the manner in which politicians, administrators and businessmen actually make decisions than are social science methodologies.

119 In Asian Drama (359, 1977) Myrdal argues that changes in per capita national income can only be a rough-and-ready indicator of more complex changes in the entire social system, and that emphasising this criterion results in an undue concentration on the more easily accessible and measurable economic conditions of underdevelopment.

120 See W. Harvey, 'Comment' in Arkhurst, op.cit. 147, at 149 and Myrdal, in Lloyd, op.cit. 18. Karl Popper (2 The Open Society and its Enemies 260-1, 1963) takes the position that
> all scientific descriptions of facts are highly selective . . . . It is not only impossible to avoid a selective point of view, but also wholly undesirable to attempt to do so; for if we could do so, we should get not a more "objective" description, but only a mere heap of entirely unconnected statements. But, of course, a point of view is inevitable; and the naive attempt to avoid it can only lead to self deception and to the uncritical appreciation of an unconscious point of view.

121 T. Cowan, op.cit. 103-4, 109. See Dias, Jurisprudence 208 (1976) and Friedman, op.cit. 216. "Legal thinking is sui generis. Its logic is instrumental and functional, and though precise, it is not mechanical. It is creative and purposive, but not haphazard". (Dias, Jurisprudence 4th Ed. 215 1976).

122. See T. Cowan, op.cit. 94, 96, 106-7, 109; Habermas, op.cit. 112-13, 119; Schur, op.cit., 202; d'Entreves, op.cit. 153, 160; J. Robinson, op.cit. 119; and R.Pound, 'Contemporary Juristic Theory', in Lloyd, op.cit. 369, at 372.

123 Myrdal, Asian Drama 15, 27, 364 (1977). Traditional values are defined as part of inherited cultures long identified with stagnating societies (Id., at 37).

124 Id., at 30-6. The best authority for the theoretical validity of these ideals is, of course, the creative use Myrdal makes of them.

125 Id., 36-7.

126 Id., 6, 27-8. See Harrison, op.cit.

127 Self, op.cit. 258.

128 P. Samuelson, Economics: An Introductory Analysis 5 (6th Ed. 1964).
Samuelson emphasises resource allocation, income level determination
and income distribution, but a fourth factor which concerns at least
some economists - organisation and control or the structure of
power - receives insufficient attention. See W. Samuels, 'Law and
Economics' 7 J. of Ec. Issues 535, at 536-7 (1973). We have therefore
incorporated this fourth factor in our analyses.

129 As used by Uphoff and Ilchman in 'The New Political Economy' (see at
1). According to A. Grunchy ('Law, Politics and Institutional
Economics', 7 J. of Economic Issues 623, and 626-7 (1973), all pol-
itical, economic and legal systems are decision-making processes
concerned with the allocation or distribution of scarce resources,
with the authority to enforce decisions through separate but closely-
related institutional systems. We argue that these systems are
separable for analytical purposes only.

130 Barth, quoted by Seidman, 'Law and Stagnation in Africa', 52.

131 Hurst, Law and Social Order in the United States 43, 105.

132 See Uphoff and Ilchman, 'The New Political Economy', 78, 80-3 and
The Political Economy of Change 53, and Tangri, op.cit. 430. Easton
(quoted by P. Merkl, Modern Comparative Politics 306, 1970) makes
the related argument that, as economics deals with scarce resource
allocations, so political science deals with the "authoritative
allocation of values" by means of governmental processes. We argue
that this approach seems to divide unduly an essentially unitary
process, merely because two academic disciplines approach the subject-
matter differently. We note, however, that law is the primary
means used for the "authoritative allocation of values".

133 See Habermas, op.cit. 5,8.

134 See: Uphoff and Ilchman, 'The New Political Economy', 88-92 and
The Political Economy of Change 31, 97 (1969); B. Gross, The Managing
of Organizations 35 (1964); S. Eisenstadt, 'Social Change and Devel-
opment', in Id., ed., Readings in Social Evolution and Development
3, at 4 (1970); Hurst, Law and Social Order in the United States 119-20;
Habermas, op.cit. 36; S. Huntington, The Soldier and the State 86
(1957); Furtado, op.cit. 84; Finer, op.cit. 12-3;and G. Lenski, Power
and Privilege 45 (1966). Lenski terms "privilege" what we have char-
acterised as 'property'.

135 Id. 315.

136 Hayek, op.cit. 4.

137 See C. Ganang and R. Pearce, Law and Society 76 (1965).
Samuels (op.cit. 537) argues that law's fundamental impact on the
economy lies in the division of power between public and private spheres
and within each sphere. Robert Lee Hale (Freedom Through Law 132 ,1952)
maintains that "we rely on coercive bargaining power, not only for
distributing the output of our collective processes of production but
also for bringing that production into existence". Clive Thomas

(<u>op.cit.</u> 309) adds that the most fundamental contradictions which occur during the transition from underdevelopment to development are between state and social forms of property and between juridical and formal controls over the means of production. As a result, the nationalisation of property leaves social relations and the forms of appropriation and exploitation unchanged. These arguments are similar to Renner's: <u>see</u> Note 91, <u>supra.</u>

138 <u>See</u> A. Allott, 'African Law in the 1980's', in Arkhurst, <u>op.cit.</u> 163, at 164 and Ghai and McAuslan, <u>op.cit.</u> 516.

139 Hurst, <u>op.cit.</u> 17-18.

140 <u>See</u> A. Hirschman, 'Obstacles to Development', in <u>The Political Economy of Development</u> 55, at 59-61, discussing Leon Festinger's <u>Theory of Cognitive Dissonance</u>. Hirschman would therefore reject Hagen's assertion that an integrated social science theory is necessarily a theory of personality formation in childhood - the best framework for human behaviour studies. (See E. Hagen, <u>On the Theory of Social Change</u> 5 1962). Myrdal (<u>Asian Drama</u> 360 (1977) defines policies as induced changes in causal circles of underdevelopment which can be coordinated through development planning (<u>see</u> text, <u>supra</u>, however). Policies are easily changed while attitudes and institutions are stubborn and especially resistant to change through indirect means.

141 Shakespeare, <u>Merchant of Venice</u>, I, ii, 13.

142 <u>See</u> Freeman, <u>op.cit.</u> 7 and W. Evan, 'Law as an Instrument of Social Change', in Grossmans, <u>op.cit.</u> 43, at 44.

143 See Uphoff and Ilchman, 'The Political Economy of Land Reform', in <u>The Political Economy of Development</u> 279, at 281

144 Quoted by Meier, <u>Leading Issues in Economic Development</u> 744 (1970).

145 G. Myrdal, 1 <u>Asian Drama</u> 66-7 (1968).

146 Baro Tumsa, 'Decentralization and Nation-building in Ethiopia' 8 (1973). <u>See</u>: Lenski, <u>op.cit.</u> 18-19; Chap. 1, <u>supra.</u>; and, <u>e.g.</u>, the (Ethiopian) Planning Commission Order, No. 63 of 1970, <u>Neg. Gaz.</u> 29/19, discussed in Chap. 3.

147 See: S. Eisenstadt, <u>Modernization, Protest and Change</u> 39, 52 (1966); B. Nwabueze, <u>Constitutionalism in Emergent States</u> 168 (1973); M. Esman, 'The Politics of Development Administration', in J. Montgomery and W. Siffen, eds., <u>Approaches to Development</u> 59, at 70 (1966); M. Smith, cited in H. and L. Kuper, 'Introduction', in <u>African Law</u> 5, at 18 (1965); C. Anderson <u>et al.</u>, <u>Issues of Political Development</u> 28, 75 (1967); Cohen and Sileshi, <u>op.cit.</u> 2, 10; and Klinghoffer, <u>op.cit.</u> 14.

148 G. Keeton, personal communication. See: R. Jackson and M. Stein, <u>Issues in Comparative Politics</u> 206 (1971); R. Tucker, <u>The Marxian Revolutionary Idea</u> 85 (1970); G. Heeger, <u>The Politics of Underdevelopment</u> 134 (1974); Jaguribe, <u>op.cit.</u> 49; Lenski, <u>op.cit.</u> 57; Farrar, <u>op.cit.</u> 10; Dahrendorf, <u>op.cit.</u> 290; Friedman, <u>op.cit.</u> 112; S. Finer, <u>Comparative Government</u> 29-30 (1970); and Uphoff and Ilchman, <u>The Political</u>

Economy of Change, 73. Marx believed that the exercise of power could never be rightful, and that the dictatorship of the proletariat was a necessary evil (Tucker, op.cit. 81). This view posed grave difficulties when socialist states were created, and Marx's anarchistic position was discarded by practical politicians. The locus of legitimacy in a socialist state (analogous to the Western concept of sovereignty) is typically a vanguard party, which fortifies the leadership. See G. Kennedy, The Military and the Third World 19-22 (1974).

149 See: Id. 6; B. Moore, Jr. Reflections on the Causes . . . 52-3 (1972); McCarthy , op.cit. xiv-xvi (on Habermas's views); Uphoff and Ilchman, The Political Economy of Change 112; Friedman, op.cit. 213-14; Freeman, op.cit. 54; J.Kautsky, Communism and the Politics of Development 181-2 (1968); and Nwabueze, op.cit. 25. G. Kennedy,op.cit. 55,adds:

> The legitimacy crisis in the developing world rests on the inability of any of the competing elites to sustain a political leadership for a long enough time for its concepts of public good to be supported by other elites and by the masses. The conflict situation is a permanent feature of the political system; it is pluralistic, involving conflicts within the governing elite. . ., and between the traditional and modern-ising, between village and city, peasant and worker, landlords and tenants, collective and individual, Europeans and nationals, administrators and subjects and the rising and falling groups.

In pre-Revolutionary Ethiopia, competing elites were not allowed to achieve meaningful political leadership, and many of the conflicts Kennedy mentions are only now having a real impact on political events. Kennedy's description also characterises legitimation crises in the First and Second Worlds nicely.

150 Kelsen, quoted in J. Eekelar, 'Principles of Revolutionary Legality', in Simpson, op.cit. 22, at 27. See K. Boulding, 'The Legitimacy of Economics', in The Political Economy of Development 24, at 24.

151 Niklas Luhmann, quoted by Habermas, op.cit. 98.

152 See: Renner, cited in R. Dahrendorf, Class and Class Conflict in Industrial Society 291 (1959); M. Edelman, The Symbolic Uses of Politics 139 (1964); Zinn, op.cit. 17-18; and Friedman, op.cit. 56, 116, 118-9. See Chapters 1 and 5 on stratified social and legal systems and the Rule of Law respectively. Peter Self (op.cit. 251) adds:

> Modern life is highly organised /except in the Third World/ but commitment or loyalty to particular organisations is a very variable phenomenon depending upon such factors as social culture, career systems and (in public administration) political and professional allegiances. Organisations are frequently valued instrumentally rather than intrinsically, so that their survival or growth depends upon their capacity to serve the goals of their members and sponsors.

153 See: D. Apter, Political Change 116 (1973); F. Riggs, Administration in Developing Countries 127 (1964); Schur, op.cit. 59; V. Uchendu, 'Comment', in Arkhurst, op.cit. 118, at 122; Barkun, op.cit. 117;

Moore, Jr., <u>Social Origins</u> . . . 721; and Uphoff and Ilchman,
<u>The Political Economy of Change</u> 70. Edelman, <u>op.cit.</u> 114 adds:
> The employment of language to sanctify action is exactly
> what makes politics different from other methods of allocating
> values. . . . Force signals weakness in politics, as rape does
> in sex.

154 <u>See</u>: Lenski, <u>op.cit.</u> 51; Griffen, <u>op.cit.</u> 66; Uphoff and Ilchman,
<u>The Political Economy of Change</u> 136; and H. Bienen, <u>Violence and
Social Change</u> 72-3, 94 (1968). Bienen sees a "vicious cycle" in
which absolute power fosters isolation, leading to an insecurity which
results in suspicion and fear, breeding the violence that reduces the
flow of information to the regime, thereby increasing its isolation
(<u>Id.</u> at 98).

155 See W. Shack, <u>The Gurage</u> 163, 165 (1966) and Shepherd, <u>op.cit.</u> 4.
John Cohen ('Ethiopian Provincial Elites and the Process of Change',
11 J. Ethiopian Studs. 93, at 107, 1973) found that 42.9% of the Chilalo
Awraja elite believed that local government institutions had no
effect on daily life. 28.6% saw some effect and 20.5% believed the
effect to be great. If a similar survey were carried out among ordin-
ary farmers in areas where contact with central government institutions
is not so pronounced, the percentage of "no effect" would undoubtedly
increase radically.

156 <u>See</u>: J. LaPalombara, 'Penetration' in L. Binder et al., eds., <u>Crises
and Sequences in Political Development</u> 205, at 205 (1968); A. Diamant,
'Bureaucracy in Developmental Movement Regimes', in F. Riggs, ed.,
<u>Frontiers of Development Studies</u> 486, at 513; Wilber, <u>op.cit.</u> 23;
Schur, <u>op.cit.</u> 59; and Klinghoffer <u>op.cit.</u> 14. Binder ('Crises of
Political Development', in Binder <u>et al.</u>, <u>op.cit.</u> 1, at 62) argues that
penetration represents an equalisation of political obligations among
individuals rather than among collectivities. We would argue that
this Western assumption of the evolving individualisation of the
political process is accurate neither in the West nor in the Third
World.

157 L. Friedman, 'Legal Culture and Social Development', 4 Law and Society
Rev. 29, at 68-9 (1969); Merkl, <u>op.cit.</u> 254; and Lenski, <u>op.cit.</u> 53-4.

158 Allott, <u>op.cit.</u> 168. Some legal theorists attempt to account for
this fact by locating an ultimate sovereignty in the people, who
can then limit the exercise of power by withdrawing allegiance
(e.g., Hayek, <u>op.cit.</u> 93).

159 See: B. Barber, <u>Social Stratification</u> 235 (1957); M. Weiner,
'Political Participation and Political Development' in Weiner,
<u>op.cit.</u> 206, at 208; N Roberts, The Reform of Planning Law 108,
112-3 (1976); Moore, Jr., <u>Reflections.</u> . . 62-3; Nwabueze, <u>op.cit.</u> 139;
Self, <u>op.cit.</u> 287; Myrdal, <u>Asian Drama</u> 139-40 (1977); and Jaguribe,
<u>op.cit.</u> 51. C.H. Dodd (<u>Political Development</u> 25-61, 1972) reminds us
that political participation by individuals in the West does not mean
playing an equal part, as parties, trade unions and bureaucracies

dominate politics. Ralf Dahrendorf (The New Liberty 10-11) adds
that permanent participation by all in everything results in a total
immobility and that a balance must therefore be struck between part-
icipation and innovation by a minority. Keith Griffen (op.cit.
66-8) argues that the major aim of participation is to encourage
various groups to associate their own interests with the stability of
society as a whole. We part company with him, however, when he
suggests that this participation must be democratic: patterns of
social stratification make this an impractical goal in many Latin
American countries. Development must be the art of the possible,
and an insistence upon democracy may be an excessively optimistic
and Westernised viewpoint (see Chapter 4).

160 Edward Shils (Center and Periphery 423, 1975) argues that: "History
is the graveyard of rulers who would not listen to criticism – and
it is just as often the graveyard of their peoples, condemned by the
obstinacy of their rulers".

161 Mouzelis, op.cit. 56.

162 R. Seidman, 'Law and Development: A General Model', 6 Law and Soc.
Rev. 311, at 316 (1972).

PART II

1   See: G. Heeger, The Politics of Underdevelopment 112 (1974);
     Bretton, cited by R. Seidman, 'Law and Development in . . . Africa'
     1966 Wisconsin Law Rev. 999, at 1069 (1966); and B. Davidson, Black
     Star: A View of the Life and Times of Kwame Nkrumah, passim (1973).
     R. Dumont and M. Mozayer (Socialisms and Development 330, 1973)
     interpret Mao's dictum, "Politics is in Command", to mean that pro-
     ducers must achieve the reality of political power. We argue that
     it is also a statement of the practical philosophy of most politicians,
     recognising that political power is used to attempt to gain a wide
     variety of political aims.

2   See Davidson op.cit. 20-1, who states that Nkrumah did not begin
     teaching until 1926.

3   See, e.g.: W. Siffen, 'Introduction', in J. Montgomery and Siffen,
     eds., Approaches to Development 1, at 6 (1966) - economic development
     is "inherently instrumental" to the achievement of the aims of pol-
     iticians and "the political system"; R. Jackson and M. Stein, Issues
     in Comparative Politics 26 (1971) - many political scientists who
     adopt the consensus model see development as "a prescriptive policy
     process for achieving whatever may be the dominant goals of society";
     J. Coleman, 'The Resurrection of Political Economy', in N. Uphoff
     and W.Ilchman, eds., The Political Economy of Development 30, at
     37 (1972) - unless the accumulated bitterness is too great, political
     instability can be counteracted by extending opportunities for economic
     growth to discontented groups; and J. Robinson, Freedom and Necessity
     59 (1970) - governments are bound to be concerned with economic
     affairs, if only to establish a sound tax base.

4   See: Chap. 1, supra; R. First, The Barrel of a Gun, passim (1972);
     Heeger, op.cit.;   Dumont and Mozayer, Note 1, supra; and Gene
     Ellis (quoted by J. Cohen and Sileshi Sisaye, 'Research Problems in
     . . . Ethiopia's Socioeconomic Development' 37, 1976), discussing
     the activities of Zemecha students who were expected to, inter alia,
     help to implement the 1975 Ethiopian land reform:
              /In the south/ pressures for land reform had been building up
              long before the actual proclamation, and the influx of the
              Zemacha with their tales of the revolution had had the effect
              of further inflaming tenant imaginations. In these areas,
              students often obeyed Mao's injunction to 'fight first the
              political fight' and worked at organizing and /in some areas/
              arming the peasantry. Landlords' cattle were stolen, houses
              burnt, and parades arranged to show both landlord and peasant
              that power had indeed passed hands. In some areas / for example,
              Jimma and Wollamo Soddu/, students fought provincial admin-
              istrators and project officials, and conducted kangaroo courts.
              In other areas /for example, the Jijiga Plains, where many
              retired officers had received land in pension/, the reforms were
              stoutly /and violently/ resisted.
     Those who were opposed to the activities of zemecha students were, of
     course, fighting the political fight also, as are other traditional
     elites, intellectuals, labour leaders and bureaucrats.

5   See: Chaps. 1 and 2; B. Csikos-Nagy, *Socialist Economic Policy* 18
     (1973); J. LaPalombara, 'Alternative Strategies for Developing Admin-
     istrative Capabilities in Emerging Nations', in F. Riggs, ed., *Frontiers
     of Development Studies* 171, at 186 (1970); Heeger, op.cit. 1;
     Siffen, op.cit. 6; and Seidman, op.cit. Government is bound to play
     the dominant role in development activities when, as in Ethiopia under
     the Derg: a great range of ends and high levels of attainment are
     sought; a relative economic backwardness and poor resource and factor
     endowment is apparent; and a variety of institutional barriers
     perpetuate underdevelopment (Alexander Eckstein, cited by T. Ocran,
     'Law, African Development and Social Engineering', 3-4 Zambia Law
     Rev. 16, at 30, 1971-2). Ocran adds (Id.) that the type and extent of
     state involvement in development activities illustrate social conceptions
     of state power and of the role of law. M. Smith ('Institutional and
     Political Conditions of Pluralism', in L. Kuper and M. Smith, eds.,
     Pluralism in Africa 27, at 58-9, 1969) inverts Marx while arguing that
     economic inequalities /and underdevelopment7 presuppose and are
     based upon conditions of political and jural domination. In Chap. 1,
     we argued that the factors inhibiting Ethiopian development were
     primarily the outcome of long-term political processes, and that what
     was created politically can also be dismantled politically. We also
     argued in Chap. 2 that, while economists emphasise production and
     political scientists focus on distributive issues, these concepts are
     separable only analytically, lying as they both do at the nexus of
     structure and process. (See Uphoff and Ilchman, 'Development in the
     Perspective of Political Development', in Uphoff and Ilchman, op.cit.
     75, at 78).

6   These are the "priority research" topics listed by Cohen and Sileshi,
     op.cit. 42. They express the hope (Id.) that scarce research time
     will not be wasted on less important topics: whether Ethiopia was
     feudal prior to 1974; whether Haile Selassie was a modernizer blocked
     by traditional forces; the means by which the aristocracy exploited
     peasants; the rise of the centralised state and its dependence on
     traditional elites with a localised power base;the failure of a
     national bourgeoisie to emerge; the effects of delaying land
     reforms, particularly with regard to rural development projedts;
     the dichotomy of rural and urban development; and the reasons for a
     failure of economic growth and development prior to 1974. While we are
     in general agreement with Cohen and Sileshi, we have felt it necessary
     to deal with many of these topics briefly (see, e.g., Chap. 1) and
     with the latter topic in detail (see Chap. 1, supra and Chap. 5,
     infra.).

7   Societies cannot function without political organisations, which
     necessitate inequalities in the distribution of power. Organisations,
     in turn, create a functional requirement for leadership posts, and
     competitions for scarce resources take place within these organisational
     frames. To some extent, the scarcity of resources is due to dissipations
     resulting from these competitions and, instead of constituting a check
     on the abuse of power, competitions often produce the abuses, part-
     icularly during revolutions. One of the best ways of understanding the
     politics of a particular state is to examine political conflicts, the
     kinds of coalitions and bargaining that take place, the kinds of rewards,
     punishments, propaganda and persuasion used or threatened and the monopoly

over particular resources possessed by various groups. Where a
voice is raised, a decision is made: not to decide is a decision in
favour of the status quo. There is an immense gap between elites, who
can select from various modernities on the basis of international
information systems, and the ordinary people. See: Chap. 2; Mosca,
cited by G. Lenski, Power and Privilege 13 (1966); S. Finer, Comp-
arative Government 9 - 12 (1970); B. Moore, Jr., Reflections on the
Causes of Human Misery . . . 47, 64 (1972); J. Kautsky, 'An Essay on
the Politics of Development', in Id. ed., Political Change in Under-
developed Countries 3, at 5 (1962); K. Griffen, Underdevelopment in
Spanish America 68-70 (1969); and J. Nettl, 'Strategies in the Study
of Political Development', in C. Leys, ed., Politics and Change in
Developing Countries 13, at 24 (1969).

David Apter (Political Change 3, 74-5, 96-7 (1973)) adopts an inter-
esting definition of politics as the interplay of the three dimensions
of political choice - normative, structural and behavioural - which
constitute the critical center of social life. The normative aspects
of government concern such abstract values as justice, equality and
legitimacy; the arrangements and instruments of decision-making,
particularly the distribution of political power, constitute the
structural dimension of politics; and the behavioural ingredient in
politics consists of socialisation processes, motivation and other
forces operating within political cultures. We shall examine all
three of these political dimensions. The connection between law and
a normative approach to politics - such as that of J. Habermas (Legit-
imation Crisis, 1976) - is obvious, and we argued in Chap. 2 that the
normative aspects of development receive too little attention among
theorists. As the formal structures of many Ethiopian institutions do
not match the actual functions performed, our analyses will tend to
focus on political functions. While the behavioural approach is
potentially of great value, it receives little emphasis in this study
because of the paucity of reliable studies of the values and motivations
of various Ethiopian groups, and because of the problematic effect of
law on behaviour (see Chap. 1).

8   J. Bruce, 'Ethiopia: Nationalization of Rural Lands Proclamation',
      Land Tenure Center Newsletter 1, at 3 (Jan. 1975). See J. Markakis,
      Ethiopia . . . 8 - 17 (1974). Uphoff and Ilchman (The Political
      Economy of Change 43 (1969)) discuss the political relations various
      sectors of the public have with government. They are: those falling
      within the regime's ideological bias /Bruce's "core constituency"/;
      the group essential to political stability (including elites which can
      be co-opted from time to time - see Chap. 1); those falling outside the
      regime's stability conditions (elites which could not be co-opted -
      e.g., Ethiopian students qua students, intellectuals, certain elements
      in organised labour); and sectors which are unmobilised (peasants and
      the urban poor - prior to the Revolution). The sector to which
      individuals and groups belong determines the order in which their
      demands will be met, and whether demands will even be recognised - an
      important qualification on Roscoe Pound's jurisprudence of interests
      (see Chap. 2).

9   D. Levine, 'Amhara Culture and Ethiopian Politics' (n.d.); V. Uchendu,
      'Comment', in F. Arkhurst, ed., Africa in the Seventies and Eighties
      118, at 124 (1970); and C. Clapham, Haile Selassie's Government 33

(1969), who adds that such political development as occurred in Ethiopia was "two steps forward, one step back" (Id.).

10 See: E. Lefever, Spear and Sceptor 8 (1970) - a study of the role of the military in Ghana, the Congo (Zaire) and Ethiopia; C. Anderson, et al., Issues of Political Development 145-6 (1967); A. Diamant, 'Political Development', in Montgomery and Siffen, op.cit. 15, at 35; and Nettl, op.cit. 27.

11 Galbraith, quoted by G. Myrdal, Asian Drama 164 (Abridged Ed., 1977). See: L. Pye, 'Communication, Institution Building, and the Reach of Authority', in D. Lerner and W. Schramm, eds., Communication and Change in Developing Countries 33, at 50 (1967); F. Arkhurst, 'Introduction', in Arkhurst, op.cit. 3, at 3; and Heeger, op.cit. 1. The political preoccupation with order is, of course, not a new phenomenon. For example, Robert Bella (quoted in Lenski, op.cit. 295-6) argues that:
> When the Islamic ulema said, 'A hundred years of despotism are better than one day of anarchy', they were not just apologists for the ruling classes. /T/hey knew what days of anarchy are like in such societies.

Ethiopia has known both 'despotism' and anarchy during her long history, and the ways in which local communities have dealt with anarchy have interesting implications for anarchist political philosophies which are beyond the scope of this study. The inability of particular elites to control specific territories for long periods of time, and the lack of settled life generally, retarded development in Ethiopia (Addis Hiwet, Ethiopia: from Autocracy to Revolution 17, 19, 1975).

12 Seidman, op.cit. 1062.

13 See R. Dahrendorf, The New Liberty 26-7 (1975).

14 See: J. Paul and C. Clapham, 1 Ethiopian Constitutional Development 71-2 (1972); Levine, op.cit.; P. Schwab, Decision-Making in Ethiopia 49 (1972); S. Eisenstadt, Modernisation, Protest and Change 4 (1966); F. Heady, 'Bureaucracies in Developing Countries', in F. Riggs, ed., Frontiers of Development Studies 459, at 483 (1970); and C. Dodd, Political Development 21 (1972).

15 R. Hess ('Ethiopia', in G. Carter, ed., National Unity and Regionalism in Eight African States 441, at 504-5, 1966) terms traditional Ethiopian politics "overdeveloped", in the context of an astuteness in everyday situations, a personalism and the formation of factions. See, e.g., B. Van Arkadie, 'Planning, Plans and Planned Economies', in E. Morgan, ed., The Administration of Change 164, at 165 (1974):
> the societies we are concerned with . . . are underdeveloped in a material sense - in a social or political sense there is no reason to suggest that they are "underdeveloped" or "poor", except insofar as they are weak or dependent as a result of their material poverty.

There is some force to these submissions when they are applied to Ethiopia: traditional politics was extremely sophisticated and absorbed large amounts of scarce resources. We argued in previous

Chapters, however, that asymmetrical exchanges in small political markets were a primary cause of Ethiopian underdevelopment. Underdevelopment and political underdevelopment are thus closely related.

16   E.g., M. Esman, 'The Politics of Development Administration', in Montgomery and Siffen, op.cit. 59, at 112:

> The effectiveness of any regime depends on numerous specific environmental factors which vary enormously. Success under such diverse conditions cannot be correlated with any group of doctrinal variables or styles of action.

Siffen, op.cit. 1, takes a less extreme view: the relations between economic and political development are often obscure, to the actors as well as to analysts. Compared to economic development, political development is a diffuse and amorphous concept, with different time dimensions and means-ends relations. While taking Esman's point, we contend that development and political development prospects can be correlated through contemporary Ethiopian ideological predilections, policy choices and an analysis of development constraints. Siffen's assertion is perfectly valid; it also indicates the need to clear up these obscurities (in an Ethiopian context), for he notes that the values of leaders will prevail where they conflict with the requisities of economic development.

17   See, e.g.,L. Binder, 'Crises of Political Development', in Id., ed., Crises and Sequences in Political Development 1 (1971) and R. Bribanti, 'The Role of Law in Political Development', in R. Wilson, ed., International and Comparative Law of the Commonwealth 6, at 2 (1968):

> Political development is essentially a series of ultimate progressions (with periodic regressions and even oscillations) from ascription to personal achievement, from ambiguity to certainty in the use of public power, from alienation and withdrawal to enlightened participation in collective social life, from coarseness and coercion to refinement and sensitivity in public action, from contraction to expansion of free choice.

While there are a few useful elements in this definition, it is imbued with the assumptions underpinning the consensus model that we rejected as an accurate description of Ethiopian affairs in Chap. 1. The extent to which political development is reversible is a hotly debated topic: See A. Klinghoffer, 'Modernisation and Political Development in Africa', 11 J. Mod. Af. Studs. 1, at 3-5, 11-12 (1973) and R. Holt and J. Turner, The Political Basis of Economic Development 7 (1966),who discuss political development theories which postulate movement on a continuum between polar opposites (Gemeinschaft-Gesellschaft, status-contract, and folk-secular societies). See the criticisms of these theories in Chap. 2. Apter (op.cit. 170) adds: "Developmental policy is inevitably social engineering, the more so as it becomes improved and predictive. . .". Perhaps, but we have noted the distinct limitations on the usefulness of social engineering - as that concept is applied in the West - in Chap. 2.

18   See: Levine, op.cit.; Holt and Turner, op.cit.; R. Tucker, The Marxian Revolutionary Idea 62 (1970); and M. Halpern, quoted by Eisenstadt, op.cit. 41: "the revolution of modernisation involves. . . the transformation

of all systems by which man organises his society. . . ." This is the
first revolution to require stability: "an enduring capacity to
generate and absorb persistent transformation." Eisenstadt assumes
the ubiquity of <u>political</u> change im a reconsideration of this topic
('Social Change and Development', in <u>Id</u>., ed., <u>Readings in Social
Evolution and Development</u> 3, at 21, 1970): the central problem of
modernisation is sustained growth and the "ability to deal with con-
tinuous changes of political demands is the crucial test of such sus-
tained growth." Governments must therefore identify social forces or
conditions which facilitate or impede growth and which create an
institutional structure capable of absorbing change. Heeger (<u>op.cit.</u>
3-5) notes that political development is concerned less with initiating
change (which is viewed as inevitable) than with managing it. As a
result, he argues, political theory does not explain stagnation or the
fact that change is

> sporadic, erratic and unpredictable in its consequences. Fixity
> and resistence to change seem as ubiquitous as change itself.

(<u>See</u> the arguments of Dahrendorf, and Cohen and Hutton, in Chap. 1,
Sec. III.)

Conditions in Ethiopia are not very favourable to political develop-
ment. For example, Uphoff and Ilchman (<u>The Political Economy of
Change</u> 213) suggest that:

> Political development may be facilitated where the population
> speaks a common language (Tanzania as opposed to Uganda), or is
> ethnically homogeneous (Tunisia as opposed to Morocco), or
> lives contiguously (Cambodia as opposed to Indonesia) or is
> used to participating in some form of local government (India
> as opposed to Iran).

Once her rugged typography is taken into account, Ethiopia possesses
none of these advantages.

19   Apter, quoted in <u>Id</u>., 25.

20   <u>See</u>: <u>Id</u>. 33; R. Seidman, 'Administrative Law and Legitimacy in
Anglophonic Africa', 5 Law and Soc. Rev. 161, at 163 (1970); Levine,
<u>op.cit.</u>; Klinghoffer, <u>op.cit.</u> 15; Habermas, <u>op.cit.</u> 49; Myrdal, <u>op.
cit.</u> 150, 358; and W. Friedman, <u>The State and the Rule of Law in a
Mixed Economy</u> 3 (1971). While many of the political and adminis-
trative decisions taken during Haile Selassie's reign were irrational
from the standpoint of political and economic development, they often
served to maintain the power of the Emperor and his core constit-
uency; they thus represented a more or less rational pursuit of pol-
itical self-interest.

21   P. Merkl, Modern Comparative Politics 429 (1970); A. Honore, 'Groups,
Laws and Obedience', in A. Simpson, ed. Oxford Essays in Jurisprud-
ence 2d Series 1, at 2 (1973); H. Cairns, Law and the Social Sciences
220-1 (1969); and W. Harvey, 'Comment', in Arkhurst, op.cit. 147,
at 151. See R. Wolff, 'Introduction', in Id., ed., The Rule of Law
7, at 8 (1971). W.J. Samuels ('Law and Economics: An Introduction',
7 J. Economic Issues 535, at 538, 1973) adds:

> The legal process of government is not a neutral black box but
> a system of control of some by others; all legal systems dis-
> criminate between social groups and are used for that end; there

is no sharp separation between private and state action; funda-
mental state action governs the relative power of economic
parties and is therefore an object of use if not also of cap-
ture.

22   See: R. Dahrendorf, Class and Class Conflict in Industrial Society 290
     (1959); J.W. Hurst, Law and Social Order in the United States 25 (1977);
     J. Lee, African Armies and Civil Order 88 (1969); Finer, op.cit. 24-5;
     and Chap. 5, infra.

23   T. Hartley and J. Griffith, Government and Law 11 (1975). See Finer,
     op.cit. 8-10.

24   K. Boyle, et al., Law and State: The Case of Northern Ireland 1 and
     passim (1975).

25   See P. Stein and J. Shand, Legal Values in Western Society 24 (1974).
     This perspective is more realistic than the one commonly offered,
     of "the province of law" as a stable political and legal framework
     (K. Bentsi-Enchill, 'African Law: Development and Reform', in Arkhurst,
     op.cit. 130, at 130).

26   Finer, op.cit. xi.

27   J. Lee, op.cit. 88. See R. Schlesinger, 'Justice in Russia', 60
     Yale Law J. 976, at 979 (1951).

28   See Syoum Gerbregziabher, 'The Structure and Function of . . . Ethiopian
     Public Administration' 13 (1960) and Chaps. 3 and 5, infra.

29   In, e.g., Holt and Turner, op.cit. 8-9. No theory of political devel-
     opment is perfect, and certain adaptations have been made in an attempt
     to remove the Western bias of Almond's theory. The main criticism
     of his theory is that it produces anomalous results when applied to
     'totalitarian' states. Nevertheless, we feel that the degree of
     specialisation and autonomy is understated for so-called totalitarian states
     and overstated for democratic states by Almond's critics. See, e.g.:
     Id. 13-5; Levine, op.cit.; R. Seidman, 'Constitutions in . . . Africa',
     1969 Wisconsin Law Rev. 83, at 84; H. Scholler, 'Ethiopian Constit-
     utional Development', 25 Jahrbuch. . .' 499, at 524 (1976); and H.
     Bienen, Violence and Social Change XIV (1968). M. Edelman, The Sym-
     bolic Uses of Politics 15 (1964) adds:
          The permanent legal and political institutions reassure people
          and make of them a supporting bulwark, even while they respond
          to particular developments with fear or hope.
     This is, of course, not the case in Ethiopia.

30   R. Seidman, 'Law and Development: A General Model', 6 Law and Society
     Rev. 311 (1972). See Uphoff and Ilchman, The Political Economy of
     Change 210-11. Analysing American legal systems, Samuels (op.cit.
     536) argues for certain "interdependence propositions":
          the working rules of law govern the distribution of power, and
          the distribution and exercise of power govern the development of
          the working rules; the power structure is a function of law and

the use of law is a function of the power structure; and, inter
alia, both income and wealth distribution are a function of law
and law is a function of income and wealth distribution.
If "governed" is replaced by "are closely related to", the statement
offers accurate insights into the interdependence of Ethiopian law and
politics.

31 See: R. Seidman, 'Law and Development', The Interface between Policy
and Implementation', 13 J. Mod. Af. Studs. 641, at 646 (1975);
A. Zolberg, 'The Structure of Political Conflict in the New States',
in Uphoff and Ilchman, The Political Economy of Development 155, at
155-6; J. Nettl, 'Strategies in the Study of Political Development',
in C. Leys, ed., Politics and Change in Developing Countries 13, at
27 (1969); and Hurst, op.cit. 25. Citing Kelsen, Seidman ('Law and
Economic Development. . .', at 997) notes that every state institution
is a manifestation of state power, which can be viewed institutionally
or legally. Merkl (op.cit. 330-1) adds that the legal-institutional
approach to politics is a highly effective response to the challenges
posed by constitution making, institution building and the preoccu-
pations of politicians in 18th and 20th Century Europe and America.
As political interests and problems in the Third World differ
significantly from the "challenges" Merkl mentions, an analysis which
gives roughly equal prominence to structural, functional and normative
aspects of politics is called for.

32 See: Coleman, op.cit. 33; Stein and Shand, op.cit. V, 1, 5, 29;
Hurst, op.cit. 47, 56; and J. Farrar, Introduction to Legal Method
165 (1977).

33 B. Moore,Jr., Reflections on the Causes of Human Misery. . . 52-3
(1972). See: C. Friedrich, The Philosophy of Law in Historical Per-
spective 192 (2d Ed. 1963); C. Thomas, Dependence and Transformation
107 (1974); Chaps. 5 and 8, infra.; B. deJouvenal, 'Sovereignty', in
e.g., D. Lloyd, ed., Introduction to Jurisprudence 377, at 377
(3d Ed. 1972). A.P. d'Entreves (Natural Law 182-3, 2d Ed. 1970)
argues that, unlike lawyers, political scientists neglect the differ-
ence between might (power we are forced to obey) and authority (power
we are obliged to acknowledge). The matter is not that simple, how-
ever. As Harold Berman ('Soviet Justice and Soviet Tyranny' 55 Columbia
Law Rev. 795, 1955) notes, a tyrant can be defeated easily if all
aspects of social life are dependent on his caprice. The use of
terror (political and ideological discipline) is often clothed in law
and justice (social and moral discipline). The only way to dis-
tinguish law from terror, we argue, is to examine the ways in which
particular laws are actually used. Edgar Friedenberg ('The Side
Effects of the Legal Process', in Wolff, op.cit. 37, at 45) points out
some of the complexities arising from analyses of the relationship
between laws and order:

> The assertion that law preserves order is logically similar to
> the statement that the medieval Church preserved and trans-
> mitted the culture of antiquity. It is both true and false,
> and altogether too simple. It preserved some of it, deliber-
> ately destroyed some, and allowed for more than could be either
> preserved or destroyed to perish /or to survive!7 because it could
> find no value or significance in it and was intent on other
> purposes.

We have tried to take account of this assertion by examining the particular kind of order which is being maintained and its relation to justice, and (inevitably) development.

34   Farrar, op.cit. 20.

35   See Stein and Shand, op.cit. 1.

CHAPTER 3

1. R. Greenfield, Ethiopia (1969); C. Clapham, Haile Selassie's Government (1969); J. Markakis, Ethiopia (1974) and P. Gilkes, The Dying Lion (1975).

2   J. Cohen and Sileshi Sisaye, 'Research on Socio-economic Development in Ethiopia' 19 (1977).

3   T. Farer, War Clouds on the Horn of Africa 6 (1976) argues that the reigns of Emperor and Tsar displayed the following "main features":
> an ethnic mosaic ruled by a highly centralised monarchy; the monarch's legitimacy resting on an ancient tradition and a national church; and the monarch himself surrounded by a horde of more-or-less dependent nobles and docile bureaucrats, supported by a large army, and committed only to that degree of modernization which would enhance his power and dignity.

In Haile Selassie's case the degree was not very great, since the twentieth-century brand of modernization could not be harnessed to the purposes of an ancient monarchical order.

4   Syoum Gebregziahber, 'The Structure and Functions of . . . Ethiopian Public Administration', 13-14 (1960). See also Farrer, op.cit. and J. Markakis and Asmelash Beyene, 'Representative Institutions in Ethiopia' 5 J. Mod. Af. Studs. 193, at 195 (1967). If despotism is defined as a marked absence of institutional restraints on the exercise of power (H. Lewis, A Galla Monarchy 4-5 1965), it can be seen that institutions such as the Church and the landed elite restrained Haile Selassie's despotic tendencies. Further, the Emperor's political control was less complete than the despotism found in other states. Consider, e.g., the arguments of Gaetano Mosca (The Ruling Class 142 (H. Kahn transl., 1939):
> when the class that monopolizes wealth and arms embodies its power in a centralized bureaucracy and an irresistible standing army, we get despotism in its worst form – namely, a barbarous and primitive system of government that has the instruments of an advanced civilization at its disposal, a yoke of iron which is applied by rough and reckless hands and which is very hard to break, since it has been steeled and tempered by practical artisans.

Ethiopian politics diverge from this pattern somewhat: the bureaucracy has never been fully centralized, groups opposed to central Government have fairly ready access to arms and, most importantly, the public has never fully acquired the habit of obedience that constitutes the foundation of any state's monopoly of power. Further, this habit has never been diffused widely in institutions like the army and the bureaucracy, and it is therefore difficult for Government to delegate vital functions without jeopardising its own effectiveness. See P. Arnoun, 'Revolution: A Redefinition', in R. Jackson and M. Stein, Issues in Comparative Politics 361, at 361 (1971).

5   P. Schwab, Decision-Making in Ethiopia 86 (1972); D. Levine, 'Class Consciousness and Class Solidarity in the New Ethiopian Elites', in

P. Lloyd, ed., The New Elites of Tropical Africa 312, at 314, 319
(1964); Syoum , op.cit. 9; Markakis and Asmelash, op.cit. 195-6;
Lewis, op.cit. 3-4; Markakis, op.cit. 210; Note 4, supra; and Chap.
2.

6 D. Levine, Wax and Gold 3 (1972) and 'Amhara Culture and Ethiopian
Politics' (n.d.); R. Hess, 'Ethiopia', in G. Carter, ed., National
Unity and Regionalism in Eight African States 441, at 504-5 (1966);
and Clapham, op.cit. 5, 72-3. See: R. Dahrendorf, Class and Class
Conflict in Industrial Society 311 (1959); M. Esman, 'The Politics of
Development Administration', in J. Montgomery and W. Siffen, eds.,
Approaches to Development 59, at 88 (1966); and A. Zolberg, 'The
Structure of Political Conflict in the New States of Africa',
in N. Uphoff and W. Ilchman, The Political Economy of Development 155,
at 162 (1972). Hess (op.cit.)adds that, given a political astuteness
in everyday situations, traditional Ethiopian politics could almost
be termed "overdeveloped". Clapham (op.cit. 7) finds that Ethiopian
politics provides "a setting in which neither Othello nor Iago seems
in the least implausible".

7 Markakis,op.cit. 208.

8 See: D. Levinson, 'Idea Systems in the Individual and in Society',
in G. Zollschon and W. Hirsh, eds., Explorations in Social Change 297,
at 299-302 (1964); Esman, op.cit.; and Dahrendorf, op.cit. 317.

9 D. Crummy, 'Ethiopia: New Approaches', 9 Canadian J. Af. Studs. 340,
at 341-2 (1975); Greenfield, op.cit. 39-40; Hess, op.cit. 505; and
Levine, Wax and Gold 153. See: C. Anderson, et al., Issues of Pol-
itical Development 20 (1967).

10 S. Messing, The Target of Health in Ethiopia 113 (1972); N. Singer,
'Modernization of Law in Ethiopia', 11 Howard Int. Law J. 73, at
75 (1970); Levine, 'Amhara Culture. . .'; and Crummy, op.cit.
See B. Moore, Jr., Social Origins of Dictatorship and Democracy 427
(1973), who adds that a state need not go through fixed historical
stages; each state carries political development a certain distance
within its own institutions (Id. - see Chap. 4).

11 I. Kaplan, et al., Area Handbook for Ethiopia 294 (2d Ed. 1971);
Markakis, op.cit. 8-9; and Gilkes, op.cit. 175. See: J. LaPalom-
bara, 'Values and Ideologies in the Administrative Evolution of Western
Constitutional States', in R. Bribanti, ed., Political and Admin-
istrative Development 166, at 176-8 (1969); C. Dodd, Political Devel-
opment 45 (1972); and Moore, op.cit. 193-200. Margery Perham (The
Government of Ethiopia xxvi, 1969)states that, from 1946 to 1960,
". . .Ethiopia /like Iran/ was maintaining a continuity not far removed
from immobility".

12 Id., lix; P. Koehn, 'Ethiopian Politics' 20 (2) Africa Today 7, at
9 (1975); Markakis and Asmelash, op.cit. 196; Clapham, op.cit.
186-8; Schwab, op.cit. 90, 151; Gilkes, op.cit. 176;Hess, op.cit.
505; and Markakis, op.cit. 329-31. See: S. Huntington, Political
Order in Changing Societies 166-8, 177 (1968); M. Janowitz, The Mil-
itary in the Political Development of New Nations 3 (1964); E. Shils,

'The Military in the Political Development of New Nations', in J. Johnson, ed., The Role of the Military in Underdeveloped Nations 7, at 61 (1962); and S. Finer, Comparative Government 441 (1970).

13 Structurally, constitutions can be viewed as regulating the aggregation, allocation and delegation of political power as a broad and vague governmental blueprint. See: P. Fitzgerald, ed., Salmond on Jurisprudence 83 (12th Ed., 1966); F. Hayek, 1 Law, Legislation and Morality 134 (1973); and L. Friedman, The Legal System 12, 309 (1975). Some constitutions do nothing more than this, and the institutionalisation of power may be symbolic only, lacking real substance. Most constitutions do, however, embody some version of Lincoln's government of, by and for the people, the rules of "fair play" which describe how to play the political game properly, and a catalog of citizens' rights. Normatively, in other words, rights which the state asserts for itself and against citizens are counter-balanced by the rights that the state permits to be exercised against itself. (see Chap. 8). From yet another viewpoint, a constitution is an autobiographical digest of the incumbent elite, a revealing choice of national symbols, historical references and ideological arguments. J. d'Entreves, Natural Law 131 (2d Ed., 1970); Sir William Anson, cited by G. Marshall, Constitutional Theory 32 (1971); and I Duchacek, Rights and Liberties in the World Today 30, 250 (1973). B. Nwabueze (Constitutionalism in Emerging States ix-x 1973) expresses a common view when he argues that:

> It seems clear that the whole concept of /Western/ constitutionalism is in danger in the new nations, as authoritarian regimes replace the carefully balanced constitutions set up at independence. The attractions and temptations of power have led to a widespread and systematic perversion of the constitutional system.

Nwabueze implicitly adopts a view of constitutional law as

> a set of rules according to which political conflict is carried on, political changes take place, and one government succeeds another in an orderly way. If the rules were abandoned, such changes could take place only by violent revolution. Labour law has similar objectives. (P. Stein and J. Shand, Legal Values in Western Society 31, 1974).

Constitutional (or labour) laws seldom perform these functions in most Third World states, and it is unlikely that rulers intend law to have these kinds of effects on political processes. We prefer a view - echoed in Marxian legal thought - of constitutions as weapons of political struggle; they are not the neutral umpires of politics throughout the Third World (Y. Ghai and J. McAuslan, Public Law and Political Change in Kenya 511, 1972). See Chap. 2.

14 See E. Shils, Center and Periphery 475 (1975). The suspension of the 1955 Constitution and the 1974 Draft Constitution are discussed in Chapter 5, infra.

15 Assefa Bequele and Eshetu Chole, A Profile of the Ethiopian Economy 16 (1969); J. Cohen and P. Koehn, 'Local Government in Ethiopia' 2 (1974); Haile Selassie, My Life and Ethiopia's Progress 17 (E. Ullendorff transl., 1976); H. Scholler, 'Ethiopian Constitutional Development', 25

Jahrbuch Des Offentlichen Rechts der Gegenwart 499, at 528-9 (1976);
Worku Tafara, 'Judicial Administration in Ethiopia' 4 (1972);
Clapham, op.cit. 36; Kaplan, et al., op.cit. 272; and Markakis and
Asmelash, op.cit. 201. See R. Dias, Jurisprudence 99 (4th Ed.,
1976). James Paul ('Problems of Public Law and Political Development',
in H. Marcus, ed. Proceedings of the First U.S. Conference on Ethiopian
Studies 323, at 323-4, 1975) notes that the 1931 Constitution was
never widely publicised or understood. The text was "prospective",
ambiguous, a "facade", and an "echo" rather than a "cause" of pol-
itical change. Ladislaus Farago (quoted by Greenfield, op.cit. 169)
remarked that the Emperor was

> the only speaker of this unique Parliament; he makes no replies
> and there are no debates. The members' duty is simply to listen
> to their ruler and take note.

16   Haile Selassie, quoted by Id., 170.

17   Haile Selassie, op.cit. 183.

18   Id., 181. According to the translator's (Ullendorff's) note, the
     English translations of rest and gult are Alan Hoben's.

19   Tekle, quoted by Id., 191

20   B.-O. Bryde, The Sociology of African Legal Development 137 (1976);
     Assefa and Eshetu, op.cit. 16; Clapham, op.cit. 39; Markakis and
     Asmelash, op.cit. 204-6. The Eritrean Constitution contained a Bill
     of Rights and adequate guarantees of democratic processes, and the 1955
     Constitution was so designed that it appeared to match these pro-
     visions. Despite the Federation of Ethiopia and Eritrea in 1952,
     Art. 1 of the Revised Constitution (P. 149 of 1955, Neg. Gaz. 15/2,
     1 Consol. L. Eth. 1) provides that the

> . . . Empire. . . comprises all the territories. . . under the
> sovereignty of the Ethiopian Crown. Its sovereignty and ter-
> ritory are indivisible. Its territories and the sovereign
> rights therein are inalienable.

Art. 26 adds:

> The Sovereignty of the Empire is vested in the Emperor and the
> supreme authority over all the affairs of the Empire is exer-
> cised by Him. . ., in the manner provided for in the present
> Constitution.

Although this Constitution impressed few political scientists, many
Western lawyers became excessively enthusiastic; see, e.g., K. Redden,
The Legal System of Ethiopia 201 (1968):

> The transition from an absolute to a Constitutional Monarchy in
> Ethiopia has been smooth and enlightened. /More/ powers of
> government are constantly being transferred. . . to the people.
> . . . In terms of political stability and growth of democratic
> institutions, Ethiopia could thus well be held out as a model
> for all Africa, if not the entire world (emphasis supplied).

In light of Ethiopia's atypical political history and institutions,
its monarchical model is of dubious relevance to the Third World.
While Redden treats constitutional monarchy as an accomplished fact, our

analysis of the conflict between traditional and Western jural postulates (infra) shows that this was simply not the case. It is more difficult to criticise the perspective adopted by a much more careful scholar, James Paul (op.cit. 327-8):

> The Revised Constitution . . . is a complex law, and, despite the tendency of political commentators to misread or disparage, it defies easy generalization and requires some modicum of learning and professionalism for honest interpretation, at least in the legal sense.
>
> All of the prerogatives of the Emperor remained, but the obligation to exercise each within the framework of law, notably the Constitution, was quite explicit; the monarchy was now subordinated to law. . . .

We suspect that Prof. Paul - a commited scholar - inclined towards optimistic interpretations of the Constitution, in the hope that his students would do likewise (and many of them did). While it is true that Imperial power was often - but not always - exercised within a legal framework, it does not necessarily follow that the Emperor was subordinated to law in any meaningful sense. As we shall see, the Constitution continued to permit the unbridled exercise of the traditional prerogatives that were, however, circumscribed by traditional laws to some extent. We agree with Markakis (op.cit. 277-86), a political scientist, that the Constitution was little more than a statement of the facts of Ethiopian political life and that little increase in political participation occurred under it.

21   J. Paul and C. Clapham, 1 Ethiopian Constitutional Development 427 (1972); Scholler, op.cit. 542; Markakis and Asmelash, op.cit. 206; and Paul, op.cit. 328. See: E. Wade and G. Phillips, Constitutional Law 1-2 (7th Ed., 1966); J. Triska, Constitutions of the Communist Party-States xl (1968); and Duchacek, op.cit. 25-8, 47.

22   Clapham, op.cit. 181. See Marshall, op.cit. 1-2.

23   See D. Lloyd, Introduction to Jurisprudence 3 (3d Ed., 1972) and E.A. Hoebel, 'The Functions of Law', in e.g., J. and M. Grossman, eds., Law and Change in Modern America 13, at 14 (1971):

> Purposive definition of personal relations is the primary law job. The law derives its working principles (jural postulates) from the postulates previously developed in the non-legal spheres of life. /The/ law specifically and explicitly defines relations. It sets the expectancies. . . .

One source of the weakness of Western jural postulates in Ethiopia is the fact that they had not been "previously developed in the non-legal spheres of /Ethiopian/ life" (See Chap. 7).

24   Mahatma Selassie, in Zikre Nager, translated and quoted by Worku, op.cit. 3; Scholler, op.cit. 516, 520; Tekle, quoted in the text accompanying Note 19, supra; and Claude Sumner 1 Ethiopian Philosophy passim (1974). Much of Ethiopian jurisprudence can be found in Vols. 2 and 3 of Prof. Sumner's monumental study. Unfortunately, these volumes are not yet published, but I was privileged to read portions of the MS. See: C. Friedrich, The Philosophy of Law in Historical Perspective 37, 42-3, 47-8 (2d Ed., 1963); J. Bodin, 'Six Books of the Republic', in

Lloyd, op.cit. 177, at 177; and B. Chapman, Police State 12-13 (1970). Markakis (op.cit. 207) uses Anglo-American terminology to describe a principle of Ethiopian public law: "No concept of ultra vires applies to the King". On the Ser'ata Mangest and the Fetha Negast, see Chap. 1, supra.

25 C. Rosen, 'The Governor-General of Tigre Province', in Marcus, op.cit. 171, at 173; Marcus, The Life and Times of Menelik II. . . 277 (1975); Syoum, op.cit. 42; Worku, op.cit. 3; and Scholler, op.cit. 516, 518, 522. See Friedrich, op.cit. 47.

26 S. Diamond, 'The Rule of Law Versus the Custom of Order', in R.P. Wolff, ed., The Rule of Law 115, at 129, 132-3 (1971); Bryde, op.cit. 23; and Nwabueze, op.cit. 139. In civilian jurisdictions, the proprietary theory of the state was based on the "rediscovery" of a mythical lex regia, in which the prince's private property in the imperium was derived from ingenious interpretations of Roman property law. This tendency was less marked in England, as the king's personal and political functions were treated as distinct at a fairly early stage. (Chapman, op.cit. 14 and Marshall, op.cit. 17).

27 1955 Constitution, Arts. 27-30, 31, 33, 35, and 92. Subject to Art. 26, the only restraint on these powers was that the advice and consent of Parliament was required for a declaration of war (but not for declarations of states of emergency). See: the definition of Ethiopian sovereignty in Art. 1, Note 20, supra; Paul and Clapham, op.cit. 440; and F. Riggs, Administration in Developing Countries 197 (1964).

28 Central Personnel Agency Order, No. 23 of 1961, Neg. Gaz. 21/3, 8 Consol. L. Eth. 2.

29 Scholler, op.cit. 548, 555. Analogous observations have been made with regard to "non-European legal systems" by Rudolf Schlesinger, Comparative Law 479 (1959). See: Lewis, op.cit. 7; Markakis and Asmelash, op.cit. 198; and Constitution, Art. 36:

>   The Emperor, as Sovereign, has the duty to take all measures that may be necessary to ensure at all times, the defense and integrity of the Empire; the safety and welfare of its inhabitants, including their enjoyment of the human rights and interests abroad. Subject to the other provisions of this Constitution, He has all the rights and powers necessary for the accomplishment of the ends set out in the present Article.

Arguably, no doctrine of implied powers can be read into the Constitution, for the residue of power is expressly conferred on the Emperor. The most sensible interpretation of this proviso — the interpretation adopted de facto in Ethiopia — is that the Emperor was unfettered in his choice of means to achieve a constitutional end. Art. 62, for example, permits suits to be brought against Government instrumentalities (a right that is restricted by proclamations which are thus arguably unconstitutional), yet a suit cannot be brought against the Emperor.

30 Although the Ethiopian Church was "founded in the fifth century on the doctrines of St. Mark", strong Hebraic, archaic Semitic and pagan

was created in 1967 under Order (O.) 48 of 1967, Neg. Gaz. 26/9,
31 Consol. L. Eth. 3 (as amended slightly by O. 83 of 1973, Neg.
Gaz. 32/11, 31 Consol. L. Eth. supp. 1). The impact of these laws on
Church administration was minimal, and that was undoubtedly their
intended effect. An attempt was, however, made to replicate state
administration: specialised departments were set up in a rudimentary
fashion and bishops were appointed for each province. The Church failed
to spread education or evangelism effectively, or, from 1942 onwards,
to exercise its spiritual and temporal powers aggressively. The
latter may have been some sort of quid pro quo for Haile Selassie's
refusal to punish many churchmen who had collaborated with the Ital-
ians during the 1930s. (J. Spencer, 'Haile Selassie. . .', 18 Orbis
1129, at 1136 (1975); Shenk, op.cit. 227-34; Clapham, op.cit. 83-4;
Markakis, op.cit. 36; Perham, op.cit. 131; Gilkes, op.cit. 18, 54; and
Syoum, op.cit. 37).

31 Perham, op.cit. 29; Schwab, op.cit. 21; Gilkes, op.cit. 54-61;
and Shenk, op.cit. 361. See: B. Russell, A History of Western Phil-
osophy 16, 389 (New Ed. 1961); E. Johnson, An Introduction to the
Soviet Legal System 12 (1969); and Note 30, supra.

32 Farer, op.cit. 21; Kaplan, et al., op.cit. 229, 244; and Shenk,
op.cit., 333n. See Lenski, op.cit. 67 and Note 30, supra.

33 Quoted by Perham, op.cit. 102. See G. Myrdal, Asian Drama 42
(Abridged Ed., 1977).

34 See D.Mathew, Ethiopia 16 (1947) and Mosca,op.cit. 70.

35 1955 Constitution, Arts. 66-74; Clapham, op.cit. 20, 22, 45, 126-9,
147; Spencer, op.cit. 1142; and Syoum, op.cit. 70. See Paul and Clap-
ham, op.cit. 393-4, 400. Art. 74 was too vague to do justice to the
problem of ministerial corruption. During the speech promulgating the
Constitution, Haile Selassie (quoted by Id., 390) re-stated Art. 68:
> We have. . . provided that Our Ministers shall be responsible
> to Us and to the State for the proper fulfilment of their
> highly responsible functions.
An Ethiopian State distinct from the Emperor was a remote abstraction;
it is clear that, for the Emperor, L'Etat,c'est Moi. In our brief
analysis, we have chosen to omit O. 44 of 1966, Neg. Gaz. 25/10,
which had a negligible impact. Art. 11 of that Order, for example,
reserves all"policy decisions" to the Emperor.

36 1955 Constitution, Arts. 33, 76-92; W. Ewing, 'Some Observations on
Ethiopian Legislative Development', in Marcus, ed., Proceedings. . .
337, at 338-42; Schwab, op.cit. 107, 110, 126; Kaplan, et al., op.cit.
298; Clapham, op.cit./144-6; Paul, op.cit. 330; and Markakis, op.cit.
279, 331. Art. 92 provided that the Emperor may issue decrees while
Parliament is not in session. A subsequent Parliament may nullify
such a decree by a majority vote in each House. Under Art. 33, how-
ever, there was no restriction on the number of times the Emperor could
dissolve Parliament. Gilkes, op.cit. 64 termed Parliament "a place
where the nobility could get together".

elements coexist with the Christian tenets of the parent Egyptian
Church. Ethiopia's Church serves as a storehouse of cultural, social
and political life (Assefa and Eshetu, op.cit. Ch. 9). Nevertheless,
James Westfall's characterisation of the Catholic Church (in Lenski,
op.cit. 262) can be applied to Ethiopia's:

> Democratic, yet aristocratic; charitable, yet exploitative;
> humanitarian, yet cruel; indulgent, yet surely repressive of
> some things; progressive, yet reactionary. . . - all these
> are qualities of the Church in the Middle Ages.

Like medieval Christians in Europe (and many colonial missionaries)
Ethiopian priests acknowledged in principle the brotherhood of man, yet
regarded "pagans" as semi-outsiders, who had been called to membership
in the Christian community but were not yet members of it (see Unger,
op.cit. 149).

The Church is anchored in the experiences of an isolated peas-
ant civilisation and views itself as the embattled repository of true
Ethiopian nationalism, a claim that is today outdated and rather
tragic: the Church's social conscience goes no further than the feed-
ing of individual beggars. Isolation and an over-extended priesthood
comprising some 20% of the adult male Christian population has created
something of a religious caste although, once priestly duties are
performed, the life of most priests is similar to that of the peasants.
Despite the conspicuously worldly ways of many of its priests, the
Church retains an aura of sanctity. (Perham, op.cit. 111; Levine,
Wax and Gold 128; Kaplan, et al., op.cit. 236-7; and Greenfield,
op.cit. 26).

Monophysitism, the belief in the single rather than dual (human
and divine) nature of Christ, is conducive to the view that Church and
State are one - in contrast to the medieval European conception of a
two-edged sword. Priests stimulate a localised patriotism by infusing
it with religious fervor, and enjoy a large measure of authority over
secular affairs since the parish is often the only unit of political
loyalty. Church and state are linked at the national level through the
divinity of the Solomonic line of Emperors: a "pearl" was passed from
Adam to Solomon and then to Hanna, mother of the Virgin Mary. Emperor
and Christ are thus kinsmen and, when the Jews repudiated Christianity,
Ethiopians became the Chosen People. They already possessed the
Ark of the Covenant, stolen by Menelik I, son of Solomon and Sheba.
In general, the Ethiopian Church possessed a greater political authority
than did Islamic institutions in Arab states. (C. Shenk, 'The Devel-
opment of the Ethiopian Orthodox Church. . .' 367 (1972); Kaplan, et
al., op.cit. 34; Greenfield, op.cit. 27; and Hess, op.cit. 478).

Coulbeaux termed the Ethiopian Church and State "a single moral being,
an amphibious personality" communicating movement to life as motor
does to machine (in Perham, op.cit. 102). The wealth of the Church was
as important a source of power as was its ethnical influence, and the
Church was an integral part of the feudal system. Priest and peasant
recognise their interdependence, but meaningful organisational links
between this base and the central Church leadership are still lacking.
Vague Regulations concerning the clergy and Church lands were pro-
mulgated in 1942 (Decree No. 2, Neg. Gaz. 2/3, 31 Consol. L. Eth.
1) and an Ecclesiastical Council with "secular" administrative powers

37 Paul and Clapham, op.cit. 400, 433-4; Markakis, op.cit. 286; and
Bryde, op.cit. 19. See J. Williamson, The Tudor Age 437-8 (3d Ed.,
1964) and J. Farrar (Introduction to Legal Method 88,1977): "Until
the nineteenth century Parliament was primarily a deliberative body
and in practice legislation was not a very productive source of law".
The same can be said of Haile Selassie's Parliament.

38 D. Foulkes, Introduction to Administrative Law 4-5 (1972); L.Kuper,
'Plural Societies', in Kuper and M. Smith, eds., Pluralism in Africa
7, at 9 (1969); and Marshall, op.cit. 100, who adds that separation of
powers is a "jumbled portmanteau of arguments for policies which ought
to be supported or rejected on other grounds". It is rarely clear
whether and in what sense a separation exists and what is separated,
as legislation, execution and adjudication cannot be precisely defined
(Id., 124).

39 Worku, op.cit. 7-8. The refashioning of the court system was one of
Haile Selassie's first acts after the Italians were defeated. The
Supreme Court consists of 7 divisions,headed by an Afe Negus ('Chief
Justice', lit. "mouth of the king"), 8 Vice Afe Neguses and 20
justices. The Court hears appeals and the bench may be constituted
by 3 to 7 judges. Majority and minority opinions are written but
not published except, occasionally, by the Law Faculty. The High Court
has 80 judges who sit in benches of 3 in more than 20 divisions. There
are specialised divisions for an original criminal juris-
diction, criminal appeals, civil appeals, commerical disputes and land
cases sitting in Addis Ababa, and a division in each province. The
Court has unlimited civil and criminal jurisdiction. Awraja Courts
have original jurisdiction over more minor civil and criminal matters
and hear appeals from Woreda Courts. The 800 Woreda judges are
supervised directly by the Ministry of Justice. The jurisdiction of
Awraja and Woreda Courts is regulated by the Civil and Criminal Proced-
ure Codes and, in practice, several appeals are often permitted.
Atbia dagnia judges are appointed by the local governor, and their
decisions rely heavily on customary laws. Their jurisdiction and status
are uncertain, their decisions are often unenforceable if not accepted
by both parties, and they perform miscellaneous administrative functions
similar to those of an eighteenth century English magistrate. Advo-
cates are registered by the Ministry of Justice,which makes minimal
inquiries into their "sufficient /traditional/ qualifications" and "good
character". They can be suspended by the Minister on the recommen-
dation of a Disciplinary Committee. A separate hierarchy of Muslim
courts of original jurisdiction (Nuibas Councils) intermediate appeals
(Kadis Council) and final appeal (Courts of Shariat) received legal
sanction in 1944. When the Civil, Civil Procedure and Criminal Pro-
cedure Codes cast doubt on their legitimacy, Muslim leaders secured
Haile Selassie's assurance of their continued legality. (Administration
of Justice P. 2 of 1942, Neg. Gaz. 1/1; Registration of Advocates Rules,
L.N. 166 of 1952, Neg. Gaz. 11/11; Local Judges P. 90 of 1947,
Neg. Gaz. 6/10; Worku, op.cit. 10-16, 20-6; Markakis, op.cit. 298;
W. Howard, Public Administration in Ethiopia 76 (1955); and Kaplan,
et al., op.cit. 283-5. There are, of course, a bewildering variety of
customary tribunals which are not recognised under state law. In

1975, the Derg established rural and urban tribunals - See Chaps. 6-7.

40   See Dias, op.cit. 131 and Bryde, op.cit. 68-9, 73.

41   Worku, op.cit. 34, 36-7, 63, 67-8 and Marcus, Menelik. . . 197.
      See: Bryde, op.cit. 67-9, 73-5, 162; Dahrendorf, op.cit. 294; and
      Duchacek, op.cit. 140.

42   Krzeczunowicz, cited by R. Means, 'The Constitutional Right to Judicial
      Review of Administrative Proceedings',3 J. Ethiopian Law 175, at
      175-6 (1966). See: Id., passim; Paul and Clapham, op.cit. 414-17
      and V. 2, 617-18; Scholler, op.cit. 549; and R. David and J. Brier-
      ley, Major Legal Systems. . . 88 (1968).

43   E.g., Goplan v. State of Madras, A.I.R.1950 (S.C.) 27 and Maw Naing
      v. Rangoon Commissioner of Police /1950/ Burma L. R.p. 17 (SC).
      In Goplan, detention was held to interfere only indirectly with the
      freedoms of speech and assembly protected under Art. 19 (due process),
      and the relevant standard was therefore Art. 21: "except according
      to procedures established by law". This standard is complied with
      where there is a reasonable use of police powers, since the detention
      law was enacted for the public good. In Maw Naing, the court rejected
      American due process cases, reasoning that " in accordance with law"
      referred to positive law, enacted in due form. C.F. Mebratu,
      in the text, infra. But see Paul, op.cit. 328, suggesting that the
      Ethiopian courts have acted 'per incuriam'.

44   E.g., St. of Uttar Pradesh v. Deoman, A.I.R. 1960 (S.C.) 1125, at
      1131-2: Since Art. 14 of the Constitution was "adopted" from the
      U.S. 14th Amendment, it is reasonable to assume that the Assembly
      adopting it was aware of the American judicial gloss on due process.
      American case law does not, therefore, contain foreign principles or an
      alien jurisprudence.

45   1955 Constitution, Arts. 40-1, 44-7. See, e.g., Sutra Porlal in the
      text, infra and the fact that despite Art. 44, the property of persons
      accused of serious political offenses was confiscated. The Ethiopian
      'bill of rights' is "a monument to formalism". (Markakis, op.cit.
      214, 334).

46   Marx ('The Eighteenth Brumaire. . .', in 1 Selected Works of Marx and
      Engels 398, at 409, 1969) makes the same criticism of the 1848
      French Constitution, which embodied identical language: see Note
      51,infra. Means, op.cit. 188-90 and Paul, op.cit. 330 offer rather
      optimistic interpretations which are opposed to mine. Means suggests
      that Art. 65 is redundant unless it is interpreted as converting
      other rights into absolute rights, overriding "in accordance with law"
      qualifications. If so, interpretations by the European Commission on
      Human Rights are wrong and the American presumption of constitution-
      ality is also redundant. Paul argues that, while the Constitution is
      "confusing", a "careful reading" shows that: government must prove a
      threat to public order, overly broad sanctions are implicitly proscribed,

and due process must be observed. The careful reading and implicit proscriptions envisaged by one person are not necessarily those of another, and due process is mentioned only in the unofficial English language version of Art. 43.

47   Ewing, op.cit. 343.

48   Clapham, op.cit. 42 and Scholler, op.cit. 524. See: H. Groves, Comparative Constitutional Law 49 (1963); P. Merkl, Comparative Politics 457 (1970); and K. Boyle, et al. , Law and State: The Case of Northern Ireland 179 (1975).

49   Speaking in 1931, Tekle Hawaryat, the Minister of Finance and alleged draftsman of the 1931 Constitution argued that:

> It is needful for us to have patience, for it always takes a lot of time to accomplish a great concept. . . . Some people, lacking the patience to wait for the right time, claim that the law has been set down in writing but has not been acted upon; lest they should annoy the people and make them lose hope, it is our duty to explain matters to our friends wherever we go . . . until they are able to analyse the advantages and disadvantages. (quoted by Haile Selassie, op.cit. 199).

Much of what Tekle says is, of course, true but it is also an excellent illustration of the Amharic tag ishi naga, roughly 'Okay, tomorrow' - the Amharic version of mañana. See: K. Lowenstein, 'Reflections on the Value of Constitutions. . .', in A. Zurcher, ed., Constitutions and Constitutional Trends since World War II 191, at 204-5 (1951); Etzioni, quoted by J. Habermas, Legitimation Crisis 128 (1976); G. Myrdal, 'The "Soft State" in Underdeveloped Countries', 15 U.S.L.A. Law Rev. 1118, at 1128 (1968); F. Burke, Africa's Quest for Order 13 (1964); Bryde, op.cit. 137-8; Markakis and Asmelash, op.cit. 200; Zolberg, op.cit. 157; Scholler, op.cit. 528; and Merkl, op.cit. 460-1.

50   See: W. Andrews, Constitutions and Constitutionalism 13-14 (1968); B. Moore, Jr., Reflections on the Causes of Human Miseries. . . 88-9 (1972); D. Apter, Political Change 76-7 (1973); Nwabueze, op.cit. x, 5; Paul and Clapham, op.cit. 429; Ghai and McAuslan, op.cit.; and my criticisms of quotations from Nwabueze and Stein and Shand, Note 13, supra. Nwabueze (op.cit. 10) cites S.A. de Smith for the proposition that Western constitutionalism entails three minimum restraints: government must be genuinely accountable to an organ independent of itself; free elections and the organisation of parties must be permitted ; and civil liberties must be enforced effectively by an independent judiciary. There is a definite Western bias in de Smith's list, but it is interesting to note that, apart from the organisation of parties, these restraints are guaranteed formally by the 1955 Constitution. In practice, however, none of them were effective.

51   E.g., Marx (op.cit. 409) found that the Constitution, with its call for organic laws, appealed both to the friends of order who abrogate liberties and Democrats who demand liberties:

/Each/ paragraph of the Constitution contains its own anti-
thesis, its own Upper and Lower House, namely, liberty in the
general phrase, abrogation of liberty in the marginal note.
/In/ a legal way, the constitutional existence of liberty
remained intact, inviolate, however mortal the blows dealt to
its existence in actual life.

52 See Apter, op.cit. 86 and Lenski, op.cit. 67.

53 W. Weisslender, 'The Political Ecology of Amhara Domination', 13,
325-6 (1965); D. Levine, 'Class Consciousness and Class Solidarity in
the New Ethiopian Elites', in P. Lloyd, ed., The New Elites of Trop-
ical Africa 312, at 314-5, 317 (1964). Marcus, Menelik. . . 214;
Clapham, op.cit. 47; and Kaplan, et al., op.cit. 111-12, 264, 292.
See: D. Goulat, 'Development Administration and Structures of Vulner-
ability', in E. Morgan, ed., The Administration of Change 27, at 36
(1974); J. Kautsky, 'An Essay in the Politics of Development', in Id.,
ed., Political Change in Underdeveloped Countries 3, at 19 (1962);
G. Heeger, The Politics of Underdevelopment 54-5 (1974); N. Mouzelis,
Organization and Bureaucracy 16 (1967); and Moore, Reflections. . .
71-2. Syoum (op.cit. 171) adds that, in Ethiopia, "a social (and
economic) power are acquired primarily by close association with or
membership of the group of mengest serategna (public service)".

54 Addis Hiwet, Ethiopia. . . 54-5, 78-80 (1975); Haile Selassie, op.cit.
65; Marcus, Menelik. . . 227-8; Greenfield, op.cit. 172-3; and Markakis,
op.cit. 229-32. See F. Riggs, 'The Structures of Government and Admin-
istrative Reform', in Bribanti, op.cit. 220, at 222-4. The ministries
nominally created in 1908 included: Justice, Interior, Commerce and
Foreign Affairs, Finance, Agriculture and Industry, Public Works, War,
Pen (the transmission of Imperial orders), and Palace/Post, Telephone
and Telegraph (Scholler, op.cit. 527).

55 Weisslender, op.cit. 17; Gilkes, op.cit. 63; Clapham, op.cit. 21;
and Markakis, op.cit. 304-5. See: V. Thompson, 'The Administrative
Objectives. . .', in G. Ness, ed., The Sociology of Economic Develop-
ment 517, at 525 (1970); F.Riggs, Administration in Developing Count-
ries 253 (1964); and Lenski, op.cit. 230. See: L.G. Cowan, 'The
Political and Administrative Setting for Rural Development', in F.
Arkhurst, ed., Africa in the Seventies and Eighties 87, at 102-3
(1970) and Haile Selassie, op.cit. 5:
        We have set out to the best of Our ability to improve, grad-
        ually, internal administration by introducing into the country
        Western modes of civilization through which Our people may
        attain a higher level; hence Our conscience does not rebuke
        Us.

56 Clapham, op.cit. 90, 102 and Markakis, op.cit. 392. See Adu, cited
by W. Lamouse-Smith 'Complexity and African Development Administration',
in Morgan, op.cit. 131, at 138 and J. LaPalombara, 'Alternative
Strategies . . .', in F.Riggs, ed., Frontiers of Development Admin-
istration 171, at 187 (1970).

57 G. Lipsky, Ethiopia 275 (1962); Clapham, op.cit. 183-4; Kaplan, et al.
op.cit. 299; and Addis, op.cit. 94. See Myrdal, Asian Drama 318.

In a novel about Ethiopia, E. Murray (Kulubi 12, 1973) remarks:
>A degree, especially a foreign degree, was a passport to the
>. . . bureaucracy and the endless drinking of coffee and the
>endless shuffling of papers.

58 M. Abir, 'Education and National Unity in Ethiopia', 69 Af. Affairs 44, at 57 (1970); Gilkes, op.cit. 89; Kaplan, et al., op.cit. 264; Clapham, op.cit. 18; Schwab, op.cit. 51; and Markakis, op.cit. 248, 357. See F. Marx, The Administrative State 38 (1957).

59 Lipsky, op.cit. 297 and Markakis, op.cit. 355. See Farer, op.cit. 15 and L. Palmer, 'Indonesia's Agenda of Corruption', New Society 16/9/76, 594, at 596.

60 Z. Plater, 'Legal Development and Public Administration /in Ethiopia/', in Marcus, Proceedings . . . 319, at 320. See M. Esman, 'The Politics of Development Administration', in Montgomery and Siffen, op.cit. 59, at 81, 90.

61 J. Habermas, Legitimation Crisis 49 (1976). See Chap. 2.

62 See Lamouse-Smith, op.cit. 154-5 and Esman, 'Administrative Doctrine and Developmental Needs', in Morgan, op.cit., 3, at 4.

63 Clapham, op.cit. 6, 10, 31, 48, 74, 78, 101, 112; Kaplan et al., op.cit. 263-4; and Levine, 'Amhara Culture. . .'. D. Korten, Planned Change in Traditional Society 78 (1972) adds that, for most Ethiopians, "administration is not a problem of skill, ability or training, but, rather, a simple matter of exercising privilege. . . ." See: Myrdal, Asian Drama 75; H. Wheeler, Democracy in a Revolutionary Era 137 (1971); Lamouse-Smith, op.cit. 154; and F. Marx, op.cit. 65, 94.

64 Paul, op.cit. 325. See: J. Farrar, Introduction to Legal Method 30, 145-6 (1977); F. Riggs, Administration in Developing Countries 199-200 (1964); Friedman, op.cit. 30-5; G. Sawer, Law in Society 128 (1965); B. Schwartz, 'The Code and Public Law', in Id., ed., The Code Napoleon and the Common-Law World 247, at 250 (1975); J.W. Hurst, Law and Social Order in the United States 139-40 (1977); and Bryde, op.cit. 180.

65 Clapham, op.cit. 182. Analytical distinctions between Ethiopian public and private laws are discussed in Chap. 7, infra.

66 M. Norris, 'Ethiopian Municipal Administration and the Approach to Local Government Reform', 1 Planning and Administration 47, at 47 (1974).

67 Weisslender, op.cit. 2.

68 See Foulkes, op.cit. 1.

69 E.g.: Fed. Prosecutor v. Lisci Sofia, F.S.C. Cr. Ap. 7/7 (1959); Mesfin Zelellew v. Min. of Public Works, 2 JEL 298 (1965); and Ababiya et al. v. H.S.I.U., H. Ct. 593/58 (1968). See R. Seidman, 'Administrative

Law and Legitimacy in Anglophonic Africa', 5 L. and Soc. Rev. 161,
at 175 (1970). In Lisci, the Ministry of Finance had promulgated a
regulation penalising the importation of foreign currency, where the
relevant Proclamation conferred the power to regulate currency exports.
The Court struck down the regulation: Parliament has the sole auth-
ority to create new offenses under the Constitution, unless it has
expressly delegated that authority. In Mesfin, the number of buses the
plaintiff could run from Addis Ababa to Jimma was cut from 8 to 6 per
month by the Transport Board. Although the Board was empowered to
impose conditions as it saw fit to promote an "effective schedule",
the Court found that it had misused its powers. Having issued too
many licenses, the Board attempted to decrease the numbers of runs
in order to reduce competition. This aim, the Court held, was within
neither the letter nor the spirit of the Transport Proclamation, Art.
21 (iii). The most interesting of this line of cases is Ababiya:
the Court held that the E.U.S. (national service) programme estab-
lished by the University was ultra vires the University Charter, since
this service could not be imposed as an "academic requirement".
This decision was later vacated by the Supreme Court and one of the
High Court judges who delivered the judgement was dismissed in dis-
grace.

70   Paul, op.cit. 329 and Paul and Clapham, op.cit. V. 2, 660.

71.   Kaplan, et al., op.cit. 109; Syoum, op.cit. 124; Marcus, Menelik. . .
      194-5; and Clapham, op.cit. 139. See: Ghai and McAuslan, op.cit.
      173; Edelman, op.cit. 139; and Riggs, op.cit. 280-2, 381; and Marshall,
      op.cit. 114-5.

72   D. Karsten, (Ethiopian) 'Economy', in Africa South of the Sahara, 304, at
      306 (1976); Assefa and Eshetu, op.cit. 16; Markakis, op.cit. 215;
      and Cohen and Koehn, op.cit. 17. Howard, op.cit. 56 notes that
      Ethiopian "ministries, superimposed upon the medieval organization of
      the country, were conducted upon lives quite different from those of
      their European models". In 1973, for example, Ethiopian administration
      involved the following ministries: Prime Minister's Office (Secre-
      tariat of the Council of Ministers and supervision of the Planning
      Commission, Technical Agency and Statistical Office); Pen
      (Tsahafe Tezaz) - the Emperor's spokesman, Government archivist and the
      publisher of the Negarit Gazeta; Palace (administration of Imperial
      offices, lands and other properties); Foreign Affairs; community development
      (welfare programmes and labour relations); Health; Land Reform and
      Administration; Information (including censorship, the administration
      of the media and a printing quasi-monopoly); Communications, Tele-
      communications and Post; Justice (including the preparation of draft
      laws for other ministries); Mines, Public Works and Water Resources
      (including public housing);Education and Fine Arts; Commerce, Industry
      and Tourism; Agriculture,and Finance. Ministers (Definition of Powers)
      Order, 1 of 1943, Neg. Gaz. 2/5, as amended - 3 Consol. L. Eth. 1 and
      Kaplan, et al. 201-2. See also Scholler, op.cit. 537. A Ministry of
      Planning and Development was created in 1966 and abolished in 1970 -
      see infra.

73   Ministers. . . Order, <u>supra</u> Note 72, Art. 7, as amended by Order 44 of 1966.

74   Clapham, <u>op.cit.</u> 95-7; Kaplan, <u>et al.</u>, <u>op.cit.</u> 115, 280; and Lipsky, <u>op.cit.</u> 178-9.

75   See Central Personnel Agency Order ("Order"),23 of 1962 , <u>Neg. Gaz.</u> 21/3 and the ancillary Regulations, L.N. 269 of 1962, <u>Neg. Gaz.</u> 22/6. Under the Order, the Agency is responsible to the Council of Ministers (Art. 4), and broadly empowered: to issue and interpret regulations (Arts. 6, 29-30), to establish and revise a uniform class-ification of bureaucratic salaries and positions (Arts. 7, 28) and to recruit, select, appoint, transfer and promote civil servants (Art. 9). Arts. 12-28 contain "public service principles", including: obligations to denote "his whole energy and ability to the welfare" of Empire and nation (the distinction is irrelevant), to take an oath of loyalty to Emperor and Constitution (Art. 17), and "to maintain . . . a high standard of integrity and conduct" (Art. 19); and rights to "the special protection of the state"(Art. 20, which has no concrete meaning in Ethiopian law), to resign "at any time" (Art. 25 - flatly contradicted in practice, as the Emperor's consent was necessary - <u>see</u> Chap. 4), and to a "formal procedure" in the event of dismissal for "inefficiency" (Art. 26 - often ignored in practice). Under the Regulations, vacancies are filled only in the event of "indispensible need", posts are widely advertised, and candidates are evaluated through a written and/or performance test and/or interviews, "as suitable" (Arts. 8(1), 10). Transfers are ordered "in the interest of the administration" (Art. 19(1)). Promotions are based on per-formance, aptitude for the new position and seniority (Art. 21(1)), ascertained primarily on the basis of periodic efficiency reports (Art. 22(1)). In practice, as we noted, these Regulations are ignored: the powerful attempt to place their proteges in sensitive positions or take their staff with them to a new job, whether or not vacancies exist and regardless of the qualifications required in theory. This tends to support Korten's assertion, Note 63, <u>supra</u>.

76   <u>See</u>: Myrdal, <u>Asian Drama</u> 107-9 (1977); (Ethiopian) Ministry of Planning and Development, 'A Guide to Development Planning' (cyclostyled, 1967); H.Jaguribe, <u>Political and Economic Development</u> 18-19 (1968); and G. Papi, 'The Role of the State in Mixed Economies', in J. Margolis and H. Guitton, eds. <u>Public Economics</u> 1, at 12 (1969).

77   Clapham, <u>op.cit.</u> 23 and 'A Guide to Development Planning'. <u>See</u>: A. Hirshman, 'Economic Policy inUnderdeveloped Countries', in Ness, <u>op.cit.</u> 505, at 506-7; C. Thomas, <u>Dependence and Transformation</u> 70 (1974); and B. Van Arkadie, 'Planning, Plans and Planned Economies', in Morgan, <u>op.cit.</u> 164, at 167-71, 181.

78   Myrdal, <u>Asian Drama</u> 302.

79   G. Gill, 'Introduction' to 'Resource Mobilisation', in <u>Id.</u>, ed., <u>Readings on the Ethiopian Economy</u> 248, at 248 (1974) and R. Disney, 'Notes on the National Accounts of Ethiopia', in Gill, <u>op.cit.</u> 17,

at 24. See Myrdal, Asian Drama. 117, 153.

80   Order 15 of 1954, Neg. Gaz. 14/3. On this topic generally, see I.
      Fraser, 'The Administrative Framework for Economic Development in
      Ethiopia', 3 J. Eth. L. 118 (1966).

81   Order 46 of 1966, Neg. Gaz. 25/23.

82   Order 63 of 1970, Neg. Gaz. 29/19.

83   Id., Art. 3; Fraser, op.cit. 123-6, 135-40; and T. Bodman 'Income Tax
      Exemption as an Incentive to Invest in Ethiopia', in 6 J. Eth. L.
      215 (1969). See Domestic and Foreign Trade and Industrial Licence
      Procs., 1971, Neg. Gaz. 30/31-2 and Investment Proc., 1966, 19
      Consol. L. Eth. 3, discussed in Chap. 7.

84   Eshetu Chole, 'Taxation in Ethiopia' 1-2 (1968); S. Stanley, 'The
      Role of a(n Ethiopian) Budget in Promoting Economic and Social Develop-
      ment' (cyclostyled, n.d.); Kaplan, et al., op.cit. 437; Gilkes, op.cit.
      160-2; and Assefa and Eshetu, op.cit. 17. See O. Hiner, Business
      Administration 221 (1969) and Riggs op.cit. 304-5.

85   Clapham, op.cit. 155-67; Hess, op.cit. 499; Markakis, op.cit. 328; and
      Schwab, op.cit. 101. See Ministers (Definition of Powers) Order,
      Art. 29. The Minister of Finance approves the draft budget and, after
      Parliamentary approval, determines: whether individuals are auth-
      orised to claim a budgeted sum, which budget heading is to be charged,
      and whether a reallocation of funds among headings is to be permitted
      (Bulcha Demeksa, 'The Ethiopian Budget', 4 J. Eth. L. 369, at 376,
      380-1, 1967).

86   Eshetu, op.cit. 112-13. See N. Kaldor, 'Taxation for Economic Devel-
      opment', in L. Livingstone, ed., Economic Policy for Development
      313, at 315 (1971).

87   Eshetu, op.cit. 104, 122. See: Gilkes, op.cit. 165; J. Due,
      'Requirements of a Tax Structure in a Development Economy', in
      R. Bird and O. Oldman, eds., Readings on Taxation in Developing
      Countries 33, at 36 (1967); Kaldor, op.cit. 316; and Myrdal, Asian
      Drama 86-7.

88   Lewis, op.cit. 11-12; Eshetu, op.cit. 109-10, 125; Fraser, op.cit. 122;
      and Kaplan, et al., op. cit. 438. See: Customs Proc. (145 of 1955,
      Neg. Gaz. 14/7); and Regulations (L.N. 153 of 1951, Neg. Gaz. 10/8) as
      amended in 16 Consol. L. Eth. 1,7; Excise Tax Procs. (204 of 1963,
      Neg. Gaz. 22/17, 217 of 1965, Neg. Gaz. 24/10, and 249 of 1967, Neg.
      Gaz. 26/14) as amended in 17 Consol. L. Eth. 4-6; Transaction Tax
      Procs. (205 of 1963, Neg. Gaz. 22/18 and 307 of 1972, Neg. Gaz.
      31/21); Riggs, op.cit. 289-92; and M. Heth, The Legal Framework of
      Economic Activity in Israel 208 (1967).

89   Eshetu, op.cit. 28, 51-8; Fraser, op.cit. 122; and Kaplan, et al.,
      op.cit. 446. See: Income Tax Proc. 173 of 1961, Neg. Gaz. 30/13,
      as amended in 17 Consol. L. Eth. 9, particularly Arts. 7, 10 and 12;

Kaldor, op.cit. 324; and Kaldor, 'The Taxation of Business Profits', in Bird and Oldman, op.cit. 155, at 163.

90 Land Tax Proc. No. 70 of 1944, Neg. Gaz. 4/2, as amended in 17 Consol. L. Eth. 11; Taye Guillat, 'The Tax in Lieu of Tithe and the New Agricultural Income Tax', 2 Dialogue (Addis Ababa) No. 1, 17-21 (1968); and Kaplan, et al., op.cit. 442.

91 Schwab, op.cit. 63. Although Schwab is specifically referring to land measurement failures in Gojjam in 1962, his comment is equally applicable to the Agricultural Income Tax Proclamation (see Art. 17D (b) of the Proc.) and, perhaps, the 1975 Land Reform Proclamation (see Chap. 6).

92 Eshetu, op.cit. 68-9. See Cattle Tax Proc., 142 of 1954, Neg. Gaz. 14/1.

93 Redden, op.cit. 172 and Markakis, op.cit. 328. See S. Surrey, 'Tax Administration in Underdeveloped Countries', in Bird and Oldman, op.cit. 497, at 498, 500 and Heth, op.cit. 208-9.

94 J. Cohen and D. Weintraub, Land and Peasants in Imperial Ethiopia 91 (1975). Municipal administration is discussed in Chap. 7, infra.

95 Cohen and Koehn, op.cit. 2, 17; Norris, op.cit. 50-1; Gilkes, op.cit. 45; and Markakis, op.cit. 233, 307.

96 Cohen and Koehn, op.cit. See Moore, Jr., Social Origins of Dictatorship and Democracy 43, 417 and Riggs, op.cit. 223, 225.

97 Bekele Geleta, 'Asosa Awraja People and Local Government' 9-12, 57 (1968); Rosen, op.cit. 174-6; Markakis, op.cit. 306; and Clapham, op.cit. 76 (but see Id., 77). See P. Raup, 'Some Interrelations between Public Administration and Agricultural Development', in Uphoff and Ilchman, The Political Economy of Development 439, at 441.

98 Markakis, op.cit. 87-8. See Bekele, op.cit. 30.

99 J. Lyons, 'Functions of Local Government in Ethiopia', (cyclostyled, 1969) and Markakis, op.cit. 298. See Administrative Regulations, Decree 1 of 1942, Neg. Gaz. 1/6, as amended in 6 Consol. L. Eth. 1 and, e.g., the breadth and generality of Pt. 2, Id:

> The Governor-General is the Government representative for the Teklay Ghizat /Province/ to which he is appointed. Governors shall exercise general supervision over all officials appointed ... by the Ministry of Interior and other Ministers. But they are responsible to ... other Ministers according to the nature of their business. On matters directly affecting a particular Minister, governors shall communicate derectly /sic/ with that Minister. On matters of direct concern to a particular Minister but also affecting general administrative policy they will consult with the Minister of Interior.

The only other relevant piece of legislation, the Local Self-Administration Order, is discussed infra in this sub-section.

100 Bekele, op.cit. 6-7, 30, 46; Clapham, op.cit. 11; Rosen, op.cit. 173; Markakis, op.cit. 312; and the Administrative Regulations of 1942. Rules such as the following (from Id.) were violated with impunity: the governor must reside in the provincial capital (Pt. 3), must make semi-annual inspection tours (Pt. 18), and must refrain from accepting presents (Pt. 19). There are 14 Provinces, 103 awrajas, and 505 woredas (districts) in Ethiopia (Cohen and Koehn, op.cit. 3).

101 Syoum, op.cit. 126; Markakis, op.cit. 288-95, 301; Lyons, op.cit.; and Cohen and Koehn, op.cit. 3, 11. See Chapman, op.cit. 34. Under Art. 26 of the Ministers (Definition of Powers) Order, the Minister is to: "ensure the maintenance of peace and security"; "ensure the lawful administration" of local administration, including chartered municipalities; secure the implementation of town planning programmes (discussed in Chap. 7, infra.); and direct and supervise the police, prisons, the exercise of control over foreign nationals, census-taking, inland waterways and Parliamentary elections. Some amendments by implication have occurred since the Revolution.

102 Markakis, op.cit. 288, 305-6.

103 Id. and Cohen and Koehn, op.cit. 3-4,6.

104 Id., 4.

105 Norris, op.cit. 66, 70; Baro Tumsa, 'Decentralisation and Nation-Building in Ethiopia' (1973); Gilkes, op.cit. 84; Lyons, op.cit.; Markakis, op.cit. 315-6; Schwab, op.cit. 52; and Cohen and Koehn, op.cit. 18. See Awraja Self-Administration Order, No. 43 of 1966, Neg. Gaz. 25/9B, as truncated by No. 47 of 1967, Neg. Gaz. 26/6.

106 Order 86 of 1973, Neg. Gaz. 33/1, discussed in P. Brietzke, 'Ethiopia', in N. Rubin and E. Cotran, eds., 7 Annual Survey of African Law 324, at 327-9 (1977).

107 J. Shepherd, The Politics of Starvation 1,13-14, 42 (1975).

108 Personal sources of information. Some 100,000 people had, for example, starved in 1958-9.

109 Shepherd, op.cit. 9, 15.

110 Id. 33.

111 Id. 53-5.

112 Id. 22, 60-6.

113 Id. 25-8, 73.

114 Id. 59; S. Green, 'Afterword', in Id. 87, at 91-2 and T. Hughes, 'Foreword', in Id. vi, at ix.

115 Id. viii. Green, op.cit. 94-5 adds that
ironically, as subsequent events in Ethiopia have demonstrated, it
is almost invariably in the long-term best interest of a regime
to face a disaster's human effects immediately.

116 Cohen and Koehn, op.cit. 19.

117 Markakis, op.cit. 250.

118 E.g., V. Thompson, op.cit., passim. See Chap. 5, infra.

119 Syoum, op.cit. 177, 187. See Plater, op.cit. 320.

120 W. Shack, 'Occupational Prestige, Status and Social Change in Modern
Ethiopia', 46 Africa 166, at 172-3, 176 (1976); D. Levine, 'The Mil-
itary in Ethiopian Politics', 5, 6-7, in H.Bienen, ed., The Military
Intervenes (1968); Perham, op. cit. 160; and Farer, op.cit. 10-11.
See: A. Zolberg, 'Military Intervention in the New States of Tropical
Africa', in Bienen, op.cit. 71, at 95; P. Van Den Berghe, 'The Military
and Political Change in Africa' 252, 255, in C. Welch Jr., ed.,
Soldier and State in Africa (1970); and Moore, Jr., Reflections . . .
148 .

121 Lefever, Spear and Sceptor 162 (1970); Haile Selassie, op.cit. 71;
Marcus, Menelik. . . 65-7, 138-9; Kaplan, et al., op.cit. 499; and
Perham, op.cit. 162-3.

122 Markakis, op.cit. 254. See also: G. Ellis, 'The Feudal Paradigm as
a Hindrance to Understanding Ethiopia', 14 J. Mod. Af. Studs. 275,
at 288 (1976); Hess, op.cit. 502; Kaplan, et al., op.cit. 62;
and Gilkes, op.cit. 237-8. The most detailed study of the 1960 coup
is Greenfield's Ethiopia. While his analyses are excellent, in relation
to the materials available at the time, interpretations are likely to
change as a result of sources recently acquired by an Ethiopianist
under the U.S. Freedom of Information Act.

123 See Huntington, op.cit. 177.

124 The military expenditures of selected states, as a percentage of the
national budget, were: Tanzania, 13.4% (1963-70), Kenya, 5.1%
(1964-70), Egypt, 33% (1958-71), Pakistan, 24.9% (1960-69), and
Iran, 23.1% (1961-70). In 1967, Ethiopian military manpower included
40,000 in the regular army, 2,000 in the Air Force and 1,200 in the
Navy. Comparable figures include: 35,000, 2,000 and 0 for the Congo
D.R.; 26,500, 400 and 150 for Sudan; 5,000, 450 and 250 for Kenya; and
a total 50-80,000 for Nigeria during the Civil War. G. Kennedy,
The Military in the Third World 158, 168-9, 275-6 (1974); J. Lee,
African Armies and Civil Order 5 (1969); and Farer, op.cit. 2.
Although the size of the Ethiopian military remained fairly stable
from 1967 to 1974, large increases have been recently reported,
including the formation of a People's Militia. (See Chaps. 1,4,7).

125 J. MacManus, 'Big Power Scramble for the Horn', The Guardian (London -
hereinafter Guardian), 16 Sept. 1976, 4; Farer, op.cit. 98 (citing a

survey by the International Institute for Strategic Studies); Markakis, op.cit. 302; Kaplan, et al., op.cit. x, 479, 493-6; and Greenfield, op.cit. 359.

126 Id. 357-8; P. Gilkes, 'The Coming Struggle for Ethiopia' 19(3) Africa Report 33, at 43 (May 1974); Farer, op.cit.; MacManus, loc. cit.; and Kaplan, et al., op.cit. x, 497.

127 Gilkes, loc. cit.; Markakis, op.cit. 303; Lefever, op.cit. 165, 173, 198; and Kaplan, et al., op.cit. x, 495-6. See Chapman, op.cit. 95-6.

128 J. MacManus, 'Major Tank Kills Claimed in the Desert', Guardian 30 July 1977, 4 and 'Somalis' New Ally Arms an Old Enemy', Id. 31 May 1977, 6 (citing a survey by the International Institute for Strategic Studies); V. Zorza, 'African Lesson',Id., 19 Jan. 1978, 12; B. Debusmann, 'U.S. Refuses Arms Supply to Addis', Id., 30 Sept. 1977, 6; V. Brittain, 'Ethiopia Fights for Major Stronghold', Id., 3 Sept. 1977, 5; 'Ethiopia Issues Warning', Id., 15 Apr. 1978, 4; G. Hancock, 'A Horn in the Flesh',New Internationalist No. 51, 10, at 11 (May 1977) and 'Waiting Patiently for the Holocaust', Id., No. 62, 5, at 7 (Apr. 1978); and Farer, op.cit. 2-3.

129 Lefever, op.cit. 144. See Dodd, op.cit. 45.

130 See Gilkes, op.cit. 86-7.

131 See Army Proc. No. 68 of 1944, Neg. Gaz. 3/11 and Territorial Army Order, No. 21 of 1958, Neg. Gaz. 18/2.

132 No. 85 of 1973 Neg. Gaz. 32/26.

133 E.g., Kaplan, et al., op.cit. 495.

134 L.N. 429 of 1973, Neg. Gaz. 32/9, promulgated under Order 81 of 1973, Id.

135 See Order 82 of 1973, Neg. Gaz. 32/10 and L.N. 430 of 1973, Id.

136 Proc. 322 of 1973, Neg. Gaz. 32/22, Prologue.

137 No. 87 of 1973, Neg. Gaz. 33/2, Arts. 4-5, 6-7, 11, 13.

138 Paul and Clapham, op.cit. 436. See: Kennedy, op.cit. 40; Lee, op.cit. 88-9; and Art. 29 of the 1955 Constitution ("suspended" in 1974):
> The Emperor reserves the right, with the advice and consent of Parliament, to declare war. He, further, reserves the right to decide what armed forces shall be maintained. . . . As Commander in Chief. . . He has the right to organise and command the said forces; to . . . confer military rank. . .; and to promote, transfer or dismiss any of the said officers. He has, further, the right to declare a state of siege, martial law, or a national emergency, and to take such measures as are necessary to meet a threat to . . . defense and integrity. . . .

Except for the formal requirement of parliamentary consent to a
declaration of war, Art. 29 was nothing other than a restatement of the
Emperor's broad traditional powers.

139 Lefever, op.cit. 135, 163-4, 187-9 and Van Den Berghe, op.cit.
Van Den Berghe compares the Ethiopian military with the traditional
armies of Mali, Hausaland, Dahomey, Benin, Ruanda, Urundi, Buganda
and Morocco.

140 See: L. Pye, 'Armies in the Process of Political Modernization',
in J. Johnson, op.cit. 69, at 77; Janowitz, op.cit. 49-50; Finer,
op.cit. 534 and The Man on Horseback 22-3 (2d Ed. 1975); Levine,
'The Military in Ethiopian Politics', 22; and Lefever, op.cit. 145.
A 1960 survey of Harar Military Academy students disclosed the follow-
ing ethnic composition: Amhara, 53%; Tigrean, 26%; and Galla
(Oromo), 8%. 11% of the students were of the nobility, 53% were from
urban middle income strata, 21% were from lower income urban families,
and only 3% were from peasant stock still resident in rural areas
(Kaplan, et al., op.cit. 489).

141 Lee, op.cit. 83.

142 Welch, 'The Roots and Implications of Military Intervention', in
Welch, op.cit. 1, at 34.

143 Levine, 'The Military in Ethiopian Politics' 20, 22.

144 See Kennedy, op.cit. 57.

145 Perham, op.cit. 175.

146 Janowitz, op.cit.

147 See S. Decalo, 'Military Coups and Military Regimes in Africa', 11
J. Mod. Af. Studs. 105, at 108-9 (1973).

CHAPTER 4

1   P. Koehn, 'Ethiopian Politics. . .'20(2) Africa Today 7, at 11 (1975).
    See also J. Cohen and Sileshi Sisaye,'Research on Socioeconomic
    Development in Ethiopia' 1-2, 42 (1977).

2   P. Enahoro, 'Ethiopia Tikdem' 44 Africa 10, at 12 (Apr. 1975).
    See N. Uphoff and W. Ilchman, 'Development in the Perspective of Pol-
    itical Development', in Id., eds., The Political Economy of Devel-
    opment 75, at 108 (1972).

3   R. Greenfield, Ethiopia 1-2 (Rev. Ed. 1967); C. Clapham, Haile Sel-
    assie's Government 25-6 (1969); J. Spencer, 'Haile Selassie. . .' 18
    Orbis 1129, at 1132 (1975); B.-O. Bryde, The Politics and Sociology of
    African Legal Development 36 (1976); Cohen and Sileshi, op.cit. 2;
    and P. Koehn, 'Urban Origins and Consequences of National and Local
    Political Transformation in Ethiopia', in J. Walton and L. Masotti,
    eds., The City in Comparative Perspective 155, at 156 (1976).

4   Id. 165; Addis Hiwet, Ethiopia: From Autocracy to Revolution iii,
    103 (1975); and P. Schwab, 'Haile Selassie. . .' 6(2) Plural Societies
    19, at 19, 27-8 (1975).

5   This Section is largely an adapted and updated version of H. Scholler
    and P. Brietzke, Ethiopia . . . 3-30, 32-4 (1976). Much of the
    information contained is based on personal experiences and observations,
    those of our research assistant, and those of reliable informants
    (i.e., persons with good sources of information whose reports proved
    to be both consistently accurate and consistent with other information).
    The same criteria of reliability are applied to the reports of jour-
    nalists cited throughout the Chapter. The Ethiopian Revolution has
    filled the newspapers with more nonsense that most other contemporary
    events in Africa, and we have therefore tried to make judicious use
    of the materials available.

6   T. Farer, War Clouds on the Horn of Africa 12 (1976). See also J.
    Shepherd, The Politics of Starvation viii, 26, 48 (1975) and Chap. 3.

7   P. Gilkes, The Dying Lion 113 (1975); Koehn in Walton, 175n; and Shep-
    herd, op.cit. 50. See C. Furtado, Development and Underdevelopment
    98 (1967).

8   See R. Jackson and M. Stein, Issues in Comparative Politics 353
    (1971).

9   J. Harbeson, 'Ethiopia: The State of the Revolution' (1975).

10 H. Erlich, 'The Establishment of the Derg' 6 (1978).

11 Farer, op.cit. 14.

12 "Interview: Beyene Solomon", Africa 18 (May 1974). See also Sileshi,
    quoted by Cohen and Sileshi, op.cit. 50 and G. Heeger, The Politics of
    Underdevelopment 24-5 (1974).

13 H. Marcus, <u>The Life and Times of Menelik II</u> . . . 232 (1975) and Farer, <u>op.cit.</u> 16. <u>See</u> C. Anderson, <u>et al.</u>, <u>Issues of Political Development</u> 90 (1967).

14 E. Murray, <u>Kulubi</u> 192 (1973). <u>See</u> also Order 94 of 16 April 1974 and Spencer, <u>op.cit.</u> 1138.

15 Amnesty International, 'Ethiopia: The Human Rights Situation' (1977). <u>See</u> Chap. 5-II

16 Halpern, quoted by R. Dowse, 'The Military and Political Development', in C. Leys, ed., <u>Politics and Change in Developing Countries</u> 213, at 215 (1969).

17 <u>See:</u> Farer, <u>op.cit.</u> 13; E. Lefever, <u>Spear and Sceptor</u> 20 (1970); and R. First, <u>The Barrel of a Gun</u> 112, 465 (1972).

18 Cohen and Sileshi, <u>op.cit.</u> This criticism apart, we have found Koehn's studies to be uniformly excellent, and rely on them heavily.

19 "A Lesson to Others", <u>Ethiopian Herald</u> 26/11/74, 2. <u>See also</u> Spencer, <u>op.cit.</u> 1139 and Koehn, 'Ethiopian Politics' 8.

20 <u>See:</u> B. Moore, Jr., <u>Reflections on the Causes of Human Misery</u> . . . 179, 190-1 (1972); S. Shabtai, 'Army and Economy in Tropical Africa', 23 Economic Development and Cultural Change 687, at 687 (1975); and J. Nelson, 'The Urban Poor', in Uphoff and Ilchman, <u>op.cit.</u> 191, at 191.

21 C. Legum, <u>Ethiopia: The Fall of Haile Selassie's Empire</u> 3 (1975). This citation should not be construed as an acceptance of Legum's other views.

22 Greenfield, <u>op.cit.</u> 386, 400-1. <u>See also</u> Farer, <u>op.cit.</u> 13, 18.

23 Jackson and Stein, <u>op.cit.</u> 357. <u>See</u> also A. Zolberg, 'The Structure of Political Conflict in the New States of Tropical Africa', in Uphoff and Ilchman, <u>op.cit.</u> 155, at 162 and Heeger, <u>op.cit.</u> 94-6..

24 Dowse, <u>op.cit.</u> 219. <u>See also</u> S. Finer, <u>The Man on Horseback</u> 20, 23 (2d Ed. 1975).

25 <u>See Id.</u> 77-8, 141-2.

26 <u>See:</u> S. Vardalis, 'The Constitutional Order in Portugal' <u>passim</u> (1976); Spencer, <u>op.cit.</u> 1143; and Maj. E. Autunes, 'Portugal Celebrates. . .', <u>Guardian</u> 25/4/78, 6.

27 I. Horowitz, 'The Military as a Sub-culture', in A. Said, ed., <u>Protagonists of Change</u> 41, at 47 (1971).

28 W. Wertheim, <u>Evolution and Revolution</u> 176, 179 and <u>passim</u> (1974).

29 <u>Id.</u> 198.

30 R. Dahrendorf, 'Inequality, Hope and Progress' 12 (1976).

31 K. Marx, Critique of the Gotha Programme 29 (1972).

32 P. Gilkes, 'The Coming Struggle for Ethiopia', 19 (3) Africa Rep. 33, at 36 (May 1974) and Greenfield, op.cit. 361.

33 Legum, op.cit. 32. See Note 21, supra.

34 M. Woollacott, 'Mengistu's See-saw Socialism', Guardian, 4/3/78, 15; P. Keatley, 'Regime Under the Wraps', Guardian, 6/10/75; and Koehn, 'Ethiopian Politics', 11.

35 See Heeger, op.cit. 112-13.

36 'Dergue Official Killed', Guardian 4/11/77, 7; Spencer, op.cit. 1145; and Keatley, op.cit. See G. Kennedy, The Military in the Third World 62 (1974).

37 Gilkes, The Dying Lion x; D. Ottaway, 'Ethiopian Leaders Held after Coup Attempt', Guardian 28/4/75, 4; 'New Fears for Selassie as Army Splits', Observer, 27/4/75, 8; Farer, op.cit. 17, 19; and Erlich, op.cit. 10. See Jackson and Stein, op.cit. 354.

38 P. Enahoro, 'Ethiopia: Army Tightens Grip', Africa, Nov. 1974, 16.

39 Greenfield, op.cit. 377.

40 Air Force Col. Tessema Abadesash, 'Inside the Junta', Newsweek, Euro. Ed., 16/12/74, 30.

41 Ethiopian Herald, 5/12/74, 3.

42 C. Legum, 'Dilemmas on the Horn of Africa', Observer 1/12/74, 13.

43 Unidentified London Times correspondent, cited on BBC World Service "Twenty-four Hours" programme, 29/11/74, 1115 GMT.

44 P. Schwab, 'Human Rights in Ethiopia', 14 J. Mod. Af. Studs. 155, at 157-8 (1975).

45 'Dergue Responds to Pressures', 58 Africa 17, at 18 (June 1976); 'Ruler Dies in Addis Battle', Guardian, 4/2/77, 1; and Erlich, op.cit. 22.

46 P. 55 of 1975, Neg. Gaz. 35/4, Art. 3 (repealed by P. 63 of 1975, Neg. Gaz. 35/10). Art. 4 explains that a member of the security forces who is on duty may use force
> only to the extent to which the circumstances of the case, the enforcement of law and order, the carrying out of any legal arrest and the protection of the life and property of another so require.

The security forces were empowered to arrest, search and detain without warrant (Arts. 5-6). Protections of the accused found in the Civil Procedure Code of 1965 (concerning 'habeas corpus') and the Criminal Procedure Code are "suspended" (Art. 8), and the accused may be

punished (Art. 7) under the Special Penal Code (P. 8 of 1974).

47   E.g.: D. Ottaway, 'Ethiopian Unions Hit at Military', Guardian 25/9/75, 2 and 'Ethiopia Apologises after Troops Fire on U.S. Diplomat's Car', Id., 9/10/75, 4; P.Keatley, 'Crash Course in Ethiopia', Id., 3/10/75, 7. Government's official response to the airport shootings was not wholly self-serving:

> Airline employees get big pay and live a good life, which puts them in the category of the middle class. . . . Government has had to subsidize their salaries since . . . revenue proved to be insufficient. Some Airline employees. . . are not ready to make sacrifices for the sake of change. This is shown by their opposition to the rescaling of salaries, which is in line with the Revolution. (Radio Addis Ababa, Domestic Service in Amharic, 28/9/75, 1700 GMT).

48   P. 54 of 1975, Neg. Gaz. 35/3, Arts. 2(6), 3, 8. Compensation for nationalisation is regulated by P. 70 of 1975, Neg. Gaz. 35/14 (discussed in Chap. 7).

49   P. 54 of 1975, Arts. 4-6, 9.

50   D. Ottaway, 'Assassination of Marxists in Ethiopia', Guardian 4/10/76, 3; 'Ethiopia Shoots "Traitor" General', Id., 14/7/76, 3; 'Ethiopia Warns Plotters', Id., 16/7/76, 4; and 'All Quiet After Coup Attempt', Id., 27/7/76, 2.

51   M. Kaufman, 'Surrounded by Enemies, Ethiopia Wars against Itself', New York Times 4/12/77, Sec. E, p. 3; 'Attempt to Kill Mengistu', Guardian 30/1/78, 5; J. MacManus, 'Ethiopia Leader puts his Case', Id., 6/7/77, 6; P. Enahoro, 'Ethiopia Tikdem', 44 Africa 10, at 13 (Apr. 1975); W. Lee, 'Ethiopia: a Review of the Dergue', 22(2) Africa Report 7, at 10 (Mar. 1977); V. Brittain, 'Ethiopia Admits Nine Murder Attempts on Leader of Derg', Guardian 30/6/78, 5; and D. Ottaway, 'The Revolution that is Devouring its Own', Id., 5/2/77, 13.

52   Id.; Enahoro, loc. cit.; and J. Toye, 'Mengistu Named Military Council Chairman', Reuters teletype despatch, 12/2/77, 1450 GMT.

53   'Power Switch in Ethiopia', Guardian 31/12/76, 2 and Ottaway, loc. cit. See J. Kautsky, Communism and the Politics of Development 163 (1968) and Finer, op.cit. 176-7.

54   '200,000 Cheer Ethiopia Victor', Guardian, 5/2/77, 2; Kaufman, op.cit.; 'Ruler Dies in Addis Battle'; Ottaway, loc. cit.; and Ottaway, 'Ethiopia Killers Terrorise City', Guardian 3/4/77, 2.

55   Id.; 'New Ruler Chosen', Guardian 12/2/77, 2; 'No Time for Compromises', 67 Africa 19, at 20 (1977); Tamene Asmare, 'Addis Crackdown on Marxists', Guardian, 10/2/77, 2; and '200,000 Cheer Ethiopian Victor'.

56   Mengistu's Speech at the Graduation Ceremony at the Guenet Military Academy, Radio Addis Ababa, domestic service in Amharic, 12/2/77, 1145 GMT.

57   Quoted by P. Keatley, 'Ethiopia Role for Somalis', Guardian, 13/9/77, 5.

58   G. Hancock, 'Waiting Patiently for the Holocaust', New Internationalist No. 62, 5 (April, 1978).

59   V. Brittain, 'Ethiopia Purges Deputy Leader', Guardian 14/11/77, 6 and 'Ethiopia Admits Nine Murder Attempts on Leader of Derg', Id., 30/6/78, 5; 'No Aid yet for Somalia', Id., 15/11/77, 6; Toye, op.cit.; and Kaufman, op.cit.

60   Id.; D. Ottaway, 'Crosscurrents of Revolution', Guardian 12/10/77, 8; J. MacManus, 'Ethiopia's Armed Rabble Ready for Front', Id., 21/5/77, 1; 'Eritrean Reign of Terror as Death Squads Roam Streets', Id., 16/12/77, 8; 'Rebels "Retreat" in Eritrea Battle', Id., 22/12/77, 7; and 'Muting at Jijiga led to Ethiopian Debacle', Id., 10/10/77, 7.

61   Quoted by Lee, op.cit., at 7.

62   Ottaway, 'Ethiopia Purges Deputy Leader' and Erlich, op.cit. 23. See Gilkes, The Dying Lion 88 and Finer, op.cit. 263.

63   Woollacott, op.cit. See: Y. Ghai, 'Notes Towards a Theory of Law and Ideology. . .', 13 African Law Studs. 31, at 34 (1976); C. Anderson, et al., Issues of Political Development 147 (1967); R. Christensen, et al., Ideologies and Modern Politics 2,5,11-13 (1971); J. Joll, Gramsci 100 (1977); B. Barber, Social Stratification 213 (1957); S. Eisenstadt, 'Social Change and Development', in Id., ed. Readings in Social Evolution and Development 3, at 28 (1970); and Heeger, op.cit. 97 (quoting Robert North).

64   A. Diamant, 'Political Development', in J. Montgomery and W. Siffen, eds., Approaches to Development 15, at 39 (1966).

65   Special Penal Code, No. 8 of 1974, Art. 35. See Chap. 5, passim.

66   'Government Issues Policy Declaration', Ethiopian Herald, 21/12/74, 1.

67   Id., 1, 3 and 'The Political Philosophy of Ethiopian Socialism', Ethiopian Herald 28/12/74, 2-3.

68   'The Official is Slipping', (London) Financial Times, 21/4/76, 6; 'Consolidating the Revolution', 56 Africa 37 (Apr. 1976); and B. Thomson, Ethiopia: The Country that Cut off its Head 133 (1975). The latter citation should not be construed as an approval of other views expressed by Thomson.

69   'Ethiopia Plans its Future', Guardian, 22/4/76, 4; 'Addis Zemen Comments on Autonomy', Radio Addis Ababa, International Service in English, 29 March 1978, 1720 GMT; and 'Dergue Responds to Pressures', 58 Africa 17 (June 1976).

70   'It is Impossible to Hide. . .', Radio Addis Ababa Domestic Service in Amharic, 8/10/75, 1700 GMT.

71   Mengistu, op.cit. See also P. Enahoro, 'If the End Justifies the Means. . .' Africa No. 68, 11 (Apr. 1977).

72   Mengistu, op.cit. See also 'Mengistu Threatens Reprisals', Guardian 25/8/77, 5.

73   See W. Friedland, 'Basic Social Trends' in Friedland and C. Rosberg, eds., African Socialism 15 (1964) and H. Wheeler, Democracy in a Revolutionary Era 62-3 (1971).

74   See: J. Cunningham, 'So Who are the Trots', Guardian 4/2/77, 9; B. Davidson, 'Marxism in Africa', New Society 20/10/77, 114; and C. Thomas, Dependence and Transformation 28-9 (1974).

75   See: Cunningham, op.cit.; Thomas, op.cit.; Kennedy, op.cit. 16; and D. Lane, The Socialist Industrial State 14, 29, 36-7 (1976).

76   'Bible Ban', Observer 21/4/78, 1.

77   Davidson, op.cit.

78   Quoted by M. Roberts, 'A Socialist Looks at African Socialism', in Friedland and Rosberg, op.cit. 80, at 83. See: Friedland, op.cit. 34; M. Esman, 'The Politics of Development Administration', in J. Montgomery and W. Siffen, eds., Approaches to Development 59, at 99 (1966); and L. Sargent, Contemporary Political Ideologies 132 (1972).

79   Quoted in Roberts, op.cit.

80   See: Friedland, op.cit. 15-16, 22; Friedland and Rosberg, 'Introduction', in Id., eds., op.cit. 1, et 2-5; Anderson, et al., op.cit. 177; and Brietzke, 'Rural Development and Modification of Malawi's Land Tenure System', Rural Africana No. 20, 53 (1973).

81   Girma Amare, 'Aspects of Ideology in Transition in Present-day Ethiopia' (1973). See: Davidson, op.cit. 114-15; C. Morse, 'The Economics of African Socialism', in Friedland and Rosberg, op.cit. 35, at 36; C. Dodd, Political Development 57-8 (1972); Moore, Jr., op.cit. 70-71; and Anderson, et al., op.cit. 178.

82   See: Id. 192; D. Apter, Political Change 2, 38-42 (1973); R. Tucker, The Marxian Revolutionary Idea 103 (1970); B. Smart, Sociology, Phenomenology and Marxian Analysis 23, 30, 34 (1976); S. Finer, Comparative Government 509 (1970); and Dodd, op.cit. 16.

83   D. Ottaway, 'Ethiopia Attempts to Improve its Poor Relations with the U.S.' Guardian 23/9/77, 8. See also: Ottaway, 'Crosscurrents of a Revolution'; M. Woollacott, 'Ethiopia Wins a Pledge', Guardian 20/2/78, 6; and V. Brittain, 'Bodies Litter the Streets of Addis', Id., 17/12/77, 5.

84   See: R. Fagen, 'Mass Mobilization in Arba', in Jackson and Stein, op.cit. 385 at 386; Heilbroner, cited by R. Dahrendorf, The New Liberty 31 (1975); R. Meier, Development Planning 54 (1965); E. Shils, Center and Periphery 15 (1975); Heeger, op.cit. 136; Anderson, et al., op.cit. 145, 178-80; and Tucker, op.cit. 126.

85   'Reactionary Ethiopian Students to be Punished', Radio Addis Ababa Domestic Service in Amharic, 22/8/75,1100 GMT; D. Levine, Greater Ethiopia 65,68 (1974); and Girma, op.cit. See Durkheim, quoted and applied to Cuba by Fagen, op.cit. 387 and J. Hazard, Communists and their Law 482-506 (1969), discussing analogous matters in Mali.

86   See: J. Gray, 'The Chinese Model', in Nove and Nuti, eds., Socialist Economics 491, at 492 (1972); E. Schumacher, Small is Beautiful 211 (1974); J. LaPalombara, 'Alternative Strategies. . .', in F. Riggs, ed., Frontiers of Development Studies 171, at 190 (1970); Ghai, op.cit. 77; and Esman, op.cit. 74.

87   See: Id. at 103; Seidman, in Brietzke, ed., A Source-Book of Ethiopian Law and Development 132-3 (1974); A. Schaff, 'The Marxist Theory of Social Development', in Eisenstadt, ed., op.cit. 71, at 77; P. Merkl, Modern Comparative Politics 259 (1970); and Tucker, op.cit. 93-4.

88   P. Enahoro, 'Leadership in Africa', Africa 24 (June 1973).

89   'The Rhetoric of Revolution', Financial Times 3/10/75, 7.

90   Schwab, 'Human Rights. . .', 159. See E. Hagen, On the Theory of Social Change 185-6 (1962) and Horowitz, op.cit. 41.

91   See: B. Moore, Jr., Social Origins of Dictatorship and Democracy 105-6 (1973); G. Myrdal, Asian Drama 22-3 (Rev. Ed. 1977); F. Burke, Africa's Quest for Order 5 (1964); and Apter, op.cit. 193.

92   Zolberg, op.cit. 163.

93   Schwab, 'Human Rights. . .', 157. See Moore, Jr., Reflections. . . 119.

94   'Reactionary Ethiopian Students. ...' Union/Derg relations are also discussed in Chap. 7.

95   J. Paul, 'Law, Communication and Development: Some reflections on Ethiopian Experience' 18 (1978).

96   C. Shenk, 'The Development of the Ethiopian Orthodox Church' 339 (1972).

97   'Teferi Receives Russian Orthodox Delegation', Radio Addis Ababa Domestic Service in Amharic, 5/11/75, 1100 GMT.

98   'Consolidating a Revolution'; Farer, op.cit. 18; and H. Eerik, 'Boy of 14 is Shot. . .' (London) Times, 22/3/78, 1. The latter citation should not be construed as an acceptance of all of the views expressed therein.

99   'The Official is Slipping'.

100 M. Woollacott, 'The Robbespierre of the Military Rulers' Red Terror',
     Guardian 10/2/78, 11. See also: M. Molyneux and F. Halliday, 'Is
     the Terror Really Red?', Seven Days 10/3/78, 18; MacManus, 'Ethiopia's
     Bloody Power Contest'; Ottaway, 'Ethiopia Killers. . .'; W. and J.
     Hanna, 'The Political Structure of Urban-Centred African Communities',
     in H. Miner, ed., The City in Modern Africa 151 (1967); and Lane, op.cit.
     105.

101 Kaufman, op.cit.

102 Id.; P. Gilkes, Commentary in 'Focus on Africa', BBC World Service,
     23/9/77, 1715 GMT; 'Ethiopia to Form New Leftist Party', Guardian
     3 July 1978, 6; Ottaway, 'Crosscurrents of a Revolution'; and 'Dergue
     Responds to Pressures', at 50.

103 V. Brittain, 'Somali Guerrillas Claim 1200 'Enemy' Killed in Ogaden
     War', Guardian 17/4/78, 7; M. Dobbs, 'Mass Execution in Ethiopia',
     Id., 4/1/76, 4; 'War on the Horn of Africa', New Internationalist No.
     62, 8 (April 1978); Lee, op.cit. 9; Ottaway, 'Ethicpia Killers. . .';
     and Woollacott, 'Robespierre. . .'. MacManus's assertion ('Ethiopia's
     Bloody Power Contest') that the EPRP "came into being" in October
     1976 is demonstrably false.

104 'Ethiopian Finance Ministry Purged', Radio Addis Ababa Domestic
     Service in Amharic, 22 Feb. 1978, 1700 GMT; 'Ethiopian Marxists
     Call for Change of Regime', Times 28/1/77, 8; Ottaway, 'Assassination
     of Marxists. . .'; Woollacott, 'Mengistu's See-Saw Socialism';
     'War on the Horn of Africa'; . ˙ 'Dergue Responds to Pressures';
     Kaufman, op.cit.; and 'Ethiopia Swoop' Guardian 21/9/76, 2.

105 Id. and Ottaway, 'Ethiopia Killers. . .'.

106 Id.; 'Slaughter in Addis Ababa', Observer 18/12/77, 1; 'German Devel-
     opment Aid for Somalia', Guardian 3/11/77, 9; 'Antirevolutionaries
     Hunted in Wollo', Radio Addis Ababa Domestic Service in Amharic, 25
     Mar. 1978, 1900 GMT; 'Ethiopian Finance MinistryPurged'; Brittain,
     'British Aid to Somalia. . .', 'Addis Rebuffs Carter. . .', 'Ethiopia
     Purges Deputy Leader', and 'Somali Guerrillas Claim. . .'; Temene,
     op.cit.; M. Dobbs, 'A Bloody Farewell. . .'; 'Ethiopian Marxists Call
     . . .'; 'Ethiopia's New Move. . .'; and 'Dergue Official Killed'.

107 D. Martin, 'Ethiopia Builds its Future', Observer 21/12/75, 6 and
     Spencer, op.cit. 1141.

108 'Teferi's Press Conference', Radio Addis Ababa Domestic Service in
     Amharic, 15/9/75, 1700 GMT.

109 'Feasibility Studies for Socialism Concluded', Radio Addis Ababa
     Domestic Service in Amharic, 3/11/75, 1100 GMT.

110 MacManus, 'Ethiopia's Bloody Power Contest'; Molyneux and Halliday,
     op.cit.; 'Ethiopia Seeks Support', Guardian, 9/2/78, 1 and 22, at
     22; 'Dergue Responds to Pressures', at 50; Woollacott, 'Mengistu's

117, 120 (1972) and D. Tiranti, 'The Barrel of a Gun', New Inter-
nationalist No. 51, 5, at 7 (May 1977).

121 Finer, Comparative Government 589-90.

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123 See Finer, Comparative Government 507-8 and Chapters 1 and 3.

124 Woollacott, 'Mengistu's See-Saw Socialism'. See: Keatley (Ethiopian)
'Regime Under the Wraps'; J. Lee, African Armies and Civil Order
83 (1969); F. Riggs, Administration in Developing Countries 179
(1964); Heeger, op.cit. 108-9, 121, 124; and Moore, Jr., Reflections
. . . 70.

125 Woollacott, 'Robespierre. . .' and D. Levine, 'Class Consciousness and
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New Elites of Tropical Africa 312, at 319 (1964).

126 Quoted in 'Dergue Responds to Pressures', at 50. See also: J.
Harbeson, 'Wither the /Ethiopian/ Revolution?' Africa Report 50
(July 1976); Farer, op.cit. 12; Koehn in Walton, op.cit. 173; Spencer,
op.cit. 1145; and Keatley, 'Ethiopia "Role" for Somalis'.

127 Lt.-Col. Berhanu Bayih, quoted in 'Ethiopia to Crush Rebels',
Guardian 29 June 1978, 9.

128 I. Kaplan, et al., Area Handbook for Ethiopia 3(2d Ed. 1971).

129 Addis Hiwet, op.cit. 114. For a different, but equally pessimistic
assessment, see Lee, Note 113, supra.

130 See: C. Wright Mills, quoted by L. Warshay, The Current State of
Sociological Theory 159 (1975); W. Evan, 'Public and Private Legal
Systems' in Id., ed., Law and Sociology 165, at 172 (1962); Burke,
op.cit. 5; Moore, Jr., Social Origins. . . 138, 408; and Jackson and
Stein, op.cit. 196-7.

131 See: Arendt, cited by Lane, op.cit. 44-5; K. Deutsch, 'Cracks in the
Monolith', in Jackson and Stein, op.cit. 250, at 250; Ionescu, cited
by B. Chapman, Police State 111 (1970); Finer, Comparative Government
75-9; and Nwabueze, op.cit. 304.

132 J. Cohen and P. Koehn, 'Rural and Urban Land Reform in Ethiopia',
14 African Law Studs. 3, at 4 (1977).

133 'Ethiopia Consolidates her Defense Forces', Radio Addis Ababa Domestic
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on to Power', Observer, 18 June 1978, 12; Erlich, op.cit. 23;
Koehn, 'Ethiopian Politics. . .' 20; Finer, Comparative Government 589
and The Man on Horseback 258-9; and C. Friedrich, 'The Political Theory
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134 Spencer, op.cit. 1151. See First, op.cit. 115-6.

135 C. Legum, 'Ethiopia's Legacy. . .', New York Times 31/8/75, E3.
See: J. Coleman and B. Brice, Jr., 'The Role of the Military in Sub-
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137 Quoted by Enahoro, 'Ethiopia's Melting Pot', Africa, May 1974, 15.

138 Young, op.cit. See R. Dumont and M. Mozayer, Socialisms and Develop-
ment 331 (1973).

139 Moore, Reflections . . . 38-9, 192.

140 Hancock, op.cit. 1 at 6.

141 Ottaway, 'Crosscurrents of a Revolution'.

142 S. Rubenson, The Survival of Ethiopian Independence 269 (1976).
See 'Preface' to Id., at 4.

CHAPTER 5

1   B. Nwabueze, Constitutionalism in Emergent States 139, 161 (1973).

2   See M. Norris, 'Ethiopia - Municipal Administration . . .' 1 Planning and Administration 47, at 63 and passim (1974). Norris's ideas are discussed further in Chap. 7, infra.

3   See: G. Myrdal, Asian Drama 43 (Rev. Ed. 1977); G. Lenski, Power and Privilege 54-5 (1966); and G. Heeger, The Politics of Development 8 (1974).

4   See J. Markakis, Ethiopia . .'. 277 (1974).

5   J. Finnis, 'Revolutions and Continuity of Law', in A. Simpson, ed., Oxford Essays in Jurisprudence 44, at 48 (2d Series, 1973) and B. Russell, A History of Western Philosophy 717 (New Ed., 1961).

6   Kelsen, quoted by Udoma, C.J., in Uganda v. Commissioner of Prisons, Ex p. Matovu (1966) E. Af. L.R. 514, 536. See W. Wertheim, Evolution and Revolution 119, 125 (1974) and M. Barkun, 'Law and Social Revolution', 6 Law and Society Review 113, at 118-19 (1971).

7   H. Scholler, 'Ethiopian Constitutional Development' 25 Jahrbuch. . . der Gegenwart 499, at 558 (1976). See R. Dias, 'Legal Politics. . .' 26 Cambridge Law J. 233 (1968) and Kelsen, op.cit.

8   For the complete text, see H. Scholler and P. Brietzke, Ethiopia . . . 154-83 (1976).

9   P. 1 of 1974, Neg. Gaz. 34/1, Art. 5(6), 12 Sept.

10   Under P. 61 of 1975, Neg. Gaz. 35/8, Art. 2.

11   P. 2 of 1974, Neg. Gaz. 34/2, Arts. 4, 6.

12   P. 108 of 1976, Neg. Gaz. 36/10, Art. 23.

13   P. 110 of 1976, Neg. Gaz. 36/13, Art. 21.

14   See P. 108, Art. 12 and P. 110, Art. 10.

15   See P. 108, Arts. 2, 5-7, and P. 110, Arts. 2, 5-7.

16   'Ethiopia to Form New Leftist Party', Guardian 3 July 1978, 6.

17   P. 12 of 1974, Neg. Gaz. 34/11.

18   H. Dunning, 'Ethiopia: Post-Revolutionary Law Reform', 13 African Law Studs. 189 (1976).

19   P. 91 of 1976, Neg. Gaz. 35/33. Prologue and Art. 10.

20 Quoted by, e.g., S. Finer, Comparative Government 541 (1970). See R. Dahrendorf, Class and Class Conflicts in Industrial Society 315 (1959) and M. Esman, 'The Politics of Development Administration', in J. Montgomery and W. Siffen, eds., Approaches to Development 59, at 61 (1966).

21 See: Scholler, op.cit. 536; R. Seidman, 'Law and Development in . . . Africa', 1966 Wisconsin Law Rev. 999, at 1015; G. Marshall, Constitutional Theory 64 (1971); and A. Southall, 'Introduction', in Id., ed., Social Change in Modern Africa 1, at 19 (1969).

22 P. 8 of 1974, Neg. Gaz. 34/8, Prologue.

23 D. Mathew, Ethiopia 18 (1947).

24 H. Marcus, The Life and Times of Menelik II. . . 197 (1975). On Menelik, see Id. and Chap. 1.

25 N. Singer, 'Modernization of Law in Ethiopia', 11 Harvard Int. Law J. 73, at 79, 81 (1970); Haile Selassie, My Life and Ethiopia's Progress: 1892 -1937 66 (E. Ullendorff transl., 1976); and I. Kaplan, et al., Area Handbook for Ethiopia 258, 455-8, 500 (2d Ed., 1971). See: T. Clogger, 'The Code of Ethiopia',   Criminal Law Rev. 165 (1956); P. Graven, An Introduction to Ethiopian Penal Law (1965); and S. Lowenstein, Materials for the Study of the Penal Law of Ethiopia (1965).

26 Owing to space limitations, the topic is given a fairly brief treatment. For a fuller discussion, see Scholler and Brietzke, op.cit. 52-61, 109-11.

27 Amnesty International, 'Ethiopia: the Human Rights Situation', AFR 25/07/77, 2-3 (1977).

28 See Brietzke and Scholler, op.cit. 188-98.

29 Penal Code Art. 59 defines
        a criminal lack of foresight or imprudence /as acting/ . . . without consideration or in disregard of the possible consequence of his act, /or failure/ to take such precautions as might reasonably be expected in the circumstances of the case and having regard to his age, experience, education, occupation and rank.
    See H. Black, Black's Law Dictionary 454, 1185 (4th Ed. 1957), who states that culpable negligence (in the context of American law) refers to the standard of the ordinary man rather than the "reasonable man".

30 P. 96 of 1976, Neg. Gaz. 35/38, Art. 2. See 'War Against Saboteurs', Guardian 7/7/76, 3 and Amnesty International, op.cit. 4. Minor changes in the Special Penal Code were introduced by P. 21 of 1975, Neg. Gaz. 34/16.

31 P. 96, Art. 2. The punishment originally promulgated was from one to five years imprisonment.

32 E.g., P. Brietzke, 'Theft by Public Servant in Malawi', 1 Univ. of Malawi J. of Social Sciences 67 (1973).

33 Graven (op.cit. 12), who assisted in drafting the 1957 Penal Code, adds that "the intention behind Art. 3 was. . . to ensure that, saving all just exceptions, future subsidiary legislation would be consistent with the Code. . .". With respect, this adds nothing: what constitutes a "just exception"? In fact, the statement lends support to the view that Art. 3 was made deliberately ambiguous.

34 See Kaplan, et al., op.cit. 460.

35 J. Paul, 'Problems of Public Law and Political Development', in H. Marcus, ed., Proceedings. . . on Ethiopian Studies 323, at 329 (1975).

36 P. Schwab, 'Human Rights in Ethiopia', 14 J. Mod. African Studs. 155, at 159 (1975).

37 Scholler and Brietzke, op.cit. 62. See P. Merkl, Modern Comparative Politics 464 (1970).

38 R. Dworkin, 'Taking Rights Seriously', in Simpson, op.cit. 202, at 216. U.E. Maung, C.J., (Quoted by H. Groves, Comparative Constitutional Law 365 (1963) in Tinsa Maw Naing v. Rangoon Commissioner of Police /1950/ Burma L. Rep. 17 (S.C.) adds that:
        Being imperfect, it can be presaged of every man that he is
        a potential criminal but that would not justify each one of us
        being detained in custody on that bare possibility.

39 Amnesty International, op.cit. 9; Amnesty International, 'Action on Human Rights Violations in Ethiopia 1961-1974', AFR 25/04/77, 1-2 (1977); P. Keatley, 'Crash Course in Ethiopia', Guardian 3/10/75, 3; and Kaplan, et al., op.cit. 476.

40 P. 10 of 1974, Neg. Gaz. 34/10.

41 Order 56 of 1969, Neg. Gaz. 28/13.

42 E.g., 55 prominent officials were released in Sept. 1975: C. Legum, 'Regime Denies Plan. . .', Observer 14/9/75, 7. See also '1400 are Freed', Observer 14/11/76, 7 and 'Ethiopia Releases 700', Guardian, 11/6/77, 5.

43 Decree 52 of 1965, Neg. Gaz. Extraordinary, Arts. 15(2)(i), 177-9.

44 P. 55 of 1975, Neg. Gaz. 35/4, Art. 8, repealed by P. 63 of 1975, Neg. Gaz. 35/10.

45 There are several unreported cases, in which the Court seems to adopt the rationale of B.K. Mukherjee, J., in Shibhan Lal Saksena v. State of Uttar Pradesh, A.I.R. 1954 (S.C.) 179 (quoted by Groves, op.cit. 350):
        The sufficiency upon which such satisfaction purports to be
        based, provided they have a rational probative value and are not

extraneous to the scope of the legislative provision cannot be
challenged in a court of law, except on the ground of "mala fides".

46   See Y. Ghai and J. McAuslan, Public Law and Political Change in Kenya
159-60, 172-3 (1972) for a discussion of parallel legal attitudes in
Kenya.

47   P. 185 of 1961, Neg. Gaz. 21/7. See Paul, op.cit. 329 and S. Fisher,
Ethiopian Criminal Procedure passim (1969).

48   P. 323 of 1973, Neg. Gaz. 32/4, discussed in Brietzke, 'Ethiopia'
in N. Rubin and E. Cotran, eds., 7 Annual Survey of African Law 324,
at 330-1 (1977).

49   P. 7 of 1974, Neg. Gaz. 34/7.

50   P. 9 of 1974, Neg. Gaz. 34/9.

51   See K. Boyle, et al., Law and State: the Case of Northern Ireland
120 (1975). See Id., 43, 51, 90.

52   Worku Tafara, 'Judicial Administration in Ethiopia' 29 (1972) and Kap-
lan, et al., op.cit. 476-7.

53   P. 68 of 1944, 10 Consol. L. Eth. 2.

54   Capt. Alemayekou Seyoum, 'Ethiopian Military Justice' 12,32-39
(1973). The military offenses envisaged by Penal Code Arts. 747-8
never materialised. The Court-Martial Procedure Rules 1972 were
probably ultra vires.

55   P. 56 of 1975, Neg. Gaz. 35/5, 28 Oct., read with P. 21 of 1975, Art.
2 (1), amending Ps. 7 and 9 of 1974. The Special District Courts-
Martial, which heard relatively minor offenses under the Special
Penal Code, were abolished, and much of their jurisdiction is trans-
ferred to High and Awraja Courts, subject to the exercise of the Pro-
secutor's discretion. At the end of 1975:
     a. Awraja Courts may hear those 'minor' offenses defined by
     Arts. 13, 14(1), 15, 20, 21(1), 24-5 28-32, 34, 36(1), 37,39 and
     42-4 of the Special Penal Code;
     b. The High Court may hear offenses under Arts. 14(2), 16
     21(2), 23, 28-34, 36(2), 40 and 42-4 of the Code; and
     c. The Special General Courts-Martial are empowered to try those
     offenses defined in Arts. 1-12, 17-19, 22, 26-34, 38 and 41-5
     of the Code.
Where the jurisdiction of these courts overlaps, the choice of court is
at the discretion of the Prosecutor. He is also expressly authorised
to assign any Special Penal Code case triable in a Special General
Court-Martial to an Awraja or High Court, and Government may direct
that a case normally heard by an Awraja or High Court be tried by the
Special General Court-Martial - the name is not a misprint. Prose-
cutions in Awraja or High Courts are in the hands of the Advocate
General "or any other public prosecutor. . .". (P. 56 and Art. 2(1)
of P. 21). Arts. 183 and 195(3) of the 1961 Criminal Procedure

Code dealing with appeals (discussed _infra_) have been repealed (P. 51 of 1975, _Neg. Gaz._ 35/2, 27 Sept., Art. 2(1)). Where an Awraja or High Court tries an offense under the Special Penal Code, the Criminal Procedure Code is otherwise applicable, except for Arts. 38(b), 42(1)(c), 42(3), 80-93, 106 and 161(2) - Art. 2(1) of P. 21. By way of contrast, Criminal Procedure Code provisions concerning bail (Arts. 63-79), preliminary inquiries (Arts. 80-93) and appeals (Arts. 181-96) are not applicable to cases in the Special General Courts-Martial (P. 7 of 1974, Art. 15).

56 P. 53 of 1975, _Neg. Gaz._ 35/2.

57 P. 52 of 1975, _Neg. Gaz._ 35/2, Art. 11(1).

58 Soviet Law on Court Organisation 1960, Art. 7 and H. Berman, cited by D. Harris, 'The Right to a Fair Trial as a Human Right', 16 Int. and Comp. L. Q. 352 (1967).

59 P. 7 of 1974, Art. 6.

60 _Id._, Art. 12(2).

61 A. Paulos Tzadua, transl., _Fetha Nagast_ 482 (n.d.).

62 P. 21 of 1975, Art. 2(3)and P. 38 of 1975, _Neg. Gaz._ 34/32, Art. 2.

63 P. 9 of 1974, Art. 3(1).

64 Amnesty International, 'Ethiopia: The Human Rights Situation', 2-3.

65 P. 7 of 1974, Arts. 10-11. See also P. 9 of 1974, Art. 3(1) and Criminal Procedure Code, Arts. 181-96.

66 A. Harno, _Cases and Materials on Criminal Law and Procedure_ 846 (1957).

67 Quoted by C. Legum, _Ethiopia_ . . . 71 (1975). See also: M. Dobbs, 'Mass Execution in Ethiopia', _Guardian_ 4/1/76, 4; 'Ethiopia Shoots "Traitor" General', _Id._ 14/7/76, 3; 'Ethiopia Warns Plotters', _Id._ 16/7/76, 4; and Amnesty International, 'Ethiopia: The Human Rights Situation' 3.

68 Quoted by J. Hildebrand, 'The Sociology of Soviet Law. . .' 23 Case W. Reserve Law Rev. 157, at 222 (1971).

69 R. Mann, 'Ethiopian Carnage Spreads', Observer 2/4/78, 4; P. Keatley, 'Crash Course in Ethiopia', Guardian 3/10/75, 3; Amnesty International, 'Ethiopia: The Human Rights Situation' 1,3,20; 'Eritrean "Reign of Terror". . .' Guardian 16/12/77, 8; personal communications; and B. Thomson, Ethiopia . . . 118 (1975). The citation of Thomson should not be construed as an acceptance of other views he expresses. See H. Berman, Justice in the U.S.S.R. 267 (1963). The EPRP has sent an emissary to London to complain of human rights violations to the International Commission of Jurists and the U.N. Human Rights Commission (P. Keatley, 'Mass Murder by the Junta', Guardian 21/10/76, 2). A Council for Civil Liberties in Ethiopia has been formed by Ethiopian

exiles in London ('Ethiopia: Plea Over Killings', <u>Observer</u> 12/12/76, 6).

70 J. MacManus, 'Ethiopia's Bloody Power Contest', <u>Guardian</u> 1/6/77, 9; T. Lippman, 'Ethiopia's Rule of Terror', <u>Id</u>., 4/4/76,3; I. Guest, 'U.N. Body Condemns Rights Violations', <u>Times</u> 3/9/77, 4; P. Mason, BBC-TV-2 Interview, 7 PM News, 6/5/77; Amnesty, <u>loc. cit.</u> 20; and personal communications.

71 H. Eerik, 'Boy of 14 is Shot. . .', <u>Times</u> 22/3/78, 1 and 8; M. Woolla-cott, 'Robespierre. . .', <u>Guardian</u> 10/2/78, 11 and 'Mengistu's See-Saw Socialism', <u>Id</u>. 4/3/78, 15; Lippman, <u>op.cit.</u> ; and personal com-munications.

72 M. Woollacott, 'Terror Justified, Claims Dergue', <u>Guardian</u> 9/2/78, 1; V. Brittain, 'Bodies Litter the Streets of Addis', <u>Id</u>. 17/12/77,5, and 'Ethiopia Purges Deputy Leader', <u>Id</u>. 14/11/77,6; and personal communications.

73 J. Turner, 1 <u>Russell on Crime</u> 18 (12th Ed. 1964).

74 See Berman, <u>op.cit.</u> 368-9 and P. Juviler, <u>Revolutionary Law and Order: Politics and Social Change in the USSR</u> 66 (1976).

75 See: <u>Id</u>. 169, 171, 173; E.Schur, <u>Law and Society</u> 154 (1968); Z. Bankowski and G. Mungham, <u>Images of Law</u> 47 (1976); J. Farrar, <u>Intro-duction to Legal Method</u> 152-3 (1977); and P. Stein and J. Shand, <u>Legal Values in Western Society</u> 133 (1974), citing Vct. Dilhorne, in Alphacell Ltd. v. Woodward /1972/ 2 All E.R. 475, at 483.

76 C. Friedrich, <u>The Philosophy of Law in Historical Perspective</u> 207 (1963) and Juviler, <u>op.cit.</u> 169.

77 Schwab, <u>op.cit.</u> 155-6, 159-60.

78 P. 19 of 1975, <u>Neg. Gaz.</u> 34/15. <u>See</u> Chap. 7.

79 P. 49 of 1975, <u>Neg. Gaz.</u> 34/43.

80 P. 40 of 1975, <u>Neg. Gaz.</u> 34/33.

81 P. 106, of 1976, <u>Neg. Gaz.</u> 36/8.

82 <u>See</u> O. 23 of 1961, <u>Neg. Gaz.</u> 21/3 and L.N. 269 of 1962, <u>Neg. Gaz.</u> 22/6, discussed in Chap. 3.

83 <u>See</u> G.N. 8 of 1976, <u>Neg. Gaz.</u> 35/33 and G.N. 10 of 1976, <u>Neg. Gaz.</u> 36/3.

84 E. Lefever, <u>Spear and Sceptor</u> 20 (1970). See: S. Shabtai, 'Army and Economy in Tropical Africa', 23 Economic Development and Cultural Change 687, at 689 (1975); R. Dowse, 'The Military and Political Development', in C. Leys, ed., <u>Politics and Change in Developing Countries</u> 213, at 229-30 (1969); F. Riggs, <u>Administration in Developing Countries</u> 74, 320 (1964); M. Esman, 'Administrative Doctrine and

Development Needs', in E.Morgan, ed., <u>The Administration of Change</u> 3, at 19 (1974); and N. Mouzelis, <u>Organization and Bureaucracy</u> 4 (1967).

85　Lefever, <u>op.cit.</u> 178-9.

86　<u>See</u>:　S. Finer, <u>The Man on Horseback</u> 14 (2d Ed. 1975); M. Janowitz, <u>The Military in the Political Development of New Nations</u> 1, at 2, 26-7, 77-8 (1964);H. Bienen, 'The Background . . .', in <u>Id</u>., ed., <u>The Military and Modernization</u> 1, at 2, 16, 22 (1971); L. Pye, 'Armies in the Process of Political Modernization' in J. Johnson, ed., <u>The Role of the Military</u> . . . 69, at 79 (1962); Shabtai, <u>op.cit.</u> 695, 699; and Dahrendorf, <u>op.cit.</u> 303.

87　Quoted by J. Robinson, <u>Freedom and Necessity</u> 52 (1970).

88　P. Enahoro, 'Ethiopia Tikdem' 44 <u>Africa</u> 10 (Apr. 1975). <u>See</u> Finer, <u>op.cit.</u> 134-5.

89　'Consolidating the Revolution', 56 <u>Africa</u> 37 at 38 (Apr. 1976); 'Ethiopia Begins Mass Opposition Purges', <u>Guardian</u> 24/4/78, 4; 'Finance Ministry Purged', Radio Addis Ababa, Domestic Service in Amharic, 22/2/78, 1700 GMT; M. Molyneux and F. Halliday, 'Is the Terror Really Red', <u>Seven Days</u> 10/3/78, 18; and Legum, <u>Ethiopia</u> 53. <u>See</u> D. Apter, <u>Political Change</u> 137 (1973).

90　Teferi Benti, 'Revolution Anniversary Address', Radio Addis Ababa Domestic Service in Amharic, 12/9/75, 1700 GMT.

91　J. Gray, 'The Chinese Model', in Nove and Nuti, eds., <u>Socialist Economics</u> 491, at 505 (1972). <u>See</u>:　R. Unger, <u>Law in Modern Society</u> 191 (1976);　　F. Taylor, <u>On the Economic Theory of Socialism</u> 109 (1938); Mouzelis, <u>op.cit.</u> 8, 26-8; and Chap. 6, <u>infra</u>. Michaels's "iron law" states that modern large-scale organisations are necessarily oligarchic:　in its rise to power, the bureaucracy becomes an elite whose interests do not always coincide with the masses and who will attempt to retain power even if its policies are detrimental to the public.

92　<u>See</u>:　E. Schumacher, <u>Small is Beautiful</u> 202 (1974); L. Preston, 'Market Control in Development Economics', 4 J. of Development Studs. 481, at 481 (1968); Dahrendorf, <u>op.cit.</u> 296-7; and Chap. 7, <u>infra</u>.

93　<u>See</u>:　R. Seidman, 'Law and Development in . . . Africa', 1966 Wisconsin Law Rev. 999, at 1065-6 and 'Constitutions in . . . Africa', 1969 Wis. L. Rev. 83, at 91; L. Palmier, 'Indonesia's Agenda of Corruption', <u>New Society</u> 16/9/76, 594, at 594-6; H. Wheeler, <u>Democracy in a Revolutionary Era</u> 208 (1971); L. Friedman, <u>The Legal System</u> . . . 224-5 (1975); Myrdal, <u>op.cit.</u> 171; and Mouzelis, <u>op.cit.</u> 24.

94　G. Hancock, 'Waiting Patiently for the (Ethiopian) Holocaust', <u>New Internationalist</u> No. 62, 5 (Apr. 1978) and Amnesty International 'Ethiopia:　The Human Rights Situation' 22. <u>See</u>:　R. Wraith and E. Simpkins, <u>Corruption in Developing Countries</u> 177 (1963); G. Kennedy, <u>The Military in the Third World</u> 58 (1974); and Palmier, <u>op.cit.</u>

95   F. Marx, <u>The Administrative State</u> 89 (1957).

96   <u>See</u> G. Massell, 'Law as an Instrument of Revolutionary Change in
      . . . /the USSR/' 2 Law and Society Rev. 179, at 194-5 (1968).

97   J. Lyons, 'Functions of Local Government in Ethiopia' (1969).
      <u>See</u>: P. Self, <u>Administrative Theories and Government</u> 193-4 (1972);
      F. Riggs, 'The Context of Development Administration', in <u>Id</u>., ed.
      <u>Frontiers of Development Studies</u> 72, at 81 (1970); J. LaPalombara,
      'Alternative Strategies. . .', in <u>Id</u>. 171, at 205; and B. Schaffer,
      'The Deadlock in Development Administration', in Leys, <u>op.cit.</u> 177,
      at 190.

98   D. Waldo, 'Foreward' in E. Morgan, ed., <u>The Administration of Change</u>
      v, at vii (1974). <u>See</u>: M. Esman, 'Administrative Doctrine and Devel-
      opmental Needs', 3, in <u>Id</u>.; K. Boulding, 'The Legitimacy of Economics',
      in N. Uphoff and W. Ilchman, <u>The Political Economy of Development</u> 24,
      at 24-5 (1972); J.W. Hurst, <u>Law and Social Order in the United States</u>
      70 (1977); and Self, <u>op.cit.</u> 149-51.

99   Bienen, <u>op.cit.</u> 22.

100   Quoted by Barkun, <u>op.cit.</u> 113.

101   Schwab, <u>op.cit.</u> 156. <u>See</u>: J. Viera-Gallo, 'The Legal System and
      Socialism, 1972 Wisconsin Law Rev. 754, at 758; Barkun, <u>op.cit.</u> 120-1,
      134-5; A. Klinghoffer, 'Modernisation and Political Development in
      Africa', 11 J. Modern African Studies 1, at 18 (1973); Esman, 'The
      Politics of Development Administration', 75; and Hildebrand, <u>op.cit.</u>
      199-200.

102   <u>See</u>: Seidman, 'Law and Development. . .' 1015-19; J.Lee, <u>African</u>
      <u>Armies and Civil Order</u> 12 (1969); G. Lenski, <u>Power and Privilege</u>
      35,52 (1966); and F. Hayek, 1 Law, Legislation and Morality 135
      (1973). In Bagot's Case (1469) Y.B. 9 Edw. IV, Pasch., p. 1-2, a
      Yorkist seized the Throne and the Lancastrian Kings were regarded as
      usurpers. Their laws were nevertheless held to bind the "rightful"
      King: the realm needs a king under whose authority laws are made and
      upheld. <u>See</u> Adams v. A. (1971) P. 188, 210 and Finnis, <u>op.cit.</u> 46-7.

103   <u>See</u>: A. Quinton, 'Introduction', in <u>Id</u>., ed., <u>Political Philosophy</u> 1,
      at 7 (1967); P. Fitzgerald, ed., <u>Salmond on Jurisprudence</u> 27-32
      (12th Ed. 1966); T.Iyer, 'Constitutional Law in Pakistan', 21 Am. J.
      Comparative Law 759 at 764 (1973).

104   H. Kelsen, <u>The Pure Theory of Law</u> (1967). <u>See</u>: W. Ebenstein, <u>The Pure</u>
      <u>Theory of Law</u> (1969); W. Firey, <u>Law and Economy in Planning</u> (1965);
      R. Dias, 'Legal Politics . . .' 26 Cambridge Law J. 233 (1968);
      G. Paton, Jurisprudence 200-10 (3d Ed. 1969); and Scholler and Briet-
      zke, <u>op.cit.</u> 115-17.

105   <u>See</u>: Friedrich, <u>op.cit.</u> 173-4; Ebenstein, <u>op.cit.</u> 21, 71; D. Lloyd,
      'Pure Theory of Law', in <u>Id</u>., ed., <u>Introduction to Jurisprudence</u>
      269, at 272, 285 (3d Ed. 1972); and Firey, <u>op.cit.</u> 4,17,30.

106 Quoted by, e.g., Finer, The Man on Horseback 16. I have been unable to find the source of this maxim. See Dias, op.cit. 237-8.

107 G. Marshall, Constitutional Theory 64 (1971).

108 Kelsen, The Communist Theory of Law 144 (1955).

109 Quoted by Finnis, op.cit. 44. See P. Merkl Modern Comparative Politics 332 (1970).

110 Finnis, op.cit. 63, 75.

111 See: Id. 65, 75; Lloyd, 'Marxist Theory of Law. . .' in Lloyd, op.cit. 630, at 640; and the cases cited in the text, Chap. 3, supra.

112 Lloyd, 'Pure Theory of Law' 282. See: Id. 283; R. Dias, Jurisprudence 105, 407, 416 (3d Ed. 1970); Matovu, Notes 6, supra and 113 infra, at 537; and Paton, op.cit. 300-1.

113 See: Uganda v. Commissioner of Prisons, Ex p. Matovu (1966) E. Af. L.R. 514; State v. Dosso (1958) 2 Pak. S.C.R. 188; Madzimbamuto v. Lardner-Burke 1968 (2) S.A. 284 and R. v. Ndlovu 1968 (4) S.A. 207; and Sallah v. A-G, Const. S.C.S., 70 of 20/4/70 - reported in Nwabueze, op.cit. 229-32, 241-3.

114 See Madzimbamuto (Note 112, supra) on appeal to the Privy Council: /1968/ 3 All E.R. 561.

115 See: Iyer, op.cit. 763; Dias, Jurisprudence 105, 407, 416; and Merkl, op.cit. 467.

116 A-G v. Mustafa Ibraham et al. (1964) Cyprus L. Rep. 195 and Lakanni v. A-G (West) S.C. 58/69 of 24/4/70 (Nigeria - reported in Nwabueze, op.cit. 188-208). See Id., 180-7, particularly his interpretation of Glanville Williams's analyses at 184, and Lord Pearce's dissent in Madzimbamuto, Note 114, supra.

117 J. Eekelar, 'Principles of Revolutionary Legality', in Simpson, op.cit. 22, at 39-40.

118 Lee, op.cit. 88.

119 See: W. Samuels, 'Law and Economics. . .', 7 J. of Economic Issues 535, at 536 (1973); Finnis, op.cit. 55, 76; D. Lloyd, 'Positivism, Analytical Jurisprudence and the Concept of Law', in Lloyd, op.cit. 152, at 162-70; and Self, op.cit. 142.

120 See K. Lowenstein, 'Reflections on the Value of Constitutions . . .', in A. Zurcher, ed., Constitutions and Constitutional Trends . . . 191, at 193 (1951).

121 See: Id. 222-3; C. Friedrich, 'The Political Theory of the New Constitutions', in Id. 13, at 19; and G. Jacobsohn, Pragmatism, Statesmanship and the Supreme Court 56-7 (1977).

122 See: Chap. 1; R. First, The Barrel of a Gun 9 (1972); D. Lane, The Socialist Industrial State 74 (1976); and Berman, op.cit. 374-5.

123 D. Sills, 12 International Encyclopedia of the Social Sciences 315-16 (1968). See Alemayehou, op.cit. 19.

124 See Nwabueze, op.cit. 277 and P. 1 of 1974, Art. 7.

125 See: J. Hazard, Law and Social Change in the U.S.S.R. 64 (1953); Kelsen, The Communist Theory of Law 131;Myrdal, Asian Drama 142; and Chapman, op.cit. 42.

126 See J. Triska, Constitutions of the Communist Party-States 269-85 (1968) and International Commission of Jurists, Cuba and the Rule of Law (1962). Descriptions of legal changes in the latter are accurate, while some of the analyses may be suspect. Compare: the Derg's treatment of the Constitution with what happened to Cuba's Fundamental Law; the Derg's Proclamations with the "Regulations" of the High Command of the Rebel Army of Cuba; Ethiopian Land Reform (see Chapter Six) with Cuba's (Act 3 of 1954); the Special Penal Code and Courts-Martial with "Counter Revolutionary" offenses and "Revolutionary Courts" in Cuba - Gaceta Official (G.O.) 122 of 6/7/59, G.O. 58 of 22/12/59, and G.O. 207 of 2/11/59; New Ethiopian labour laws (see Chap. 7) with G.O. 50 of 14/3/60; and Ethiopian business nationalisations (Chap. 7) with G.O. Sp. ed. No. 21, 28/9/60.

127 See: L. Mayhew, 'Stability and Change in Legal Systems', in B. Barker and A. Inkeles, Stability and Social Change 187, at 189, 208 (1971); T. Parsons, The Social System, passim (1970); R. Holt and J. Turner, The Political Basis of Economic Development 51-3 (1966); J. d'Entreves, Natural Law 176-8 (2d Ed. 1970); B. Barber, Social Stratification 478 (1957); and W. Moore, 'A Reconsideration of Theories of Social Change', in S. Eisenstadt, ed., Readings in Social Evolution and Development 123, at 135 (1970).

128 See: C. Allen, Law in the Making 52-9 (7th Ed. 1964); Mayhew, op.cit. 189-92; and Holt and Turner, op.cit. 58.

129 Z. Plater, 'Legal Development and Public Administration /in Ethiopia/' in Marcus, op.cit. 319, at 321. See: Self, op.cit. 67; L. Pye, 'Communication. . .', in D. Lerner and W. Schramm, eds., Communication Change in Developing Countries 33, at 45 (1967); and Mayhew, op.cit. 189-90.

130 Myrdal, 2 Asian Drama 1126, 1132 (1968). See: Chap. 3, supra; Self, op.cit. 142; Riggs, Administration in Developing Countries 201-2; Lloyd, 'Pure Theory of Law' 273; and Mayhew, op.cit. 207-8.

131 See: Raz, quoted by Lloyd, 'Positivism. . .' 167; R. Bribanti, 'Conspectus', in Id., ed., Political and Administrative Development 638, at 641 (1969); and Triska, op.cit. 286, discussing similar attitudes in Cuba.

132 See: D. Trubeck, 'Max Weber on Law and Capitalism', 1972 Wis. L. Rev. 720, at 722, 724; Mouzelis, op.cit. 21, 39-40; Seidman, 'Constitutions . . .' 116-7; and Friedrich, The Philosophy of Law. . . 176-7.

133 Self, op.cit. 14-15, 50 and Mouzelis, op.cit. 145-6.

134 I. Swerdlow, 'The Administration of Economic Change', in Morgan, op.cit. 59, at 68.

135 Mouzelis, op.cit. 53.

136 Self, op.cit. 49-50.

137 Merkl, op.cit. 376-7.

138 F. Marx, op.cit. 22.

139 Mouzelis, op.cit. 73.

140 Riggs, Administration in Developing Countries 272-3.

141 Id. and M. Esman, 'Administrative Doctrine and Developmental Needs', in Morgan, op.cit. 3-8.

142 L. Pye, 'The Political Implications of Urbanization. . .', in G. Breese, ed., The City in Newly Developing Countries 401, at 403-4 (1969); Riggs, loc. cit. 5; Self, op.cit. 136; and Mouzelis, op.cit. 25, 134.

143 Id. 59-60, 73, 145-6, and 158-60 (including discussions of studies by H. Dalton and M. Crozier); R.Unger, Law in Modern Society 190-1 (1976); O. Hiner, Business Administration 275 (1969); Self, op.cit. 87, 234-5, 249 (including discussions of studies of A. Downs and G. Tullock); and F. Marx, op.cit. 96.

144 See Dahrendorf, op.cit. 284.

145 D. Korten, Planned Change in Traditional Society: Psychological Problems of Modernization in Ethiopia 78 (1972). See: A. Cohen, Deviance and Control 110-11 (1966); Seidman, 'Law and Development...' 1062-3; and, e.g., the maladministration during the 1973 Wollo Famine discussed in Chap. 3.

146 See W. Lamouse-Smith, 'Complexity and African Development Administration', in Morgan, op.cit. 131, at 158 and Hiner, op.cit. 210,212.

147 See Hiner, op.cit. 106-7.

148 See Syoum Gebregziabher, 'The Structure and Functions of . . . Ethiopian Public Administration' 177 (1960) and F. Marx, op.cit. 39.

149 Schaffer, op.cit. 184.

150   See J. Gall, 'Why Nothing Works. . .', <u>New York Times Magazine</u>
      26/12/76, 10-11, 34-5 - an amusing article with a serious purpose.

151   See R. Seidman, 'Contract Law, the Free Market, and State Intervention',
      7 J. Economic Issues 553, at 571 (1973).

152   <u>Id</u>.

153   <u>See</u>: G. Sawer, <u>Law in Society</u> 128 (1965); Bryde, <u>op.cit</u>. 180-1;
      Myrdal, <u>Asian Drama</u> 154 (1977); and Self, <u>op.cit</u>. 256-7.

154   Unger, <u>op.cit</u>. 50-1, 57-9.

155   See: <u>Id</u>. 177, 179; Y. Ghai, 'Notes Towards a Theory of Law and Ideo-
      logy', 13 African Law Studs. 31, at 70-1 (1976); B. Gross, <u>The Managing
      of Organizations</u> 719, 727-30 (1964); Esman, <u>op.cit</u>. 16; and Mouzelis,
      <u>op.cit</u>. 43.

156   See: Habermas, <u>op.cit</u>. 95; Riggs, <u>Administration in the Developing
      Countries</u> 58, 60; and Trubeck, <u>op.cit</u>. 732-4.

157   See Sec. II of this Chap., <u>supra</u> and Chaps. 6-7, <u>infra</u>.

158   See: G. Ness, 'Bureaucratic Aspects of Modern Economic Development'
      in G. Ness, ed., <u>The Sociology of Economic Development</u> 501, at 502-4
      (1970); V. Thompson, 'Administrative Objectives for Development Admin-
      istration', in <u>Id</u>., 517, at 519-21; P. Blau, <u>The Dynamics of Bureau-
      cracy</u> 255 (1963); Herbert Simon, cited by Self, <u>op.cit</u>. 29-31; and
      Esman, <u>op.cit</u>. 14, 22.

159   Gross, <u>op.cit</u>. 738.

160   Cited by Blau, <u>op.cit</u>. 231.

161   Pye, <u>op.cit</u>. 44. <u>See</u>: L. Friedman, <u>The Legal System</u>. . . 30, 33-4
      (1975); V. Taylor, 'The Social Purpose of Land Law' 30 Conveyancer
      305, at 306, 312 (1966); Myrdal, 1 <u>Asian Drama</u> 66-7 (1968); and Self,
      <u>op.cit</u>. 251-2.

162   S. Surrey, 'Tax Administration in Underdeveloped Countries', in R.
      Bird and O. Oldman, eds., <u>Readings on Taxation</u>. . . 497, at 503
      (1971). See Seidman, 'Law and Development in . . . Africa' 1063
      and 'Constitutions in . . . Africa' 89-90.

163   <u>See</u>: F. Cooper, 'The Executive Department of Government and the Rule
      of Law', 59 Michigan Law Rev. 515, at 529 (1961); H. Wheeler, <u>Demo-
      cracy in a Revolutionary Era</u> 119-20 (1971); A. Cohen, <u>op.cit</u>. 110;
      Gross, <u>op.cit</u>. 721; Esman, <u>op.cit</u>. 16; and Myrdal, <u>Asian Drama</u> 155
      (1977).

164   <u>See</u>: Seidman, 'Constitutions in . . . Africa' 116-7; Farrar, <u>op.cit</u>.
      10; Self, <u>op.cit</u>. 21-2; Hiner, <u>op.cit</u>. 140-1; and Mouzelis, <u>op.cit</u>.
      63. As one indication of the complexity of the scheme advocated in
      the text, consider Hiner's assertion (<u>op.cit</u>. 110):

> Work can be organized on a process, product, time or territorial basis, or on the basis of a particular class of consumer to be served, but in practice it is often necessary to adopt more than one basis of organization in complex systems, and compromises will then be called for if different organizational requirements conflict.

165   See: P. Raup, 'Some Interrelations between Public Administration and Agricultural Development', in Uphoff and Ilchman, op. cit, 439, at 442; E. Schur, Law and Society 84 (1968); Esman, loc. cit. 20; and Mouzelis, op.cit. 55.

166   See Chap. 3 and Mouzelis, op.cit. 79-80. The problems created by the growth of Ethiopian administration differ in degree rather than kind from those arising in other countries: See Hirshman's "cycles of administration" (A. Hirshman, 'Economic Policy in Underdeveloped Countries', in Ness, op.cit. 505, at 513-14) and Self's "adaptations to functional change" (op.cit. 80-1).

167   Esman, loc. cit. 18. See B. Schaffer, 'The Deadlock in Development Administration', in C. Leys, ed., Politics and Change in Developing Countries 177, at 208-9 (1969) and Self, op.cit. 254. It can, however, be argued that, despite the rigid hierarchies, there is little functional specialisation within the older Ethiopian Ministries (see Chap. 3).

168   E. Schumacher, Small is Beautiful 202 (1974).

169   i.e., making creative use of the incentives towards advancement upwards in the hierarchy, the tendency "of bowing toward those higher up and kicking those further down . . . /in_7 a perpetual scramble for position" (F. Marx, op.cit. 95).

170   See: Myrdal, Asian Drama 139 (1977); Schumacher, op.cit. 202-3; D. Feldman, 'Rural Socialism in Tanzania', in Leys, op.cit. 85, at 110; C. Dodd, Political Development 57 (1972); D. Goulat, 'Development Administration and Structures of Vulnerability', in Morgan, op.cit. 27, at 39. Hiner, op.cit. 171 and Esman, op.cit. 18-19.

171   K. Wheare, Maladministration and its Remedies 11 (1973).

172   Ghai and McAuslan, op.cit. 515.

173   See: L. Jaffee, 'The Effective Limits of the Administrative Process', in L. Friedman and S. Macaulay, eds., Law and the Behavioral Sciences 465, at 465 (1969); Mouzelis, op.cit. 23 (citing Gerth and Mills); Self, op.cit. 14-15; and F. Marx, op.cit. 44.

174   Id. 141. See W. Friedmann, The State and the Rule of Law in a Mixed Economy 75-80 (1971).

175   See: Id.; Esman, loc cit. 17; L. Brown and J. Gamer, French Administrative Law 15, 122 and passim (1973); J. Skolnick, cited by M. Freeman, The Legal Structure 152 (1974); F. Marx, op.cit.; Mouzelis, op.cit. 23;

and Seidman, 'Law and Development in . . . Africa', 1063.

176 See: G. Morgan, Soviet Administrative Legality 1-5, 247-50 (1962); Z. Szirmai, 'Foreword', in Id., ed., Legal Controls in the Soviet Union 7, at 7 (1966); L. Boim, 'Party-State Control in the Soviet Union', in Id. 11, at 12, 14-6, 98-9; Merkl, op.cit. 423; W. Gellhorn, Ombudsmen and Others 1-6 and passim (1966); and Seidman, 'Constitutions in . . . Africa' 120.

177 E. Shils, Center and Periphery 425 (1975). See P. Selznick, 'Legal Institutions and Social Controls', 17 Vanderbilt Law Rev. 79, at 88 (1963) and Blau, op.cit. 263.

178 H. Such, 'Main Lines in the Development of Economic Law in the German Democratic Republic', in G. Eorsi and A. Harmathy, eds., Law and Economic Reform in Socialist Countries 167, at 172-3 (1971).

179 See R. Aron, 'Social Class, Political Class, Ruling Class', in R. Bendix and S. Lipset, eds., Class, Status and Power 201, at 208 (1966).

180 Gellhorn, op.cit. 458. To the same effect, see Brown and Garner, op.cit. 15.

181 Amnesty International, 'AI Action on Human Rights Violations in Ethiopia 1961-1974', 1-3, AFR 25/04/77, Aug. 1977; Id., 'Ethiopia: The Human Rights Situation' 2; J. Spencer, 'Haile Selassie: Triumph and Tragedy' 18 Orbis 1129, at 1135 (1975); and H. Marcus (personal communication).

182 I. Guest, 'UN Body Condemns Rights Violations', Guardian 3/9/77, 4. See W. Lee, 'Ethiopia: A Review of the Dergue', 22 (2) Africa Report 7, at 11 (Mar. 1977).

183 Amnesty International, 'AI's Reply to Unfounded Allegations by the Ethiopian Government' 3, AFR 25/03/77 (Aug. 1977).

184 Amnesty, 'Ethiopia. . .' i, 12, 16-20. While there have been numerous newspaper reports of human rights violations in Ethiopia and some of the more reliable ones are cited supra and in Chap. 4, we feel that Amnesty's Report represents the most careful and authoritative summary. It should be consulted in detail.

185 Ethiopian Herald 5/12/74, 1 and 3. See Chap. 4, supra.

186 Quoted by M. Woollacott, 'The Robespierre of the Military Rulers Red Terror', Guardian 10/2/78, 11.

187 Quoted by J. MacManus, 'Ethiopia Leader Puts his Case', Guardian 6/7/77, 6.

188 B. Moore, Jr., Social Origins of Dictatorship and Democracy 101 (1973).

189 Scholler and Brietzke, op.cit. 110-111.

190   K. Marx, in *Critique of the Gotha Programme* (quoted and discussed by E. Fisher, *Marx in his Own Words* 141 (1973). See Merkl, *op.cit.* 428, discussing Chinese ideas which parallel those in Ethiopia.

191   See C. Wilber, *The Soviet Model and Under-developed Countries* 109-26 (1969).

192   In the matter of Article 26 /¯1940_7 I.R. 470 (S.C.), per Sullivan, C.J., upholding the constitutionality of broad detention provisions in the Offenses Against the State (Amendment) Bill 1940. The quotation is from the abridgement of the case in Groves, *op.cit.* 279, at 283. See also In Re Michael Walsh /1942/ I.R. 112 (S.C.).

193   E. Carim, 'Violence and Social Change' *New Internationalist* 17, at 17, 19 (Jan. 1977).

194   Quoted by N. Marsh, 'The Rule of Law as a Supra-national Concept', in A. Guest, ed., *Oxford Essays in Jurisprudence* 223, at 237 (1961). See Hazard, *Communists and their Law* 524.

195   See C. Brown, 'Russian Souls' (a review of Solzhenitsyn's *Gulag 'Two'*), *Guardian* 4/12/75, 14 and L. MacFarlane, 'Political Violence in Reality', *Times Higher Education Supplement* 18/2/77, 18.

196   See: Mouzelis, *op.cit.* 12-14; Lloyd, 'Marxist Theory of Law and Socialist Legality', in Lloyd, *op.cit.* 630, at 635; and Hazard, *Law and Social Change in the USSR* 64-84.

197   J. Hall, *Comparative Law and Social Policy* 62 (1963).

198   G. Williams, *Criminal Law* 575-6 (2d Ed. 1961).

199   See: International Commission of Jurists (ICJ) 'Conclusion', 2 J. of Int. Comm. of Jurists 8 at 11 (1959); ICJ, *The Rule of Law and Human Rights* 11 (1966); and E. Wade and G. Phillips, *Constitutional Law* 64-5 (7th Ed. 1966).

200   *Id.*, at 43.

201   Paton, *op.cit.* 309.

202   T. Hartley and J. Griffith, *Government and Law* 8 (1975).

203   Quoted in 'Sayings of the Week', *Observer* 3/4/77, 10.

204   ILO Conventions subscribed to by Ethiopia include: No. 2 – measures to promote fuller employment; No. 88 – employment market information and vocational guidance; No. 11 – freedom of association in labour organisations; No. 87 – freedom of association and protection of the right to organise; No. 98 – freedom of collective bargaining; No. 111 – employment and occupation non-discrimination; No. 105 – abolition of forced labour; No. 26 – minimum wage fixing machinery; No. 81 – labour inspection; and Nos. 12, 17, 42 – workman's compensation. See ILO, 'Report to the Government of Ethiopia on Labour Administration' (1968) and, on the degree of compliance with these Conventions, Chap. 7.

205 Amnesty International, 'Ethiopia: The Human Rights Situation' 25.
See Paul, in Marcus, 327, who notes that the Declaration was never
expressly implemented in Ethiopian domestic law.

206 K. Boyle, et al., Law and State: The Case of Northern Ireland 55.
While this statement is, to some extent, a generalisation of the sit-
uation in Northern Ireland, we argue - with the authors - that it holds
true generally. See B. Chapman, Police State 82-3, 85, 104 (1970).

207 A. Hunt, 'Law, State and Class Struggle', Marxism Today, 178, at
181 (June 1976).

208 Juviler, op.cit. 2-3.

209 See H. Berman, 'Soviet Justice and Soviet Tyranny', 55 Columbia L.
Rev. 795 (1955) and Hazard, Law and Social Change in The USSR 111.
These sources have been used with care because they bear the stamp of
the Cold War. See also Bryde, op.cit. 177-8 and Chap. 8, infra.

210 See G. Boehringer, 'Aspects of Penal Policy in Africa, with Special
Reference to Tanzania', 15 J. African Law 182, at 184, 194, 210
(1971) and Juviler, op.cit. 66, 177.

211 See: S. Finer, Comparative Government 8-10; R. Schlesinger, 'Justice
in Russia: A Dissent', 60 Yale L.J. 976, at 979 (1951) - see Note
209, supra; Ghai, op.cit. 66; Sawer, op.cit. 190; Lloyd, 'Marxist
Theory of Law and Socialist Legality' 632; Groves, op.cit. 196;
and Chap. 2, supra.

212 Kenneth Burke, quoted by Edelman, op.cit. 18-19.

213 Seidman, 'Constitutions in .. . Africa', 91. See: Merkl, op.cit. 466;
Seidman, 'Law and Development in . . . Africa 1067-8; and Chaps. 2-3,
supra.

214 See: G. Lenski, Power and Privilege 35 (1966); d'Entreves, op.cit.
105; G. Sartori, Democratic Theory 308 (1962); B. de Jouvenal, quoted
by Schur, op.cit. 86; and Edelman, op.cit. 14.

PART III

1   J. Markakis, Ethiopia . . . 385 (1974); C. Clapham, Haile Selassie's
     Government 74-6 (1969); and P. Schwab, 'Haile Selassie: Leadership in
     Ethiopia', 6 Plural Societies 19, at 26 (1975). See G. Myrdal,
     'The "Soft State" in Underdeveloped Economies', 15 U.C.L.A. Law Rev.
     1118, at 1122-3 (1968) and R. Meier, Development Planning 46 (1965).

2   R.L. Hale, Freedom Through Law 30 (1952), referring specifically to
     inheritance taxes. See Id., viii, xiii and K. Griffen, Underdevel-
     opment in Spanish America 183 (1969).

3   J. Cohen and Sileshi Sisaye, 'Research on Socio-economic Development
     in Ethiopia' 27 (1977). I am indebted to these Ethiopianists for many
     of the insights that can be derived from a centre/periphery analysis.

4   J. Cohen, and P. Koehn, 'Rural and Urban Land Reform in Ethiopia',
     14 Af. Law Studs. 3, at 4 (1977). See: J. Holmberg, 'Pricing Strat-
     egies for Agricultural Produce in . . . Ethiopia' 4, 11-12 (1976);
     G. Myrdal, Asian Drama 79 (Abridged Ed. 1977); J. Robinson, Freedom
     and Necessity 54, 57 (1970); and A. Gunder Frank, Latin America:
     Underdevelopment or Revolution 8 (1969).

5   J. Cohen, et al., Revolution and Land Reform in Ethiopia 97, 103,
     105 (1976). See Cohen and Sileshi, op.cit. 28.

CHAPTER 6

1   G. Gill, 'The Agricultural Sector: Introduction', in Id., ed.,
    Readings on the Ethiopian Economy 29 (1974). See Gill, 'Ethiopian
    Agriculture in Perspective', in Id. 42, at 43 and Assefa Bequele
    and Eshetu Chole, A Profile of the Ethiopian Economy 28 (1969).
    The relevant statistics vary slightly as a result of differences in the
    values imputed to subsistence production.

2   D. Karsten, (Ethiopian) 'Economy', in Africa South of the Sahara 304,
    at 307 (1976); I. Kaplan, et al., Area Handbook for Ethiopia 158
    (2d Ed. 1971); J. Shepherd, The Politics of Starvation 71-2, 74
    (1975); J. Olmstead, 'Agricultural Land and Social Stratification in
    the Gamu Highland of Ethiopia', in H. Marcus, ed., Proceedings of the
    First U.S. Conference on Ethiopian Studies 223, at 228 (1975);
    Cohen and Sileshi, op.cit. 20; R. Disney, quoted in Id., 63; J. Holm-
    berg 'Pricing Strategies for Agricultural Produce in . . . Ethiopia'
    1 (1976); and M. Woollacott, 'Two of the World's Poorest Countries. . .',
    Guardian, 6 Mar. 1978, 14. See: H. Brookfield, Interdependent Devel-
    opment 108 (1975); R. Dumont, False Start in Africa 30 (1966);
    J. Mellor, 'The Subsistence Farmer in Traditional Economies', in
    C. Wharton, Jr., ed., Subsistence Agriculture and Economic Development
    210, at 218-19 (1969); and E. Whetham and J. Currie, The Economics of
    African Countries 45 (1969).

3   Gill, 'Ethiopian Agriculture in Perspective', in Gill, op.cit. 47 at
    51. Gill compares relevant statistics covering different periods from
    1966 to 1973 for Ethiopia, Kenya, Madagascar, Malawi, Somalia, Tan-
    zania, Uganda and Zambia. See also K. Redden, The Legal System of
    Ethiopia 158-9 (1968) and Cohen and Sileshi, op.cit. 20. Previously,
    governmental expenditures on agriculture averaged 1-2% of the annual
    budget and never exceeded 5% (Assefa and Eshetu, op.cit. 48).

4   S. Messing, The Target of Health in Ethiopia 94 (1972). See: U. Lele,
    The Design of Rural Development 27 (1975); E. Wolf, Peasant Wars in
    the Twentieth Century 289, 295 (1969); R. Firth, 'A General Comment',
    in Id., ed., Themes in Economic Anthropology 3, at 3-4 (1970);
    R. Redfield, Peasant Society and Culture 135 (1956); Mellor, op.cit.
    218-19, 226; E. Whetham and J. Currie, The Economics of African
    Countries 33 (1969); and Chayanov, cited by Brookfield, op.cit. 154.

5   E. Murray, Kulubi 419, New York Crown (1973). This citation should
    not be construed as an acceptance of other views expressed by Murray.

6   P. Gilkes, The Dying Lion 101-2 (1975); M. Perham, Ethiopia 277-8
    (2d Ed. 1969); N. Marein, The Ethiopian Empire: Federation and Laws
    249 (1955); Assefa and Eshetu, op.cit. 42; A. Hoben, 'Social
    Anthropology and Development Planning - a Case Study in Ethiopian Land
    Reform Policy', 10 J. Mod. Af. Studs. 561, 582 (1972); H. Dunning,
    'Land Reform in Ethiopia', 18 U.C.L.A.L. Rev. 271 (1970); J. Cohen
    'Ethiopia After Haile Selassie', 72 African Affairs 365, 380 (1973);
    R. Greenfield, 'The Ogaden. . .: Before the Scramble', West Africa,
    26 Sept. 1977, 1965, at 1968; and Alemante G. Selassie, 'Property
    Relationships in Ethiopia and their Implications for Development',
    2 (1972). The discussion adopts the following definition of the land
    tenure system:

> (It) embodies those legal and contractual or customary arrange-
> ments whereby people in farming gain access to productive
> opportunities on the land. It constitutes the rules and pro-
> cedures governing the rights, duties, liberties and exposures
> of individuals and groups in the use and control over the
> basic resources of land and water.

Tenure systems help to shape rural income distribution and are a
principle source of political and economic power in non-industrial
society.(P. Dorner, Land Reform and Economic Development 17-18
(1972)). Although this definition is fairly broad, discussions con-
cerning land reform, infra, will expand the concept of tenure by
linking it with integrated rural development and by defining reform as
encompassing all of the necessary measures that improve the structure of
men's relations with respect to land rights (See P. Raup, 'The Cont-
ribution of Land Reform to Agricultural Development', in N. Uphoff and
W. Ilchman, The Political Economy of Development 284, at 285-6
(1972)).

7   Quoted by, e.g., Assefa and Eshetu, op.cit. 7.

8   Quoted by, e.g., Eshetu Chole, 'Taxation in Ethiopia' 36 (1968).

9   In Ethiopia, land is measured in hectares (1 ha. = roughly 2.5 acres)
     and gashas (1 gasha = roughly 35-55 has. with 40 has. as the 'official'
     definition). Arable land totals some 89 million has. (68% of Eth-
     iopia's total surface area), while less than 10 million has. are
     actually cultivated. Much of the balance is used as pasture and(prior
     to 1975) the Government owned some 11.8 million has. (mengist - the
     size of Liberia) that are either arable or potentially arable if
     irrigation is used. Cultivated land is classified as fertile (36.2%),
     semi-fertile (14%) and poor (49%). With a 1970 estimated population
     of 24.3 million, of which all but 2.3 million are rural, 4.3 million
     families (averaging 4.65 persons/family) cultivate an average of just
     over 3 has. each. (400,000 families (2 million people) are pastoral-
     ists, grazing their animals on 5.5 million has.). This average is
     misleading: 65% of the farms were one ha. or smaller and, in Tigre
     Province 45% of the farms are smaller than ½ ha. Only 10% of Ethiopia's
     cultivated land was held by smallholders, while 62% was held by large
     landowners. The lion's share of this was held by the royal family, and
     28% of the total held by the Church. Harar Province offered the most
     extreme example of inequality of land distribution: 44% of the land-
     owners owned 3.4% of the land, a further 45% of the owners held 13.4%
     of the land and two persons owned 75% of the land. One of the latter
     paid taxes on an estimated 1% of his holdings! Further, land holdings
     and tenancies are extremely fragmented; it is common for a family to
     farm 6 to 12 separate plots, Roughly half of the peasants were indebted
     to some extent, particularly those who market their crops through Arab
     traders. ('Policy of the I.E.G. on Agricultural Land Tenures' (Draft)
     2-3, 11, 29 (Aug. 1972); Ministry of Land Reform, 'The Compilation of
     the General Land Tenure Survey Reports of Ten Non-Communal Provinces'
     16, 27, Addis Ababa (1971); A. Lexander, 'Land Ownership, Tenancy
     and Social Organization in the Waji Area" 10, CADU Pub. No. 50
     (1970); H. Weatherall, 'Land Administration in Ethiopia' 252, 253
     in Seminar Proceedings on Agrarian Reform (1970); and Alemante,
     op.cit. 7, 32). If a land reform attempted to provide a farm of

roughly 10 has. for each of the 4.3 million peasant families, clearing, resettlement and, in some cases, irrigation programmes would have to cover some 82.5 million acres. In the densely populated provinces of Tigre and Wollo, vacant arable land has entirely disappeared in the last ten years. Providing each of the existing families with a farm that is economically viable in the long run - about 20 has.- would exhaust arable land without allowing for population increases.

10   P. Gilkes, 'The Coming Struggle for Ethiopia', 19 Africa Report 33, at 34 (1974). See also J. Cohen and P. Koehn, 'Rural and Urban Land Reform in Ethiopia', 14 African Law Studies 3, at 6 (1977) and Schwab, op.cit. 23.

11   C. Clapham, Haile Selassie's Government 139 (1969).

12   Jack Goody argues that Amhara tenures resemble those which existed in Europe (rather than most contemporary African ones). Common characteristics include: a plow-based agriculture supported a culturally-differentiated Church and State; property rights pass through children of both sexes; and the intensive use of relatively scarce arable land created conditions under which control over land (rather than over kin or labour) becomes the basis of social stratification (quoted by A. Hoben, 'Family, Land and Class. . .', in Marcus, op.cit. 157, at 157). R. Seidman ('Law and Development in . . . Africa', 1966 Wis. L. Rev. 999, at 1005-6) argues that African customary land law accommodates itself to the relative abundance of land: plots are brought to fruition by the efforts of an individual family, and rights are permanent, in the absence of an abandonment of land use. These legal adaptations are not found in Ethiopia. See also, J. Cohen and D. Weintraub, Land and Peasants in Imperial Ethiopia 35, 50-1 (1975).

13   P. Schwab, Decision-Making in Ethiopia 76 (1972); A. Hoben, Land Tenure Among the Amhara of Ethiopia 4-5, 9, 137, 210, 230 (1973); M. Perham, Ethiopia 278-9 (2d Ed. 1969); and Cohen, op.cit. 370.

14   Gilkes, The Dying Lion, 170.

15   Id. at 84.

16   Id. at 54-60, 255-6; Alemante, op.cit. 17-18, 30. See E. Jacoby Man and Land 180 (1971). Some of the more common forms of gult tenure were: Sisso, the third part of the land left to cooperative local rulers (subsequently called ballabats) after conquest by Emperor Menelik II; maderia, the soldiers' salary that existed largely in the South and which could vary from a maximum of 3,000 acres for a private to 30,000 acres for a captain; and erste gult, the reduction in land tax payments in return for services as a mail carrier, prison guard, etc. Rist-gult was inheritable only after governmental authorisation: it permitted the beneficiary to collect taxes for his own use. Semon land conferred upon the Ethiopian Orthodox Church the right to collect taxes normally owing to government. Gebbar land was roughly analogous to English freehold, with taxes being paid to government or the Church. It is also virtually identical to many of the tenures existing in southern Ethiopia prior to Menelik's conquests. Many

similar tenures based on ancient traditions prevailed in B_egemder, Wollo and Harar Provinces. (e.g., H. Huffnagel, <u>Agriculture in Ethiopia</u> 99-113 (1961) and Alemante, <u>op.cit.</u> 19-23).

17   J. Markakis, <u>Ethiopia</u> . . . 137, 140 (1974); R. Greenfield, <u>Ethiopia</u> 170 (1969); H. Lewis, 'Wealth, Influence and Prestige Among the Shoa Galla', in A. Tuden and L. Plotnecov, eds., <u>Social Stratification in Africa</u> 163, at 166-7 (1970); Olmstead, <u>op.cit.</u> 223-4; Kaplan, <u>et al.</u>, <u>op.cit.</u> 124; Cohen and Koehn, <u>op.cit.</u> 23; Perham, <u>op.cit.</u> 297; Marein, <u>op.cit.</u> 251; Huffnagel, <u>op.cit.</u> 116-17; Dunning, <u>op.cit.</u> 289; Alemante, <u>op.cit.</u> 13-5; Cohen, <u>op.cit.</u> 381. See note 16 <u>supra</u> and Jacoby, <u>op.cit.</u> 123:

> What we witness today in the underdeveloped world is a re-
> production of the colonial situation, reflected with unmistake-
> able clarity in the socio-economic position of the peasant
> population. (This tendency includes) a compulsory division of
> labor which is based exclusively on the effects of disequalizing
> factors and the absence of an effective countervailing power.

In southern Shoa (Chore), which can be regarded as a boundary area between predominantly Southern <u>gult</u> and predominantly <u>rist</u> tenures, 56% of the land was held in <u>gebbar</u> (taxpayers freehold) tenure and 2/3 of the balance was held by the Ethiopian Orthodox Church (as <u>Semon</u>). 2/3 of the farms studied were either wholly or partly cultivated by tenants at an effective rent of 40%. (Dunning, <u>op.cit.</u> 276).

18   Hoben, <u>Land Tenure Among the Amhara</u> 5, 7-10, 12-3, 23-5, 237; Dunning, <u>op.cit.</u> at 299; Shepherd, <u>op.cit.</u> 3; and Kaplan, <u>et al.</u>, <u>op.cit.</u> 106. See K. Parsons, 'Land Reform and Agricultural Development' 3, 9, in <u>Land Tenure</u> (Parsons, Penn and Raup, eds., 1956) and Jacoby <u>op.cit.</u> at 294.

19   Ministry of Land Reform, 'Report on the Detailed Study of the Communal Tenure Systems in Ethiopia' 4, 8, 55, Addis Ababa, n.d.; Billilign Mandefro, 'Agricultural Communities and the Civil Code', 6 J. Eth. L. 145, at 156, 160, 164 (1969); Dunning, <u>op.cit.</u> 96; Alemante, <u>op.cit.</u> 10; and Teame Beyene, 'The Communal Land Tenure Problems in Ethiopia and the Requirements for its Solution', 6, 15-19, 85 (1971). Although 'communal' tenures dominated in the North, Crown and Church lands and nomadic tenures existed, particularly in Tigre Province, where a more or less equal division of the land into individual, family and landlord-tenant tenures was found (<u>Id.</u> at 10 and Marein, <u>op.cit.</u> 251).

20   J. Bruce, 'Legal Considerations - Nomadic Lands' (1970); Billilign, <u>op.cit.</u> 167-8; Cohen, <u>op.cit.</u> 373; Huffnagel, <u>op.cit.</u> 114; and Perham, <u>op.cit.</u> 339. See Jacoby <u>op.cit.</u> 286. Art. 2 of the Cattle Tax Proclamation of 1954, 17 Cons. L. Eth. 1, provides for a tax of Eth. $0.50 on each camel, $0.25 on each horned cow, horse or mule, $0.10 per donkey and $0.05 per goat or sheep. The stated purpose of the Proclamation was to "ensure equality of taxation as between our subjects" (Prologue), yet it tends to perpetuate an inequality in terms of recognising traditional claims to land.

21   Markakis, <u>op.cit.</u> at 344 and Schwab, <u>op.cit.</u> 78. <u>See:</u> C. Wilber, <u>The Soviet Model and Underdeveloped Countries</u> 11, (1969); R. Schickele, <u>Agrarian Revolution and Economic Progress</u> 4, 164, 168 (1968);

C. Wharton, Jr., "Subsistence Agriculture" in Wharton, op.cit., 13-16;
B. Moore, Jr., Reflections on the Causes of Human Misery. . . 53
(1972); and G. Meier, Leading Issues in Economic Development 67
(2d Ed. 1970). Dorner, op.cit. 73 could have been writing about
Ethiopia when he states that:

> Where a 'law and order' nation state has not yet emerged to
> come to the aid and service of the more powerful, the upper
> classes must seek accommodation with those in lower status
> because they are so greatly outnumbered and because they
> need the lower classes to help form a common defense against
> outsiders. (T)he lower classes need. . . those in superior
> positions for their rights, for assistance, for contact with
> the outside world, and for the maintenance of order and the
> resolution of conflict.

The 'law and order' state, although zealously pursued by Haile Sel-
assie, was imperfect at best in remote rural areas, encouraging a
large measure of self-help in property relations. See the discussion
of traditional laws in Chapters One and Seven.

22 Gilkes, 'The Coming Struggle. . .' 35.

23 Hoben, 'Social Anthropology. . .' 561; Markakis, op.cit. 346, 350;
and Dunning, op.cit. 282, 306. See G. Myrdal, Asian Drama 156
and W. Wertheim, Evolution and Revolution 290 (1974). These tendencies
are, of course, common in other countries.

24 Arts. 2(2), 6, 9, 20, 24-5, 39, 51. To my knowledge, this Draft
Proclamation is only available (in cyclostyled form) in the HSIU
Law Library Archives; it does, however, receive a brief analysis from
Dunning, op.cit. 280-1.

25 Proc. 165 of 1960, Neg. Gaz. Extraordinary, discussed in Chap. 7,
infra.

26 Assefa and Eshetu, op.cit. 93 and Hoben, Land Tenure. . . 210.

27 See R. David, 'Sources of the Ethiopian Civil Code', 4 J. Eth. L.
341, 348 (1967) and Billilign, op.cit. 145, 182, 187-8, 191, 193.

28 Zegaye Asfaw, et al., 'Grants of Government Lands: Legal Consider-
ations' 4, 12, 14 (1971); J. MacArthur, 'The Development of Policy
and Planning for Land Settlement in Ethiopia', 19-26 (1972); Lele,
op.cit. 43; and Markakis, op.cit. 349.

29 Order 44 of 1966, Neg. Gaz. 25/33, incorporated into Art. 18 of the
Ministers (Definition of Powers) (Amendment) Order, 1966, 3 Consol.
L. Eth. 1.

30 J. Bruce, 'Ethiopia: Nationalization of Rural Lands. . .', Land
Tenure Center Newsletter 1, at 2 (Jan, 1975).

31 Cohen and Weintraub, op.cit. 8 and Hoben, Land Tenure. . . 228.
See: the Ministers (Definition of Powers) Order, Art. 16; the Cooperative

Societies Proc., No. 241 of 1966, Neg. Gaz. 25/24; G. Huizer, 'Community Development, Land Reform and Political Participation', in T. Shanin, ed., Peasants and Peasant Societies 389, at 390-1 (1971); K. Griffen, Underdevelopment in Spanish America 68-9 (1969); Myrdal, Asian Drama 144-7, 226; and Wertheim, op.cit. 269.

32   E. Ginsberg and M. Smith, Manpower Strategy for Developing Countries: Lessons from Ethiopia 156 (1967).

33   Ministers (Definition of Powers) Amendment Order, 1966, Art. 23 (3) Consol. L. Eth. 1. See: Ethiopian Herald, 12/9/74, p. 4: and the lack of criteria relating to development in: Education Tax Proclamation, 1947, 17 Consol. L. Eth. 3; Additional Education Taxes Proclamation, 1970, Neg. Gaz. 29/22; Education Expenditure Proclamation, 1947, 29 Consol. L. Eth. 4; National Commission for UNESCO Order, 1969, 29 Consol. L. Eth. 7; National Commission for Education Order, 1969, 29 Consol. L. Eth. 9; and Haile Selassie I University Charter, 1961, 29 Consol. L. Eth. 5.

34   See: Dairy Development Proclamtion, 1971, Neg. Gaz. 30/26; Establishment of Board of National Community Development Order, 1957, 27 Consol. L. Eth. 1; Rehabilitation Agency for the Disabled Order, 1971, Neg. Gaz. 30/16; Administrative Regulations Decree, 1942, 6 Consol. L. Eth. 1; and Local Self-administration Order, 1966, 6 Consol. L. Eth. 3.

35   Holmberg, op.cit. 4-5; Kaplan, et al., op.cit. 409; and Lele, op.cit. 103. See National Coffee Board Proclamation, and Re-Establishment Order, 1973, Neg. Gaz. 32/12; Ethiopian Grain Board Proclamation, 1950, 24 Consol. L. Eth. 8; and Ethiopian Grain Corporation Charter, 1960, 24 Consol. L. Eth. 10.

36   Aberra Jembere, 'The Prerogative of the Emperor to Determine Powers of Administrative Agencies', 5 J. Eth. L. 521, 536-8 (1968).

37   Shepherd, op.cit. 74-5. See: P. Raup, 'Some Interrelations between Public Administration and Agricultural Development', in Uphoff and Ilchman, op.cit. 439, at 440-1; A. Kamarck, The Economics of African Development 119-20 (1967); Lele, op.cit. 129; and Huizer, op.cit. 393.

38   Lele, op.cit. 81-4, 111, 202.

39   Id. 43, 67, 202-3 and P. Schwab, Decision-Making in Ethiopia 175-80 (1972).

40   L. Bondestam, 'Notes on Multinational Corporations in Ethiopia', 5 African Review 535, at 546 (1975) and Gilkes, The Dying Lion 132.

41   Id. 124-5; M. Stahl, Contradictions in Agricultural Development: Three Minimum Package Projects in Southern Ethiopia 10-17, 41-2, 46-7 (1973); Holmberg, op.cit. 1; and Lele, op. cit. 183-5, 202-4.

42   A. Hoben, 'Perspectives on Land Reform in Ethiopia', 28 Rural Afri-
cana 55, at 62 (1975). See also: M. Ottaway, 'Land Reform and Peasant
Associations', in Id., 39; Stahl, op.cit. 5, 56; and T. Farer, Storm
Clouds on the Horn of Africa 43 (1976).

43   Myrdal, Asian Drama 198. See also B. Moore, Jr. Social Origins of
Dictatorship and Democracy 63, 190, 422 (1973).

44   Gilkes, The Dying Lion 101, 137.

45   Bondestam, op.cit. 543-4.

46   G. Ellis, 'Agricultural Development in Ethiopia' (1973); T.J. Goering,
'The New Technologies in Agriculture. . .' 3, 5-6 (1972); and Gilkes,
The Dying Lion 126.

47   T.J. Goering, 'Some Thoughts on Future Strategies for Agricultural
Development in Ethiopia', in Gill, op.cit. 66, at 73. Ladejinsky
(quoted by Wertheim, op.cit. 297) adds:
>It is relatively easy to use science to increase production, but
>only if the cultivator's relationship to the land and the state's
>treatment of him and of agriculture create incentives to
>invest, to improve the land and to raise productivity.

48   See Goering, 'Some Thoughts. . .', and Jacoby, op.cit. 112.

49.   Id., at 89-91.

50   No. 31 of 1975, Neg. Gaz. 34/26 (published on 29 Apr., with an ef-
fective date of 4 Mar., and hereinafter referred to as the 1975
Proclamation).

51   The Derg began, in about May 1974, to consider at least nine successive
drafts of the Proclamation, and I was fortunate in being able to
secure three of them. Although an early draft was rejected as being
too radical, it became the basis of the last four drafts, which varied
only in minor detail from the final version. This version was pub-
lished in the 4 March 1975 Ethiopian Herald and relatively minor
changes were then made before the official (29 April) Negarit Gazeta
version was released.
    The extent to which the Derg's thinking moved to the left can be
gauged from an early (and possibly the original) draft, entitled the
Limitation of Owned Land Proclamation. This law was to be proclaimed
by Haile Selassie and was declared to be inapplicable to communal and
nomadic lands (Art. 3). Individuals were barred from owning more than
40 has. (100 acres) and the maximum holding for religious and business
associations was left blank (Art. 4) in an obvious attempt to protect
the holdings of the Church and agricultural concessions. Owners were
to declare their holdings and the Ministry of Land Reform was
to investigate the accuracy of their statements; a temporary moratorium
on land transfers was to be imposed (Arts. 7, 10-11). Government was
to acquire excess land and to compensate owners up to a maximum of

$10,000, in 4% Government bonds redeemable over 30 years for the land, permanent structures and perennial crops (Arts. 21-2). Usufruct rights were then to be redistributed subject to conditions to be specified (Art. 25). Provincial High Courts were to hear disputes arising under the Proclamation, subject to a two year statute of limitations (Arts. 32-3).

The only major difference between the version proclaimed and a fairly late draft bearing the same title is that the functions of peasant associations are not spelled out in detail.

52 Art. 1205. See Farer, op.cit. 44. Further, "transfers" are pro-hibited under Proclamation Art. 4, and a holder of a "possessory interest" could have his land confiscated for failure personally to possess if he attempted to lease his interest to another. See Arts. 8 and 10 of the 1975 Proclamation.

53 17 Cons. L. Eth. 11, discussed supra.

54 Proc. No. 255 of 1967, Neg. Gaz. 27/4, discussed supra.

55 E.g.: P. Brietzke, 'Land Reform in Revolutionary Ethiopia', 14 J. Modern African Studs. 637 (1976); J. Bruce, 'Ethiopia: Nationalization of Rural Lands Proclamation', Land Tenure Center Newsletter 1 (Jan. 1975); J. Cohen and P. Koehn, 'Rural and Urban Land Reform in Ethiopia', 14 African Law Studs. 3 (1977); J. Cohen, et al., Revolution and Land Reform in Ethiopia. Cornell University Rural Development Committee, Occasional Paper No. 6 (1976); A. Hoben, 'Perspectives on Land Reform in Ethiopia', 28 Rural Africana 55 (1975); J. Holmberg, Grain Marketing and Land Reform in Ethiopia, Scandinavian Institute of African Studies, Research Report No. 41 (1977); and M. Ottaway, 'Land Reform and Peasant Associations in Ethiopia' 28 Rural Africana 39 (1975). Much of the interpretive material in the section that follows is based on Brietzke, op.cit.

56 See N. Stjepanovic, 'The Code in a Socialist State', in B. Schwartz, ed., The Code Napoleon and the Common Law World 224, at 227 (1975) and Bruce, op.cit. 12.

57 See: A. Honore, 'Ownership', in A. Guest, ed., Oxford Essays in Jurisprudence 107, at 113-19 (1961); J. Hazard, Communists and their Law 145-63 (1969); and R. David and J. Brierley, Major Legal Systems . . . 216 (1968).

58 Proc. 31 of 1975, Arts. 4(1) and (3), 9 and 10(1). See J. Elder, 'Cultural and Social Factors in Agricultural Development', in Uphoff and Ilchman, op.cit. 46, at 50.

59 Cohen and Koehn, op.cit. 6-7 and Bruce, 'Ethiopia: Nationalization . . .' 9-10.

60 Neg. Gaz. 35/15. See Cohen and Koehn, op.cit. 16-24.

61 P. 71 of 1975, Arts. 4,5,14. The intended effect of the provision imposing a liability to be sued (Art. 5(6)) is uncertain, owing to Art. 28(4) of Proc. 31 of 1975: "No court action shall be brought

challenging the legality of any action taken pursuant to the provisions of this Proclamation." The presumed intention is one of implied amendment - see Arts. 20 and 55 of P. 71.

62   G. Last, 'Indigenous Associations and the Process of Change . . . in . . . Ethiopia' (1973); Lewis, op.cit. 170-3; Kaplan, et al., op.cit. 128, 176; and Markakis, op.cit. 172-4.

63   P. Enahoro, 'If the End Justifies the Means . . . ' 68 Africa 11, at 12 (April 1977).

64   Art. 45. See Art. 41 and Cohen and Koehn, op.cit. 19.

65   Neg. Gaz. 36/18.

66   W. Lee, 'Ethiopia: A Review of the Dergue', 22(2) Africa Report 7, at 10 (Mar. - Apr. 1977); Cohen and Koehn, op.cit. 11, 23, 50n; Hoben, Rural Africana, passim; and M. Ottaway, op.cit., passim.

67   Under P. 11 of 1974, Neg. Gaz. 34/10.

68   Cohen and Koehn, op.cit. 21-3.

69   P. 48 of 1975, Neg. Gaz. 34/42.

70   P. 72 of 1975, Neg. Gaz. 35/16, Arts. 3, 7. Pending criminal charges are suspended and transferred to zemecha headquarters for disposition (Arts. 4-5). Exonerated students are given a "certificate of exoneration" while those who are not in default are given a "certificate of priority", which receives a more favourable treatment from Government and private organisations, particularly with regard to employment (Arts. 6, 8-10). In addition to penalties under general penal laws, a defaulting zemecha student could, unless exonerated, be barred from school, public and private employment, and leaving the country (P. 11 of 1974, Art. 15).

71   Ottaway, op.cit. and Bruce, op.cit. 6.

72   Proc. 31 of 1975, Arts. 2(7), 3(5) and 7(2).

73   E.g., in Jibendra Kishore Acharyya Chowdhury v. Prov. of E. Pakistan, P.L.D. 1957 S.C. (Pak.) 9, Muhammed Munir, C.J., rejected the contention that a Bengali law (enabling Government to acquire land by scheduling the landlords affected) was a denial of equal protection because the scheduling power could be exercised in a discriminatory fashion:

> if the legislature decides to abolish the system of private landlordism. . . and the resources of the state are not sufficient. . ., the classification based on such considerations must be considered to be a necessary result of bringing the expropriating provisions of the Act into action.

Examining American constitutional law rules such as Yick Wo v. Hopkins, he concluded that the scheduling power

> is not arbitrary or capricious, /it/ is natural and reasonable and bears a fair and substantial relation to the object of the legislation.

74   Proc. 31 of 1975, Arts. 2(2), 7(1) and 16(1).

75   Hoben, 'Perspectives', op.cit. See also Cohen and Koehn, op.cit. 20 and G. Ellis, 'Ethiopia: Socialist Agriculture in the Making' 14 (1976):

> One immediate result of the reform may be inequities and decreased production. For example, the Ude sersach kash /work committee/ is in charge of coordinating production for a 5 gasha /200 hectare/ unit. They have 21 families altogether. Because the area /near Debre Zeit/ was formerly commercially farmed; they have large holdings of nearly 10 hectares per family. Previously, the farmers tilled an average of less than 4 hectares apiece. Since the area has good soil, the income was good, even after paying 50% rents. As a result, many of the farmers hired labor to weed and harvest. The hired laborers came from poorer, over-crowded areas.
>
> Now the farmers are faced with 250% more work to do, but will not have to pay any rent. If the farmers worked hard enough to harvest the extra area, they will have nine times their traditional income. But is it normal to expect them to increase their incomes by nine times, while working 2.5 times more? Is it not more reasonable to expect a cutback in production?

Holmberg, op.cit. 11, on the other hand, terms the plowing and planting of former commercial farms "generally successful".

76   Id., 2. See: G. Myrdal, 'Paths of Development', in Shanin, op.cit. 412, at 419; V. Uchendu, 'Comment', in F. Arkhurst, ed., Africa in the Seventies and Eighties 118, at 125 (1970); and Kamarck, op.cit. 90.

77   Rural Land Use Fee and Agricultural Activities Income Tax Proc. No. 77 of 1976, Neg. Gaz. 37/19, Prologue.

78   Proc. 77 of 1976, Arts. 5-7, 8.

79   Id., Arts. 2, 12-15, 17, 22, 25, 28-9, 44.

80   Cohen and Koehn, op.cit. 14 and C. Legum, 'Disaster Faces Refugees', Observer, 2/5/76, 9.

81   Holmberg, op.cit. 11 and Lele, op.cit. 62-3.

82   Settlement Authority Establishment Proc. No. 78 of 1976, Neg. Gaz. 35/20, Art. 17. See also Prologue and Arts. 4, 6.

83   Id., Arts. 5, 8, 11.

84   Rural Projects Agency Establishment Proc., No. 86 of 1976, Neg. Gaz. 35/30, Prologue and Arts. 5, 8, 10.

85   Proc. 83 of 1976, Neg. Gaz. 35/31, Prologue and Arts. 5-6, 8, 11. The Board is composed of representatives of the Ministries of Agriculture, Commerce, Transport and National Resources Development, and the General Manager.

86   L.N. 27-9 of 1976, Neg. Gaz. 35/21; L.N. 32-3 of 1976, Neg. Gaz.
      35/23; and L.N. 37 of 1976, Neg. Gaz. 35/27. See Ch. 7, on the nation-
      alisation of private businesses.

87   Proc. 118 of 1977, Neg. Gaz. 36/21, Prologue and Arts. 5-7, 11, 17.
      The Board is composed of the Minister of Agriculture and represen-
      tatives of the Ministries of Mines, Industry, Interior and the Planning
      Commission. The Awash Valley Authority Charter, G.N. 299 of 1962,
      is repealed (Arts. 9, 16).

88   L.N. 53 of 1977, Neg. Gaz. 36/21, Arts. 4,7.

89   Gilkes, The Dying Lion 137; Holmberg, op.cit. 4; and Kaplan, et al.,
      op.cit. 403-4.

90   Holmberg, op.cit. 11, 15-17.

91   See Ethiopian Grain Board Proc. 1950, 24 Consol. L. Eth. 8 and the
      Ethiopian Grain Corporation Charter 1960, 24 Consol. L. Eth. 10.

92   Agricultural Marketing Corporation Establishment Proc., No. 105 of
      1976, Neg. Gaz. 36/7, Arts. 7, 9, 13(3), 14(3). While the Grain
      Board Proclamation of 1950 is not expressly repealed, the Board is
      assigned no functions under No. 105 of 1976.

93   Holmberg, op.cit. 7, 11-12, 20 and Cohen et al., op.cit. 103-5. See
      Kamarck, op.cit. 126.

94   Gill, 'Introduction to Money and Banking', in Gill, op.cit. 314, at
      314; Kaplan, et al., op.cit. 317, 403; and Holmberg, op.cit. 14. See
      D. Lane, The Socialist Industrial State 155 (1976) and Moore, Jr.,
      op.cit. 186-7.

95   S. Pausewang, 'Problems of Transition from Subsistence Farming to Mar-
      ket Production in Rural Ethiopia' 1 (1976). See R. Dumont and M.
      Mozayer, Socialisms and Development 190 (1973).

96   J. Shepherd, The Politics of Starvation 47 (1975); W. Lee, 'Ethiopia:
      A Review of the Derg', 22(2) Africa Report 7, at 10 (1977); Cohen,
      et al., op. cit. 52; Holmberg, op.cit. 11; and Assefa and Eshetu,
      op.cit. 34.

97   J. Robinson, Freedom and Necessity 100 (1970). See: A. Stinchcombe,
      'Agricultural Enterprise and Rural Class Relations', in R. Bendix and
      S. Lipset, eds., Class, Status and Power 182, at 182 (1966);
      S. Moore, 'Law and Social Change', 7 Law and Society Rev. 719,
      passim (1973); H. Brookfield, Interdependent Development 127-8
      (1975); J. Nyerere, Freedom and Socialism 16 (1968); and Myrdal, Asian
      Drama 132.

98   See Hung Chao-Tai, 'The Political Processes of Land Reform', in Uphoff
      and Ilchman , op.cit. 295 at 299.

99   Uphoff and Ilchman, 'Introduction to Part II', in Uphoff and Ilchman, op.cit. 277, at 281.

100   'New Fears for Selassie as the Army Splits', Observer, 27/4/75, 8 and D. Ottaway, 'Ethiopian Leaders Held After Coup Attempt', Guardian 28/4/75, 4.

101   See: Y. Ghai and J. McAuslan, Public Law and Political Change in Kenya 159-60 (1972); C. Wilber, The Soviet Model and Under-developed Countries 48 (1969); Markakis, op.cit. 385; and Alemante, op.cit. 43.

102   Woollacott, op.cit.

103   J. Harbeson, 'Land Reform and Integrated Rural Development' (1975) and Cohen and Koehn, op.cit. 16. See: C. Thomas, Dependence and Transformation 153 (1974); Uphoff and Ilchman, op.cit. 106, 109, 282-3; Jacoby, op.cit. 43; and Dumont and Mozayer, op.cit. 160.

104   Cohen and Koehn, op.cit. 23 and Lele, op.cit. 111, 162-5.

105   See: L.G. Cowan, 'The Political and Administrative Setting for Rural Development', in Arkhurst, op.cit. 87, at 107-8; J. Saul and R. Woods, 'African Peasantries', in Shanin, op.cit. 103, at 112-3; and Wertheim, op.cit. 252, 254-5.

106   K. Marx, 'The Eighteenth Brumaire of Louis Bonaparte', 1 Selected Works of Marx and Engels 398, at 478-9 (1969). See R. Dahrendorf, Class and Class Conflict in Industrial Society 183 (1959).

107   Myrdal, Asian Drama 100, 205.

108   Id., 235.

109   D. Ottaway, op.cit.; personal sources of information; C. Legum, Ethiopia: The Fall of Haile Selassie's Empire 71 (1975); and Shepherd, op.cit. 48.

110   M. Woollacott, 'Political Void Left by Fall of (Ethiopian) Empire', Guardian, 18/2/78, 6.

111   'Ethiopian Provincial Administrator Assassinated', Reuters despatch (Paris), 25/9/75, 11.20 G.M.T.; 'Ethiopian Security Forces Kill 88 Persons', Reuters despatch (London), 9/10/75, 10.30 G.M.T.; Maeve Owen, 'Feudal Duel', Guardian 22/12/75, 17; John Aveyard, 'Eritrean March a Disaster', Id., 29/6/76, 2; Legum, op.cit. 74, 77; and Hoben, 'Perspectives. . .'.

112   Amnesty International, 'The Human Rights Situation in Ethiopia', 7, 23 (1977).

113   Levine, Wax and Gold 38 (1965).

114   Quoted by Wertheim, op.cit. 149.

115 Hoben, Land Tenure. . . 5, 7-10, 12-13, 23-5, 237 and B. Thomson, Ethiopia: the Country that Cut off its Head 131 (1975).

116 Ellis, op.cit., passim; Hoben, Land Tenure. . . 229; and Alemante, op.cit. 39-40.

117 See Dumont and Mozayer, 314 and Mandel, quoted by Thomas, op.cit. 290.

118 Cohen, et al., op.cit. 97-112 and Ellis, 'Ethiopia. . .', 20-3. See P. Dorner, 'Needed Redirections in Economic Analysis for Agricultural Development Policy', in Uphoff and Ilchman, op.cit. 129, at 130.

119 Quoted by, e.g., R. Christensen, et al., Ideologies and Modern Politics 152 (1971). Similarities between Ethiopia's and China's land reform are only superficial: see Id. 152-3; J. Gray, 'The Chinese Model', in Nove and Nuti, eds., Socialist Economics 491, at 492-5 (1972); and R. James, Land Tenure and Policy in Tanzania 21, 26 (1970).

120 Holmberg, op.cit. 14. See: A. Mosher, 'The Development Problems of Subsistence Farmers', in C. Wharton, Jr., Subsistence Agriculture and Economic Development 7, at 8 (1969); P. Merkl, Modern Comparative Politics 426-7 (1970); D. Lerner, 'Communication and the Prospects of Innovative Development', in Lerner and W. Schramm, eds., Communication and Change in Developing Countries 305, at 306 (1967); Myrdal, Asian Drama 139-40; Dumont and Mozayer, op.cit. 42; and Chap. 2 , Sec. IV.

121 Jacoby, op.cit. 341. See: Myrdal, 'Paths of Development' 414 and Lele, op.cit. 23, who adds, at 3, that the importance of rural development is reflected by the fact that 85-90% of the 310 million people of sub-Saharan Africa live in rural areas and typically have per capita incomes of less than £ 50 per year.

122 Wertheim, op.cit. 272.

123 Cohen and Weintraub, op.cit. 77. See J. Montgomery, 'The Allocation of Authority in Land Reform Programs', in Uphoff and Ilchman, op.cit. 449, at 450-1 and Hung-Chao, op.cit. 299. This viewpoint constitutes a substantial departure from the received wisdom of Western development theorists: see Chap. 2, Sec. I and, e.g. B. Hodder, Economic Development in the Tropics 119 (1968).

124 Bruce, op.cit. 12 and Cohen and Sileshi, op.cit. See: Myrdal, Asian Drama 230-1; D. Feldman, 'Rural Socialism in Tanzania', in C. Leys, ed., Politics and Change in Developing Countries,111 (1969); and Chap. 2, Sec. I.

125 Cohen and Sileshi, op.cit. 21; Shepherd, op.cit. 47; and Lele, op.cit. 116, 127. See Id. 20 and James, op.cit. 169.

126 See: W. Harvey, 'Comment', in Arkhurst, op.cit. 147; S. Golunski and M. Strogavich, 'The Theory of State and Law', in D. Lloyd, Introduction to Jurisprudence 673, at 674 (3d Ed. 1972); B. Bryde, The Sociology of African Legal Development 138 (1976); and Uphoff and Ilchman, The Political Economy of Change 113 (1969).

CHAPTER 7

1   L. Bondestam, 'Notes on Multinational Corporations in Ethiopia', 5
     African Rev. 535, at 539-40 (1975); D. Karsten, '(Ethiopian) Economy'
     in Africa South of the Sahara 304, at 307 (1976); and C. Legum, Ethiopia
     . . . 25 (1975). The statistics cited in these sources vary slightly
     and Bondestam's are preferred as the most accurate.

2   DATA CONCERNING 263 OF THE 479 BIGGEST ETHIOPIAN INDUSTRIES IN 1969/70
     FOR WHICH DATA ARE AVAILABLE (IN MILLION ETH$)

Industry	Fixed Assets	Value Added at Market Price	Number of Employees	Paid-up Capital local	Paid-up Capital foreign
Food and beverages	134.8	94.5	11,230	45.4	53.5
Textiles	86.0	69.2	21,610	31.9	45.6
Others	148.4	71.2	16,060	107.0	39.2
Total	369.2	234.9	48,900	184.3	138.3

     Source: Annual Survey of Manufacturing Industry for 1969/70, Ethio-
     pian Ministry of Commerce, 1972, quoted by Bondestam, op.cit. 540.

3   Id., 541-2, 544, 547 and Legum, op.cit. 20.

4   A. Ewing, Industry in Africa 35 (1968); P. Gilkes, The Dying Lion
     139 (1975); I. Kaplan, et al., Area Handbook for Ethiopia 376, 408
     (2d Ed., 1971); Karsten, op.cit. 306; and P. James, 'A Study of
     Ethiopian Economy' 68 (1973). See: C. Thomas, Dependence and Trans-
     formation 107 (1974); E. Whetham and J. Currie, The Economics of
     African Countries 134 (1969); B. Gallin, 'Land Reform in Taiwan', in
     N. Uphoff and W. Ilchman, eds., The Political Economy of Development
     317, at 318 (1972); and G. Myrdal, Asian Drama 74, 239 (Rev. Ed.,
     1977). Kaplan, et al., op.cit. 380 note that , of 395 manufacturing
     units in 1970, only 84 had more than 100 employees yet they accounted
     for 83.4% of employment. The 15 largest employers accounted for 57%
     of employment.

5   Myrdal, op.cit. 356-7.

6   Ewing, op.cit. 36 and Bondestam, op.cit. 538. See: H. Brookfield,
     Interdependent Development 74 (1975); R. Dahrendorf, Class and Class
     Conflict in Industrial Society 315 (1959); B. Moore, Jr., Social Origins
     of Dictatorship and Democracy 481 (1973); C. Furtado, Development and
     Underdevelopment 131-2 (1967); K. Griffen, Underdevelopment in Spanish
     America 56 (1969); Thomas, op.cit. 188, 293; and Chap. 1, supra.

7   J. Farrar, Introduction to Legal Method 145-6 (1977); B. Schwartz,
     'The Code and Public Law', in Id., ed., The Code Napoleon and the
     Common-Law World 247, at 250 (1956); O. Kahn-Freund, ed., of K. Renner's,
     The Institutions of Private Law 181 (1949); and Renner, Id. 115:
     See the Civil Code, P. 165 of 1960 and Commercial Code, P. 166 of
     1960 (Neg. Gaz. Extraordinaries) discussed in the next Sec.

8   Quoted by, e.g., Farrar, op.cit. 15.

9   J. Habermas, Legitimation Crisis 53-5 (1976); J.W. Hurst, Law and
     Social Order in the United States 138 (1977); W. Evan, 'Public and Private

Legal Systems', in <u>Id</u>., ed., <u>Law and Sociology</u> 165, at 169 (1962);
D. Black and M. Mileski, 'Introduction', in <u>Id</u>., eds., <u>The Social
Organization of Law</u> 1, at 6 (1973); and Farrar, <u>op.cit.</u> 30, 145-6.

10   <u>Id</u>., 15, 145-6; Kahn-Freund, <u>op.cit.</u> 182; and Schwartz, <u>op.cit.</u> 253.

11   Much of the material in this Section has been adapted from P. Brietzke,
'Private Law in Ethiopia', 18 J Af. Law 149 (1974).

12   See R. Sedler, 'The Development of Legal Systems: The Ethiopian Exper-
ience', 53 Iowa L. Rev. 562, at 563-4, 571, 609-10, 621 (1967). B.-O. Bryde,
<u>The Sociology of African Legal Development</u> 172 (1976), adds that:
> Ethiopia could afford impressive modern codifications becuase
> (not despite) it is one of the least developed countries in
> Africa; in areas where the new laws are completely out of line
> with social reality they are guaranteed to be ignored. Prob-
> lems are confined to groups partly incorporated into the modern
> sector without being fully absorbed by it.

See also: L. Friedman, <u>The Legal System: A Social Science Perspective</u>
143, 213 (1975); A. Stinchcombe, 'Agricultural Enterprise and Class
Relations', in R. Bendix and S. Lipset, eds., <u>Class, Status and Power</u>
182, at 183 (1966); G. Sawer, <u>Law in Society</u> 130 (1965);   Kahn-
Freund, <u>op.cit.</u> 11-12; and F. Riggs, <u>Administration in Developing
Countries</u> 46-7 (1964).

13   See: R. David, 'A Civil Code for Ethiopia', 37 Tulane L. Rev. 187
(1963) /hereinafter cited as David 7; David, 'The Law of Contract and
of Civil Wrongs in French-Speaking Africa' in <u>Integration of Customary
and Modern Legal Systems in Africa</u> 160 (Allott ed. 1964)/ hereinafter
cited as David in Allott/; N. Singer, 'Modernisation of Law in Ethiopia'
11 Harvard Int. L. J. 73, at 73 (1970), who terms it "one of the more
innovative" modernisation plans of this century; K. Redden, <u>The Legal
Systems of Ethiopia</u> 49-55, 58-61, 72-81, 86-90 (1968) /hereinafter
cited as Redden/; F. Russel, 'The New Ethiopian Civil Code', 29 Brook-
lyn L. Rev. 237 (1963); and Sedler, <u>op.cit.</u> For a more 'balanced'
analysis of the Codes, <u>see</u>: J. Beckstrom, 'Transplantation of Legal
Systems: An Early Report on the Reception of Western Laws in Ethiopia',
21 Am. J. Comp. L. 557 (1973) /hereinafter cited as Beckstrom7; and
J. Vanderlinden, 'Civil and Common Law Influences on the Developing
Law of Ethiopia', 16 Buffalo L. Rev. 250 (1966) /hereinafter cited as
Vanderlinden7.

14   Quoted in P. Brietzke, ed., <u>A Source-Book of Ethiopian Law and Devel-
opment</u> 92 (1974).

15   J. Escarra, 'Expose des Motifs' in <u>Background Documents of the Eth-
iopian Commercial Code of 1960</u> 11, 15 (Winship ed. 1972) /hereinafter
cited as Winship/; Redden at 53; and David in Allott at 167. Although
the predominant flavour of the Codes is French, Swiss influences can
be traced in Books IV-V of the Civil Code and a German influence is
present in the Commercial Code.

16   See H. Berman, 'Soviet Perspectives on Chinese Law' in <u>Contemporary Chinese Law</u> 313, 313-4 (J. Cohen ed. 1970).

17   David at 204.

18   Escarra, 'Minutes of the Commercial Legislation Sub-Committee Meeting of 22 Oct. 1954' in Winship, 90,91.

19   Escarra, 'Preliminary Report on the Preparation of the Commercial Code of Ethiopia' in Winship 1, 3.

20   <u>See</u>: R. Pankhurst, <u>Economic History of Ethiopia</u> 346-451 (1968); and S. Date-Bah, 'Aspects of the Role of Contract in the Economic Development of Ghana', 17 J. of African L. 254, 257 (1973).

21   A. Paulos Tzadua (Transl.), <u>Fetha Nagast</u> 329-330 (n.d.) The textual interpolations in this literal translation from the Ge'ez are those of Paulos.

22   R. Seidman, 'Law and Stagnation in Africa', 5 Zambian L.J. 39, 40 (1973). <u>See</u> Note 33, <u>infra</u>.

23   David at 188.

24   H. Jaguribe, <u>Economic and Political Development</u> 10 (1968).

25   <u>Id</u>. at 9-11; and Wolf, 'The Elan Vital of France', Christopher, 'The Dessication of the Bourgeois Spirit',Ruggles, 'The French Investment Program', and Sawyer, 'Strains in the Social Structure of Modern France' in <u>The Civil Law System</u> 588-91 (Von Mehren,ed. 1957).

26   F. Deak and M. Rheinstein, 'The Development of French and German Law' 24 Georgetown L.J. 551, 560 (1936).

27   Geny, <u>Method of Interpretation and Sources of Private Law</u> (1899), quoted by Sawer, <u>op.cit</u>. 21.

28   A. Tunc, 'The Grand Outlines of the Code' in <u>Readings on the Historical Background and Development of the Ethiopian Civil Code</u> 70, 82 (Kindred ed. 1969); K. Ryan, <u>An Introduction to the Civil Law</u> 27 (1962); and R. Houin, 'Reform of the French Civil Code and the Code of Commerce', 4 Am. J. Comp. L. 485, 488-9 (1955) /hereinafter cited as Houin7; F. Davis, et al. Society and the Law 84 (1962); M. Rheinstein, 'The Code and the Family', in Schwartz, <u>op.cit</u>. 139, at 140; and Deak and Rheinstein, <u>op.cit</u>.

29   R. Drago, 'Public and Private Enterprise in France', in W. Friedman, ed., Public and Private Enterprise in Mixed Economies 3, at 3 (1974); P. McCarthy, 'The Law and Economic Development In Ethiopia' (n.d.); David, French Law 112-3 (Kindred transl. 1969); Deak and Rheinstein, op.cit. 561-2; and Houin at 489, 494. Escarra (in Winship at 2-4) argues that separate code provisions are needed to regulate the subjective status of 'traders', and that it does not matter whether these provisions

are in a Civil Code or a separate Commercial Code, if Commercial Code rules are synchronised with those in the Civil Code. In Ethiopia, however, the Codes come into conflict at several junctures (infra).

30 L. Juillot de la Morandiere, 'The Reform of the French Civil Code', U. of Penn. L. Rev. 1, 6 (1948); and Houin at 486, 489.

31 S. Bayitch, 'Codification in Modern Times', in Civil Law in the Modern World 161, 167, 183 (Yiannopoulos ed. 1965).

32 R. Seidman, 'Law And Development: A General Model', 6 Law and Soc. Rev. 311 (1972). J. Stone, Law and the Social Sciences 9 (1966), cites Huntington Cairns and Montesquieu (Note 34, infra) for the proposition that laws can be understood as social phenomena only by postulating the operation of cause and effect in the social field – a challenge to the notion of an immutability of a natural law discovered through the contemplation of man's nature.

33 E.g., J. Markakis, Ethiopia . . . 296 (1974): "The Codes . . . were cut on the most advanced models, quite removed from actual conditions in Ethiopia."

34 A. Watson, Legal Transplants 4 (1974). This idea is obviously grounded in Montesquieu (quoted by, e.g., H. Cairns, Law and the Social Sciences 133 (1969):
      /Laws/ should be adapted in such a manner to the people for whom they are framed that it should be a great chance if those of one nation suit another. They . . . should have relation to the degree of liberty which the constitution will bear; to the religion of the inhabitants, to their inclinations, riches, numbers, commerce, manners, and customs.

35 Hurst, op.cit. 23. While Hurst's characterisation refers to Americans, it is equally applicable to the French.

36 These arguments are elaborated infra.

37 David at 193-4.

38 Id. at 193; Sedler at 609; and Beckstrom at 576.

39 Beckstrom at 572.

40 R. David and J. Brierley, Major Legal Systems in the World Today 462-3, 465 (1968). G. Krzeczunowicz, 'Code and Custom in Ethiopia', 2 J. Eth. L. 425, at 427 (1965), finds a parallel between Art. 3347(1) and the repeal of the old law by the French Civil Code which, however, merely finalised a mature internal evolution of French law. He argues that Art. 3347(1) should have only repealed "law and custom. . . inconsistent with the provisions of this Code", and that some judges proceed on the assumption that this is the case.

41 David, 'Critical Observations Regarding the Potentialities and the Limitations of Legislation in the Independent African States' in Integration of Customary and Modern Legal Systems in Africa 44, 46-7

(Allott ed. 1964); David at 200; David in Allott at 161, 164;
Redden at 72; and Beckstrom at 560. It should be noted that Parliament deleted most of the extensive transitory provisos that David
had drafted in an attempt to prevent the divorce of law from reality.
(G. Krzeczunowicz, 'The Ethiopian Civil Code', 7 J. Af. L. 172, 175(1963).
See A. Schaff, 'The Marxist Theory of Social Development' in S. Eisenstadt, ed., Readings in Social Evolution and Development 71, at 85
(1970) and David and Brierley, op.cit. 40:

> The customs were the law of closed societies; Roman law was the
> law of an open society. Therein lies the reason for its expansion
> and, in various areas, for its reception.

Presumably, they are referring to an open-ended society rather than,
for example, Karl Popper's "open society".

42 Id., 466.

43 David at 194. See Redden at 55 and Sedler at 579.

44 J. Vanderlinden, 'The Importance of Amharic for the Development of the
Ethiopian Legal System' (mimeo, 1969).

45 Markakis, op.cit. 340.

46 A. Schiller, 'The Changes and Adjustments. . .' in Legal Aspects of
Economic Development 193, 200 (Tunc Ed. 1966).

47 W. Harvey, 'Comment', in F. Arkhurst, ed., Africa in the Seventies and
Eighties 147, at 147 (1970).

48 R. Dias, Jurisprudence 444 (4th Ed., 1976).

49 David at 202.

50 Bryde, op.cit. 141. See Id. 46, 165-6.

51 R. Hale, Freedom through Law 385 (1952).

52 Kahn-Freund, op.cit. 7.

53 A. Allott, 'African Law in the 1980s', in Arkhurst, op.cit. 163,
at 169-70; C. Clapham, Haile Selassie's Government 138 (1969); and
Singer, op.cit. 91, 97-8. See: Friedman, op.cit. 181; Bryde, op.cit.
83, 87; and Renner, op.cit. 47, who adds that, while laws are laid down
in the name of the general will, it is difficult to see how a volonte
generale arises from conflicting individual wills.

54 Bryde, op.cit. 7. See Id. 79.

55 Id. 100. See David and Brierley, op.cit. 2 and Brietzke, 'Rural Development and Modification of Malawi's Land Tenure Systems', Rural Africana
No. 20, 53 (1973).

56 See, generally, J. Beckstrom, 'Handicaps of Legal and Social Engineering in a Developing Nation', 22 Am.J. Comp. L. 697 (1974).

57   Decree 52 of 1965, <u>Neg. Gaz.</u> 25/3.

58   N. Benham, 'Law and Justice in Ethiopia', The Contemporary Review No.
     941, 267, 269 (May, 1944); Vanderlinden at 256; David at 203; Sedler
     at 570; and Markakis, <u>op.cit.</u> 88, 298.

59   David at 189, 203.

60   H. Gutteridge, <u>Comparative Law</u> 96 (quoting Pothier), 103 (1949); A.
     Tunc, 'The Grand Outlines of the Code', in Schwartz, <u>op.cit.</u> 19,
     at 19; and Singer, <u>op.cit.</u> 87.

61   Worku Tafara, 'Judicial Administration in Ethiopia' 73 (1972);
     T. Geraghty, 'People, Practice, Attitudes and Problems in the Lower
     Courts of Ethiopia', 6 J. Eth. L. 427, 440, 455 (1969); Beckstrom at
     565-6; and Singer, <u>op.cit.</u> 87, 92.

62   G. Krzeczunowicz, 'The Present Roles of Equity in Ethiopian Civil
     Law' 13 J. Af. L. 145, 155 (1969); J. Ross and Zemariam Berhe, 'Legal
     Aspects of Doing Business', J. Eth. L. Occasional Paper No. 1, 11-14,
     19-20, 35-9 (1972) /hereinafter cited as Ross and Zemariam7; Escarra,
     'Book V: Expose des Motifs' in Winship 105, 108; and Geraghty, <u>op.cit.</u>
     480-1.

63   S_edler at 609-10.

64   <u>Id.</u> at 621. See L. Cooperrider, 'The Rule of Law and the Judicial
     Process', 59 Mich. L. Rev. 501, 507 (1961).

65   <u>See</u> Geraghty, <u>op.cit.</u> and Sedler.

66   <u>Id.</u> at 627. <u>See</u> Gutteridge, <u>op.cit.</u> 34.

67   G. Krzeczunowicz, 'An Introductory Theory of Laws', J. Eth. L.
     Occasional Paper No. 3, 6 (1973). <u>See</u> F. Lawson, A. Anton and L. Brown,
     <u>Amos and Walton's Introduction to French Law</u> 9-11 (2d Ed. 1963) and
     Gutteridge, <u>op.cit.</u> 90, who takes a slightly more ambiguous view of
     the role of civilian case law:
              /its/persuasive influence . . . is so great that it is only by
              shutting one's eyes to its existence that it can be eliminated
              from any general conspectus of the sources of law. How far
              this influence extends is, however, open to doubt.
     A group of cases forming a practice (<u>usus fori</u>) will generally be
     followed, while a single precedent may not be applied. There is also
     the <u>jurisprudence constante</u>, an attempt to create uniformity on
     recurring questions by, for example, the Court of Cassation (<u>Id.</u>
     and A. Sereni, 'The Code and Case Law', in Schwartz, <u>op.cit.</u> 55, at
     75-6). It is submitted that these practices differ but little from
     those of common law courts.

68   <u>Id.</u> 67; Portalis, quoted by Tunc in Schwartz, <u>op.cit.</u> 26; Geny, quoted
     by Sawer, <u>op.cit.</u> 21; and Dias, <u>op.cit.</u> 173. <u>See</u> House of Lords,
     'Practice Statement' (1966) and S. Asante, 'Stare Decisis in the Supreme
     Court of Ghana', 1 U. of Ghana L.J. 52 (1964). Dias does, however, note

that stare decisis is a fortiori inappropriate where there is a Code (op.cit. 446). This is strange, because it contradicts his other analyses (see Id. 165, 171, 173). For example, he cites an argument of Lord Denning and then proceeds to refute it. Denning contends that civilian judges decide cases by laying down principles through abstract reasoning and then applying them to concrete cases. Their common law colleagues rather decide cases according to the merits and then see what principles emerge. The latter statement probably reflects what Denning himself does, rather than the views of the broad run of his brethren. Dias argues that case developed common law principles gain respect over time and that there is a marked reluctance to challenge settled principles (Id. 165).

It is the civilian jurists who wish markedly to distinguish stare from judicial custom. Most of them rely on outmoded English views of the doctrine, however: Sereni (op.cit. 67), for example, bases his analyses on a 1774 decision by Lord Mansfield, Jones v. Randall.

69 Quoted by Farrar, op.cit. 49. See Id. 127 and O. Kahn-Freund, et al., A Source-Book on French Law 1-2 (1973).

70 Fasil Abebe and S. Fisher, 'Language and Law in Ethiopia', 5 J. Eth. L. 553, at 553-4 (1968); David at 199; Vanderlinden, 'The Importance of Amharic . . .'; Krzeczunowicz, 'Introductory Theory . . .', 6, 22; and Singer, op.cit. 91. See: W. Probert, 'Law through the Looking Glass of Language. . .', 20 J. Legal Educ. 253, at 258-9 (1965); Watson, op.cit. 11; and Dias, op.cit. 166-9. Edward Ullendorff, in the 'Preface' to Haile Selassie, My Life and Ethiopia's Progress xix (1976), adds that:

> Amharic stylistics . . . are as apt to aid and abet a desire for almost total opacity as they may illumine complicated thought processes by their marvellous flexibility and clarity of hierarchical structuring.

71 Sedler at 560.

72 See Van Mehren, op.cit. 824, 836 and K. Boyle, et al., Law and State: The Case of Northern Ireland 23 (1975).

73 F. Lawson, Introduction to the Law of Property 2 (1958). See M. Heth, The Legal Framework of Economic Activity in Israel 27-9, 44 (1967) and Renner, op.cit. 196, 217, 260.

74 C. Ganang and R. Pearce, Law and Society 76 (1965); Alemante G. Selassie, 'Property Relationships in Ethiopia and their Implications for Development' 9 (1972); Singer, op.cit. 89-90; P. Stein and J. Shand, Legal Values in Western Society 103 (1974); C. Levy, 'The Code and Property', in Schwartz, op.cit. 162, at 164, 166-7; and Kahh-Freund, op.cit. 17. In addition to expropriation provisions (infra) and minimal protections of agricultural tenants (Chap. 6), the minor and, in western legal systems, ordinary exceptions to a purely individual ownership are found in Civil Code Arts. 1228-56 (water law), Arts. 1489-96 (collective land exploitation in conformity with tradition) and Arts. 1535-47 (town planning areas). In practice, these exceptions are of little relevance (see Chaps. 6-7).

75 H. Marcus, <u>Life and Times of Menelik II</u>. . ., 222-3 (1975) and Kahn-Freund, <u>loc. cit.</u> 66.

76 K. Marx, 'Introduction', <u>A Contribution to the Critique of Political Economy</u> 188, at 193 (1970). See: J. Hazard, <u>Communists and their Law</u> 200-3 (1969); D. Lane, <u>The Socialist Industrial State</u> 174 (1976); and Friedrich, <u>op.cit.</u> 146.

77 Marx, quoted by H. Kelsen, <u>The Communist Theory of Law</u> 37 (1955).

78 <u>Id.</u>

79 Hazard, <u>op.cit.</u> 205-22; Hazard, <u>Law and Social Change in the USSR</u> 1-7,33-4 (1953); A. Honore, 'Ownership', in A. Guest, ed., <u>Oxford Essays in Jurisprudence</u> 1, at <u>passim</u> (1961); David and Brierley, <u>op. cit.</u> 214-15; Stein and Shand, <u>op.cit.</u> 216; and Marx, <u>op.cit.</u> 193.

80 Date-Bah, <u>op.cit.</u> 261; Genang and Pearce, <u>op.cit.</u> 78; and Renner, <u>op.cit.</u> 28, 32, 271.

81 Kelsen, cited by W. Firey, <u>Law and Economy in Planning</u> 27 (1965) and R. Seidman, 'Contract Law, the Free Market and State Intervention', 5 J. of Economic Issues 553, at 555-6 (1973).

82 David, <u>Commentary on Contracts in Ethiopia</u> 29 (Kindred transl. 1973).

83 Seidman, <u>loc. cit.</u> 555; L. Friedman, <u>Contract Law in America</u> 20-1, 23 (1965); F. Kessler, 'Contract as a Principle of Order', in M and F. Cohen, eds., <u>Readings in Jurisprudence and Legal Philosophy</u> 140, at 140-1 (1951); A. Von Mehren, 'The Code and Contract', in Schwartz, <u>op.cit.</u> 110, at 113; L. Preston, 'Market Control in Developing Countries', 4 J. of Development Studs. 481, at 483 (1968); Hurst, <u>op.cit.</u> 37; and Gutteridge, <u>op.cit.</u> 32..

84 David, quoted by Markakis, <u>op.cit.</u> 296. See Friedman, <u>Contract Law</u> . . . 17.

85 Nathan Issacs, quoted by <u>Id.</u> 24. See Stein and Shand, <u>op.cit.</u> 237-8 and Kahn-Freund, . . . <u>Private Law</u> 39.

86 Seidman, 'Contract Law. . .', 559.

87 <u>Id.</u> 556. See also: <u>Id.</u> 554; W. Wagner, 'The Interplay of Planned Economy and Traditional Contract Rules in Poland', 11 Am.J. Comp. L. 348, at 348, 355, 362 (1962); and Firey, <u>op.cit.</u> 27.

88 Z. Mihaly, 'The Role of Civil Law Institutions in the Management of Communist Economies. . .' 8 Am. J. Comp. L. 310, at 311, 313-14 (1959) and David and Brierley, <u>op.cit.</u> 220-3.

89 Escarra, 'Expose des Motifs', in Winship, 11, 18.

90 David, at 346.

91 Escarra, 'Book V: Espose des Motifs', in Winship 105, 112 (concerning bankruptcy provisions). Parallel justifications are made concerning provisions governing share companies, private limited companies and cheques in Id., at 62, 74, 101. See also T. Hadden, Company Law and Capitalism 24-5 (1972) and Drago, op.cit. 19.

92 C. de Hoghton, The Company 104 (1970); Kahn-Freund in Renner, op.cit. 225; and Kaplan et al., op.cit. 408. See Hurst, op.cit. 44 and Firey, op.cit. 44.

93 See: Hadden, op.cit. 391-3; Kahn-Freund in Renner, op.cit. 225; Heth, op.cit. 80; de Hoghton, op.cit. 28, 80, 126, 164, 199, 230; Hurst, op.cit. 50; and Stein and Shand, op.cit. 224.

94 Civil Code Arts. 2313-24, 2825 and 2390-3; and Commercial Code Arts. 124, 127(1), 129(1), 171(3), 191(2), 945 and 959. See Hadden, op.cit. 117.

95 Ross and Zemariam at 26-9, and I. Fraser, 'The Administrative Framework for Economic Development in Ethiopia', 3 J. Eth. L. 118 (1966).

96 See Ross and Zemariam at 9-11 and P. Maris, 'Law and African Business' in P. Thomas, ed., Private Enterprise and the East African Company 1, at 1 (1969).

97 1966, 27 Cons. L. Eth. 2.

98 Ross and Zemariam at 22-4.

99 Id. at 39-40.

100 See Y. Dror, 'Law and Social Change', 35 Tulane L. Rev. 749 (1959); and W. Chambliss, 'Types of Deviance and the Effectiveness of Legal Sanctions', 1967 Wis. L. Rev. 703.

101 Jauffret, 'General Report: Book I', in Winship 50, 53.

102 Beckstrom at 574-5; Bryde, op.cit. 155; and personal experiences.

103 P. Enahoro, 'If the End Justifies the Means. . .', Africa No. 68, 11, at 14 (April, 1977); E. Johnson, An Introduction to the Soviet Legal System 7 (1969); E. Schur, Law and Society 125 (1968); Sawer, op.cit. 132; Hurst, op.cit. 242; Kahn-Freund in Renner, op.cit. 32; and de Hoghton, op.cit. 133-4.

104 W. Shack, 'Occupational Prestige, Status and Social Change in Modern Ethiopia', 46 Africa 166, at 173 (1976). See: Heth, op.cit. 1, 27; F. Davis, et al. 126-7; and Riggs, op.cit. 183.

105 N. Stjepanovic, 'The Code in a Socialist State', in Schwartz, op.cit. 224, at 238-9. See: Bayitch, op.cit. 178, 182; Farrar, op.cit. 110-11; and Gutteridge, op.cit. 94-5.

106 Bryde, op.cit. 165 and Geraghty, op.cit. 473.

107 W. Friedman, 'Public and Private Enterprise in Mixed Economies', in
Id., ed., Public and Private Enterprise in Mixed Economies 359, at
370-3 (1974); W. Friedman, The State and the Rule of Law in a Mixed
Economy 40-1 (1971); and Heth, op.cit.131.

108 Hadden, op.cit. 463 and Stein and Shand, op.cit. 225.

109 See: Ghai, op.cit. 167 and J. Anderson, 'Public Economic Policy and
the Problem of Compliance', in J. and M. Grossman, eds., Law and
Change in Modern America 110, at 110 (1971).

110 D. Levine, Wax and Gold 188 (1972).

111 P. 211 of 1963, Neg. Gaz. 23/6.

112 23 Cons. L. Eth. 6-14. The Proclamation is No. 228 of 1965, Neg. Gaz.
24/19.

113 P. 301 of 1972, Neg. Gaz. 31/16.

114 Industrial Licencing Proc. No. 292 of 1971, Neg. Gaz. 30/31, Arts.
4,7; Foreign Trade Proc., 293 of 1971, Neg. Gaz. 30/32, Arts. 4(3),
6(2); and Domestic Trade Proc. No. 294 of 1971, Neg. Gaz. 30/32,
Arts.3(3), 6. These Procs. are repealed by P. 76 of 1975 (infra). See
Heth, op.cit. 131.

115 P. 242 of 1966, Neg. Gaz. 26/2, Arts. 4-8.

116 T. Bodman, 'Income Tax Exemption as an Incentive to Invest in Ethiopia',
6 J. Eth. L. 215 (1969). See also: Duri Mohammed, 'Private Foreign
Investment in Ethiopia', 7 J. Eth. Studs. 53 (1969); K. Ahooja,
'Development Legislation, in U. Singh, ed., Studies in African Economic
Development 1, at 2, 4, 11, 15 (1972); Fraser, op.cit. 135-41; C.
Thomas, op.cit. 87-90; and H. Bretton, 'The Political Role and Function
of Direct Foreign Investment in Africa', passim (1973).

117 W. Friedman, 'A Theory of Public Industrial Enterprise', in A. Hansen,
ed., Public Enterprise 11, at 12-13 (1959); M. Margolis, 'Introduction',
in Id. and Guitton, eds., Public Economics xi, at xix (1969); A.
Kiapi, 'The Public Corporation as a Legal Instrument of Economic Policy
in East Africa' (1973); Friedman, The State and Rule of Law. . . 56,
63; and Friedman, in Friedman and Garner, 314-15.

118 Ghai, op.cit. 175.

119 See Drago, op.cit. 8-12 and Friedman in Garner, op.cit. 323-4.

120 'Sub-Commission Minutes', in Winship 74, at 78.

121 See: Ghai, op.cit. 163; T. Daintith, 'Public and Private Enterprise
in the U.K.', in Friedman, ed., Public and Private Enterprise. . .
195, at 195, 215-6; and Friedman in Hansen, op.cit. 17-19.

122 Of the 68 public companies organised under the Commercial Code, 21 were
wholly owned by Government prior to 1974: Addis Tyre Co. S.C., Adwa
Flour Mills, Agro-Industrial Development Bank, Bahar Dar Textile Mills,
Commercial Bank of Ethiopia, Debre Berhan Wool Factory, Development and
Hotels S.C., Ethiopian Airlines S.C., Ethiopian Cement Corporation S.C.,
Ethiopian Petroleum S.C., Ethiopian Shipping Lines, Ethiopian Tannery
S.C., Ethiopian Tourism and Hotel Investment Corporation S.C.,
Ethiopian Tourist Trading Co., Maritime and Transit Service, National
Resources Development S.C., Northern Ethiopian Railways, Rubber and
Canvas S.C.(shoes), Saving and Mortgage Corporation of Ethiopia,
Wanza S.C. (agriculture), and Awasa Agro Industrial S.C.

The 14 companies in which Government owned 50% or more of the shares are:
African Match and Paper Factory S.C., Agricultural Input and Marketing
Services, Eritrean Cement Factory S.C., Ethio-Italian Hotel S.C.
(Asmara), Ethiopian Hotels, Ethiopian Abattoirs S.C., Ethiopian Light
Industries, Ethiopian Metal Tools S.C., Ethiopian Pharmaceutical
Manufacturing Co. S.C., Ethiopian Pulp and Paper S.C., Ras Hotel,
Real Estate Development Center, Suntu Coffee Processing Corp.,
and Abadir Agricultural Development S.C.

The ten companies with 20-50% Government ownership were: Berhana Selam
Printing Press, Kassem-Kebgna Farm S.C., Elidoo(?), Ethio-Japanese
Synthetic Textiles S.C., Ethio Lime Senkelle S.C., Ethi Meat Con-
centrate S.C., H.V.A. Metahara (sugar), Mutual Fund Management S.C.,
Societe du Tedj d'Ethiopie Saba (alcoholic drinks), Tendaho Plan-
tation (cotton).

The 22 companies where Government ownership was less than 20% were:
Addis Ababa Bank, Adulis Private Ltd. Co. S.C. (shipping and travel
agent), Aerated Water of Harar S.C., Ashange Private Ltd. Co.,
Automotive Manufacturing Co., Banco Di Napoli S.C., Blue Nile Insur-
ance Co. S.C., Bottling Co. of Ethiopia, Cotton Co. of Ethiopia,
Elaberet Estate S.C. (Mixed farming), EPHARM (pharmaceuticals),
Ethiopian Chipwood and Furniture S.C., Ethiopian Distribution Co.
S.C. (EDISCO), Ethiopian Fabrics S.C., Ethiopian Livestock Development
S.C., Ethiopian Spice Extraction S.C., General Ethiopian Transport
S.C., H.V.A. Ethiopia (Sugar), Imperial Insurance Co. of Ethiopia S.C.,
Indo-Ethiopian Textiles S.C., International Air-Radio Ltd., Kaliti Food
Prod. S.C., Meta Ato Brewery (Ethiopia) Ltd. S.C., National Soft
Drink Corp., Sabean Metal Products, Sabean Utility S.C., Scrap Iron Board,
Shenker of Ethiopia Pvt. Ltd. Co. (shipping), Societe En Particip-
ation Pour L'etud. Voie Feree Nazareth-Dilla, Tigrai Agricultural
and Industrial Developments S.C., and United Touring Company.

(Getu Aberra, 'Public Corporations in Ethiopia', 123-6 (1974)).
See Friedman, in Friedman and Garner, op.cit. 334.

123 Getu Aberra, op.cit. 90.

124 J. Paul and C. Clapham, 2 Ethiopian Constitutional Development 459-60
(1972). See Ghai, op.cit. 180.

125 Chartered (public law) Corporations in Ethiopia, 1974 (adapted from
Getu Aberra, op.cit. 9-10 and passim).

125 Chartered (public law) Corporations in Ethiopia, 1974 (adapted from Getu Aberra, op.cit. 9-10 and passim):

Key to the Table Below

a = corp. independent to extent that it uses its own resources, receives Treasury funding and returns any surplus annually.

b = corp. receives grant-in-aid to the extent that it can justify the receipt of funds; sums are not tied to Government's annual Budget headings.

c = corp. virtually self-financing; largely independent from direct political controls.

d = corp. employees are not civil servants (otherwise they are, except for h below).

e = corp. chief executive appointed by Emperor on Board's recommendation.

f = chief executive appointed by Board on Minister's recommendation.

g = chief executive appointed by Board only.

h = corp. employees can form union and bargain collectively, etc. under Labour Relations Proc.; h therefore encompasses d.

i = corp. may be able to interfere with private property rights, yet be immune to attack under the Constitution.

I. Created by Proclamation

Addis Ababa Water and Sewage Authority - c,e,i
Dairy Development Agency - b,e
Ethiopian Grain Board - c,g
Eth. Standards Institute - b,e
Imp. Board of Telecommunications - c,g,h,i
Imp. Highways Authority - b,g,i
Imp. Eth. Tobacco Monopoly - c,g,h
Imp. Savings and Home Ownership Assn. - c,g,h
National Coffee Board - c
Nat'l Lottery Administration - c,d,g,h
Post Office Administration - c,d,e

II. Created under G.N. (Regulation)

Awash Valley Authority - a,e,i
Central Medical Stores Corp. - c,d,h
Eth. Electric Light and Power - c,e,h,i
Eth. Grain Corp. - c,d,g,h
Haile Selassie I Univ. - b,e
H.S.I. Foundation - accepts gifts - g
Municipality of Addis Ababa - c (Mayor elected)

III. Created by Order

Centre for Entrepreneurship and Management - b,f
Civil Aviation Administration - a,e
Health Tax Board - a
Livestock and Meat Board - a , e
Institute of Agricultural Research - a,f
Malaria Eradication Service - b, f
National Bank of Eth. - c,e,h
Nat'l Water Resources Committee - b,e
Rehabilitation Agency -
Road Transport Admin. - a,g
State Forest Dev. Agency - b,e

(Other chartered organisations are purely charitable - YMCA, Boy
Scouts, etc. - and are created by G.N.)

126 Getu Aberra, op.cit. 58-60, 105-6. See: Ghai, op.cit. 168; Friedman,
in Friedman and Garner, op.cit. 304, 327-30; and Daintith, op.cit. 209,
215, 264, 286.

127 See: Id. 236; Ghai, op.cit. 182-3; Drago, op.cit. 15, 27; Friedman,
in Friedman and Garner, op.cit. 325; and Note 122, supra.

128 See: F. Riggs, 'The Context of Development Administration', in Id.,
ed., Frontiers of Development Studies 72, at 86 (1970); F. Sherwood,
'The Problem of the Public Enterprise', in Id. 348, at 361; W. Fried-
man, The State and the Rule of Law . . . 11; and Ghai, op.cit. 157.

129 'Declaration on Economic Policy of Socialist Ethiopia', Addis Ababa,
Feb. 7, 1975; 'Banks and Insurance Companies Nationalized', Ethiopian
Herald, Jan. 2, 1975, 1, 6; '72 Companies Made Public Property',
Id., Deb. 4, 1975, 1; and Radio Addis Ababa News, Feb. 3, 1975.

130 P. 19 of 1975, Neg. Gaz. 34/15, 4 Feb., Art. 2(2), and P. 20 of 1975,
Neg. Gaz. 34/15, 4 Feb. Arts. 3-11.

131 P. 26 of 1975, Neg. Gaz. 34/22, 11 Mar., Arts. 2-5, 7-8, 10.

132 Id. See Chap. 6, Sec. II.

133 P. 39 of 1975, Neg. Gaz. 34/33, 25 June, Arts. 3,5, amending P.
26 of 1975, Arts. 2(1)(d),3.

134 P. 93 of 1976, Neg. Gaz. 35/34, Arts. 2, 3(1).

135 P. 70 of 1975, Neg. Gaz. 35/14, 13 Dec., Prologue and Art. 2.

136 Civil Code Arts. 1474, 1475(2), and 1476 (2) provide that compensation
for expropriation "shall be equal to the amount of actual damage caused
by expropriation" on the day the committee takes its decision, less
"the increase of value arising from the construction of public works"
and "any speculative increase of value" arising from the announcement
of public works projects. It is unlikely that these provisions are
applied, although they have never been repealed expressly or, arguably,
by implication.

137 See Heth, op.cit. 58 and Friedman, in Friedman and Garner, op.cit. 326,
330, 332, 335.

138 P. 76 of 1975, Neg. Gaz. 35/18, 29 Dec., Arts. 3(2),(3), 4(1), supple-
menting the Industrial Licence Proclamation, Foreign Trade Proclamation
and Domestic Trade Proclamation, Nos. 292-4 of 1971 (supra). Art.
2(2) declares P. 76 inapplicable to "construction work, surface
transport, inland water transport /and/ the publishing of newspapers
and magazines."

139 L.N. 13 of 1975, L.N. 14 of 1975 and L.N. 38 of 1976, Neg. Gaz. 35/27.

140 Salt - L.N. 24 of 1975, Neg. Gaz. 35/12, 11 Dec., issued under the same authority as L.N. 21. The Corp. mines salt or obtains it through the evaporation of sea water. Authorised capital is Eth. $15 millions, of which $6.5 millions has been paid in cash or kind (Art. 5). Gum - P. 94 of 1976, Neg. Gaz. 35/35, Building Materials - L.N. 34 of 1976, Neg. Gaz. 35/23.

141 L.N. 21 of 1975, Neg. Gaz. 34/43, 9 Sept., issued by the Minister of National Resource Development under the authority of P. 20 of 1975, Art. 10 (sic - should read Art. 11). The authorised capital totals Eth. $100 millions, of which $83.9 millions has been paid in cash or kind (Art. 6).

142 P. 68 of 1975, Neg. Gaz. 35/13, 12 Dec. The Authorised and fully-paid capital totals Eth. $11 millions (Art. 13).

143 P. 68 of 1975, Arts. 7, 22-3. The Bank has a capitalisation of Eth. $20 millions, fully-paid (Art. 14).

144 P. 68 of 1975, Arts. 7, 22-3. See Commercial Code, P. 166 of 1960, Neg. Gaz. Extraordinary, Arts. 44-59, 654-712.

145 P. 69 of 1975, Arts. 5,7.

146 Road Transport Proc., No. 107 of 1976, Neg. Gaz. 36/9, Arts. 2, 3(1), 8-9, 16, 24 and Road Transport Associates Regs., L.N. 49 of 1976, Neg. Gaz. 36/9, Arts. 4(1), 5-8.

147 Paul and Clapham, Vol. 1, op.cit. 68-9. See: B. Csikos-Nagy, Socialist Economic Policy 24-6, 44, 75, 84 (1973); Friedman in Hansen, op. cit. 13; Stjepanovic, op.cit. 238-9; Hauriou, quoted by A. Honore, 'Groups, Law and Obedience', in A. Simpson, ed., Oxford Essays in Jurisprudence 1, at 17 (2d Series, 1973); Margolis, op.cit. XIV-XV; Friedman, The State and the Rule of Law . . .64; and Hale, op.cit. 385, 401, 541.

148 Gill, op.cit. 1 and Gill, 'Introduction to the Manufacturing Sector', in Id. 114, at 114; Karsten, op.cit. 307; and Brietzke, A Source-book . . . 37. See: Myrdal, Asian-Drama 179, 184, 187, 357; Whetham and Currie, op.cit. 89-93; and Moore, Jr., op.cit. 115, 441.

149 See: G. Soares, 'Economic Development and Class Structure', in R. Bendix and S. Lipset, eds., Class, Status and Power 190, at 190-2 (1966); R. Unger, Law in Modern Society 156 (1976); M. Roberts, 'A Socialist Looks at African Socialism', in W. Friedland and C. Rosberg, eds., African Socialism 83, at 90; R. Dumont and M. Mozayer, Socialisms and Development 94 (1973); and Bryde, op.cit. 40.

150 Decree 49 of 1962, Neg. Gaz. 21/18, amended and renumbered by P. 210 of 1963, Neg. Gaz. 23/3 (to which our citations refer). See Kaplan, op.cit. 385-6, 398.

151 Gilkes, op.cit. 167-8. The Board consisted of five members appointed by the Emperor and was empowered to attempt initially to conciliate and, as a last resort, arbitrate labour disputes and unfair labour practices and "to enforce its decisions and awards by appropriate means" (Arts. 5(a), 12(a), 16). Decisions could be appealed to the Supreme Imperial Court on questions of law only, within 30 days of receipt of the Board's decision (Art. 19(a)).

152 Minimum Labour Conditions Regulations, L.N. 302 of 1964, Neg. Gaz. 24/5 and Labour Standards Proc., P. 232 of 1966, Neg. Gaz. 25/13, Arts. 1-6, 10-17 (repealing the Factories P. of 1944).

153 Labour Standards P., Arts. 7-9 and Labour Inspection Service Order, No. 37 of 1964, Neg. Gaz. 24/4.

154 Bondestam, op.cit. 540 and Kaplan, et al., op.cit. 396.

155 See B. Hoselitz, 'The Role of Cities in the Economic Growth of Under-developed Countries', in G. Breese, ed., The City in Newly Developing Countries 232, at 233 (1969) and Renner, op.cit. 115, 296.

156 See Hurst, op.cit. 235. Similar patterns have been noted elsewhere in the Third World: see B. Millen cited in P. Merkl, Comparative Politics 313 (1970).

157 P. 26 of 1975, Art. 9.

158 'Dergue Turns Heat on Counter-Revolutionaries', Africa No. 69, 53, at 59 (May, 1977).

159 E.g., R. Chapman, 'ILO in Test of US Charges', Guardian 19/11/75,2.

160 P. 64 of 1975, Neg. Gaz. 35/11, 6 Dec. as amended, in a minor fashion, by Corrigendum 6 of 1976, Neg. Gaz. 35/28 and P. 85 of 1976, Neg. Gaz. 35/29.

161 Subject to more favourable terms in a contract of employment or collective agreement, the following conditions - largely restated from L.N. 302 of 1964 - will apply: overtime may only be worked under stringent conditions and after 8 hours per day or 48 hours a week, and 1¼ to 2½ times the hourly rate must be paid (Arts. 31-3); in addition to paid public holidays, the paid holiday entitlement ranges from 14 to 35 days (depending on the length of service), and 24 consecutive hours of rest must be granted each week (Arts. 35(1)-(3), 36(1)); paid maternity leaves of 45 days and sick leaves (one month on full pay, two months on half pay and three months without pay) must be granted (Arts. 38(2), 39(2)); educational, union activity and mourning leaves, or leaves for "unforeseen circumstances" are granted under certain conditions (Arts. 40-2); the "same initial wages shall be paid for similar jobs in an undertaking" (Art. 43), but the express prohibition of sex discrimination found in P. 232 of 1966, Art. 14, is not repeated; and the attachment or assignment of wages is prohibited, except where authorised by law or by a collective agreement and subject to a 'statute of limitations' of one year (Arts. 47-8).

162 Ethiopians may seek employment abroad if national manpower requirements
are not adversely affected and the Ethiopian's "rights and dignity
will be protected" (Art. 19). Foreigners, their wives, husbands and
dependents cannot work unless they have a work permit or are themselves
"members" of diplomatic or consular missions, the U.N. and its agencies,
the OAU, the World Bank, the IMF, and the International Atomic Energy
Commission, or are persons employed under a treaty (Art. 20). Work
permits shall be issued: to install machinery, supervise work, "study
a project" or train workers; to employees of foreign non-governmental
agencies whose projects are deemed to be beneficial; and to repre-
sentatives of foreign firms who will foster employment opportunities
for Ethiopians. In all other cases, the work permit will not be issued
if qualified Ethiopians are available (Art. 21). The maximum duration
of the permit is three years (unless varied by the Minister), it must
be reviewed annually, and the permittee is obliged to train an Ethiopian
counterpart (Arts. 22-3). Legislation previously in force in this
area includes Order 26 of 1962, Neg. Gaz. 21/18, Art. 15 and L.N.
295 of 1964, Neg. Gaz. 23/25.

163 Id., Arts. 50(5), 52(1)-(2). The constitution and administration of
each union are also regulated - see Arts. 55-62. The 1962 Decree was
extremely sketchy on these topics: see Note 150, supra.

164 P. 62 of 1975, Art. 66(1), (10)-(11). The responsibilities of the
parties during the negotiation of collective agreements are detailed by
Arts. 77-8, and the obligation to negotiate in good faith - a hallmark
of American labour law found in Art. 26 of the 1962 Ethiopian Decree -
is repeated in Arts. 107(6) and 108(4). The regulation of collective
agreements under the 1975 Proclamation is more detailed and contains a
few references to socialist policies, when compared to the 1962
Decree: see Note 72, supra.

165 P.64 of 1975, Art. 79. The total number varies in relation to the size
of the enterprise. See Arts. 80-4 for elections to, and procedures of,
these committees.

166 P. 210 of 1963, Neg. Gaz. 23/3, amending Order 15 of 1957, Neg. Gaz.
16/5 which created the Ministry. These laws have been incorporated
as amendments to the Ministers (Definition of Powers) Order, No. 1
of 1945, Neg. Gaz. 2/5.

167 See: Hadden, op.cit. 395-6, 429-30; Dumont and Mozayer, op.cit. 48;
and Hazard, Communists and their Law 372-3.

168 'Ethiopia Union Chief Shot', Guardian, 1/10/77, 5. See: C. Wilber,
The Soviet Model and Under-developed Countries 129-30 (1969);
R. Dumont, False Start in Africa 260 (1966); and Moore, Jr., op.cit.
115, 441.

169 P. Koehn, 'Urban Origins and Consequences of National and Local Polit-
ical Transformation in Ethiopia', in J. Watson and L. Masotti, eds.,
The City in Comparative Perspective 155, at 157 (1976). See
J. Froomkin, 'Fiscal Management of Municipalities and Economic Development',

in R. Bird and O. Oldman, eds., Readings on Taxation in Developing Countries 415, at 415 (1967) and W. Barber, 'Urbanisation and Economic Growth', in H. Miner, ed., The City in Modern Africa 91, at 108 (1967).

170 Norris, op.cit. 61; J. Cohen and P. Koehn, 'Local Government in Ethiopia' 3 (1974); J. Doresse, Ethiopia 150 (1959); and Koehn, op. cit. 158-9. See: J. Robinson, Freedom and Necessity 47-8 (1970); K. Griffen, Underdevelopment in Spanish America 54, 58 (1969); and J. Turner, 'Uncontrolled Urban Settlement', in Breese, op.cit. 507, at 523-4.

171 Laketch Dirasse, 'Survival Techniques of Female Migrants in Ethiopian Urban Centers' (1973); J. Harbeson, 'Socialist Politics in Revolutionary Ethiopia' (1976); J. Spencer, 'Haile Selassie . . .', 18 Orbis 1129, at 1139 (1975); Kaplan, et al., op.cit. 75-6; Shack, The Gurage 166-7, 171-3; and Markakis, op.cit. 171. See: Economic Commission for Africa, 'Size and Growth of Urban Population in Africa', in Breese, op.cit. 128, at 143; L. Pye, 'The Political Implications of Urbanization and the Development Process', in Breese, op.cit. 401, at 402; Thomas, op.cit. 106; and Soares, op.cit. 196.

172 Koehn, op.cit. 164-5. See also: Spencer, op.cit.; Pye, op.cit. 401; and Pye, cited by H. Miner, 'The City and Modernisation', in Miner, op.cit. 1, at 9.

173 D. Lerner, 'Comparative Analysis of Processes Of Modernization', in Miner, op.cit. 21, at 24-5. See also: Kaplan, et al., op.cit. 175-7; Norris, op.cit. 63; and Griffen, op.cit. 84-5.

174 Norris, op.cit. 59-60.

175 Id., 63. Markakis, op.cit. 316, characterises Ethiopian urban administration as "a mixture of traditional practices and modern forms, flavoured with more than a little confusion."

176 J. Cohen and Sileshi Sisaye, 'Research on Socio-economic Development in Ethiopia. . .' 29 (1977); Cohen and Koehn, op.cit. 4, 15-16; Norris, op.cit. 55-9, 71; and Markakis, op.cit. 319-21. See Froomkin, op.cit. 415-17.

177 Markakis, op.cit. 319; Bekele Geleta, 'Asosa Awraja People and Local Government' 37-41 (1968); Cohen and Koehn, op.cit. 12-15; Kaplan, et al., op.cit. 74; Norris, op.cit. 55, 66; and Municipalities Proc., No. 74 of 1945, 7 Consol. L. Eth. 1

178 P. 79 of 1976, Neg. Gaz. 35/22. See Norris, op.cit. 60.

179 J. Lyons, 'Functions of Local Government in Ethiopia . . .' (1969); Syoum Gebregziabher, 'The Structure and Functions of the Civil Service in Ethiopian Public Administration' 126 (1960); Cohen and Koehn, op.cit. 14; Markakis, op.cit. 321-3; and Norris, op.cit. 60, 64.

180 Koehn, op.cit. 161 and Markakis, op.cit. 167.

181 Haji Ali Ahmed Abogu v. Mun. of Addis Ababa, Addis High Court Civil Case 832/50 (1957).

182 See Cohen and Koehn, op.cit. 4 and Heth, op.cit. 136.

183 Neg. Gaz. 34/41.

184 N. Marein, Ethiopian Empire: Federation and Laws 252-3 (1955).

185 J. Cohen and P. Koehn, 'Rural and Urban Land Reform in Ethiopia', 14 African Law Studs. 33, at 25, 29 (1977), hereinafter cited as 'Land Reform', and Ethiopian Herald, 17 and 24 July 1975, p. 1, which termed Addis Ababa "the last stronghold of feudalism".

186 See Kaplan, et al., op.cit. 159.

187 P. 80 of 1976, Neg. Gaz. 35/25 (as amended by P. 104 of 1976, Neg. Gaz. 36/5, Art. 41), Prologue.

188 L.N. 36 of 1976, in Id.

189 'Land Reform' 29.

190 Id. 35-6.

191 P. 60 of 1975, Neg. Gaz. 35/7, Arts. 3-4, 30.

192 P. 104 of 1976, Neg. Gaz. 36/5, Prologue.

193 P. Enahoro, 'If the End Justifies the Means. . .' Africa No. 68, 11, at 12 (April 1977) and 'Dergue Turns Heat on Counter-revolutionaries' Africa No. 69, 53, at 53 (May 1977).

194 Amnesty International, 'Ethiopia: The Human Rights Situation' 22 (1977). See: Id. 5-6; Y. Ghai, 'Notes Towards a Theory of Law and Ideology. . .', 13 African Law Studs. 31, at 51 (1976); and A. Southall, 'In roductory Summary', in Id., ed., Social Change in Modern Africa 2, at 23 (1969).

195 'Land Reform', 34.

196 P. 60 of 1975, Neg. Gaz. 35/7, Arts. 3-4, 30.

197 Id., Arts. 8, 10, 15(2). The Manager, appointed by the Board, is also made responsible for organisation, administration, the delegation of his own authority, incurring expenditures and performing such other duties as are set by the Board (Art. 15(3)). The Board is composed of the Manager, representatives of the Public Works and Housing, Community Development, Finance, and Interior Ministries, representatives of the Planning Commission and the National Bank, and two representatives of the urban coops (Art. 11). All powers of the Bank are vested in the Board, which is, in turn, responsible to the "supervising authority", the National Bank (Arts. 2(8), 11). The supervising authority coordinates activities and assists in resource mobilisation and in fulfilling planning priorities, "within the limits of sound monetary policy" (Art. 8). The Housing Ministry surveys housing needs,

supervises and pays for certain construction activities, and authorises the importation of construction materials. The lines of authority between the Bank and the Ministry are not spelled out clearly, however (see Arts. 9, 12).

198   P. 82 of 1976, Neg. Gaz. 35/26, Prologue.

199   F. Burke, Africa's Quest for Order 35 (1964).

200   'Land Reform' 27-8, 35.

201   See Koehn, op.cit. 172 and E. and P. Koehn, 'Edir as a Vehicle for Urban Development in Ethiopia', in H. Marcus, ed., Proceedings of the First U.S. Conference on Ethiopian Studies 399, at 402 (1975).

202   W. Lee, 'Ethiopia: A Review of the Derg', 22(2) Africa Report 7, at 10 (Apr. 1977).

203   J. Holmberg, 'Pricing Strategies for Agricultural Produce in . . . Ethiopia' 17 (1976) and 'Land Reform', 4. See Id., 9 and John Friedman, cited by H. Brookfield, Interdependent Development 113, 120, 124 (1975).

204   'Land Reform', 37. See Id., 36 and Bruke, op.cit. 37, 39.

205   A. Touraine, 'Sociology of Development', in S. Eisenstadt, Readings in Social Evolution and Development 337, at 342 (1970). See: I. Kopytoff, 'Socialism and Traditional African Societies', in Friedland and Rosberg, op.cit. 53, at 60-1; J. Spengler, 'Africa and the Theory of Optimum City Size', in Miner, op.cit. 55, at 56, 63-4; and Moore, Jr., op.cit. 386, 422, 427, 441.

206   See Ewing, op.cit. 12-13, 16, 119.

207   Bordestam, op.cit. 541 and P. James, op.cit. 67-8.

208   See Ewing, op.cit. 12, 82-3, 87-8.

209   See R. McNamara, 'Does Aid Go to the Right Places', Guardian 24/10/77, 14 and Stjepanovic, op.cit. 240-2.

210   See Habermas, op.cit. 53-5.

211   See N. Uphoff and W. Ilchman, 'Development in the Perspective of Political Development', in Id., eds., The Political Economy of Development 75, at 109-12 (1972) and Hale, op.cit. 5-11.

CHAPTER 8

1   J. Robinson, <u>Freedom and Necessity</u> 124 (1970).

2   B. Moore, Jr., <u>Reflections on the Causes of Human Misery</u>. . . 193 (1972).

3   <u>Id</u>. xiii. Moore's usage here is consistent with ours. <u>See</u> also <u>Id</u>., 27,58.

4   J. Stone, <u>Law and the Social Sciences</u> 14 (1966).

5   R. Dumont and M. Mozayer, <u>Socialisms and Development</u> 337 (1973). <u>See</u> also: J. Cohen and Sileshi Sisaye, 'Research Problems in . . . Ethiopia's Socioeconomic Development', 5, 23 (1976); F. Burke, <u>Africa's Quest for Order</u> 76 (1964); and R. Dahrendorf, <u>The New Liberty</u> 87 (1975).

6   <u>See</u>: E. Schur, <u>Law in Society</u> 91 (1968); S. Eisenstadt, <u>Modernization</u>, <u>Protest and Change</u> 52 (1966); and Chaps. 1-2, 5-7, <u>passim</u>. James Paul, 'Language, Law, Communication and Development . . .' 13 (1978) terms Ethiopia's "the world's most 'mixed' (up?) legal system."

7   I. Swerdlow, 'The Administration of Economic Growth', in E. Morgan, ed., <u>The Administration of Change</u> 59, at 72 (1974). <u>See</u>: E. Schumacher, <u>Small is Beautiful</u> 196 (1974); M. Heth, <u>The Legal Framework of Economic Activity in Israel</u> 251 (1967); and Chaps. 2 and 7, <u>passim</u>.

8   J. Habermas, <u>Legitimation Crisis</u> 23, 49 (1976). <u>See</u> Chap. 2 and Part II, <u>supra</u>.

9   R. Unger, <u>Law in Modern Society</u> 170 (1976) and J. Lee, <u>African Armies and Civil Order</u> 88 (1969). <u>See</u> Chap. 1 and Part II, <u>passim</u>.

10 S. Diamond, 'The Rule of Law and the Custom of Order', in R. Wolff, ed., <u>The Rule of Law</u> 115, at 129, 132-3 (1971); S. Finer, <u>Comparative Government</u> 589-90 (1970); D. Rustow, cited by N. Uphoff and W. Ilchman, <u>The Political Economy of Change</u> 160 (1969); and P. Enahoro, 'If the End Justifies the Means. . .' /in Ethiopia/, <u>Africa</u> No. 68, 11, at 12 (Apr., 1977). <u>See</u> Chaps. 3-5, <u>passim</u>.

11 <u>See</u>: D. Black and M. Mileski, 'Introduction', in <u>Id</u>., eds., <u>The Social Organization of Law</u> 1, at 9 (1973); R. Seidman, 'Law and Development: the Interface between Policy and Implementation', 13 J. Mod. Af. Studs. 641, at 643 (1975); J. Mellor, 'The Subsistence Farmer in Traditional Economies', in C. Wharton, Jr., ed., <u>Subsistence Agriculture and Economic Development</u> 210, at 222 (1969); H. Schermerhorn , cited by Schur, <u>op.cit</u>. 85; Eisenstadt, <u>op.cit</u>. 4, 99-105; and Chaps. 1, 5-7, <u>passim</u>.

12 J. Nyerere, <u>Freedom and Socialism</u> 9 (1968); Dumont and Mozayer, <u>op.cit</u>. 19, 25; G. Myrdal, <u>Asian Drama</u> 32, 291-3 (Abridged Ed., 1977); and Schumacher, <u>op.cit</u>. 140-1. <u>See</u> P. Raup, 'The Contribution of Land Reforms to Agricultural Development', in Uphoff and Ilchman, eds., <u>The Political Economy of Development</u> 284, at 293 (1972)..

13 M. Twain, 1 _A Yankee at the Court of King Arthur_ 132 (1890).

14 See Chaps. 1-2 and, _e.g._, W. Wertheim, _Evolution and Revolution_ 12
    (1974):
> Progress can be expressed as the process of human emancipation
> —either from the forces of nature or from the fetters of social
> hierarchy and domination by man; it generally implies an
> increase in the rate of human cooperation.

15 See: K. Redden, _The Legal System of Ethiopia_ 41-2 (1968); C. Friedrich,
    The Philosophy of Law in Historical Perspective 199 (2d Ed., 1963);
    Stone, _op.cit._ 5; and Moore, _op.cit._ 1-2 and 57: "unhappiness and
    misery in certain of their major forms are objective facts, while
    happiness is much more fluid and subjective."

16 _Id._ 2. _See_ also: J. Feinberg, _Social Philosophy_ 96 (1973); P. Stein
    and J. Shand, _Legal Values in Western Society_ 59 (1974); B. DeJouvenal,
    'Sovereignty', in D. Lloyd, ed., _Introduction to Jurisprudence_ 377,
    at 377 (3d Ed., 1972); G. Lenski, _Power and Privilege_ 36-9 (1966);
    the ideas of William James and John Dewey, discussed by B. Russell,
    History of Western Philosophy 770-6 (New Ed., 1961); and Lord Byron,
    quoted in _Id._, 716: "Those who are hungry have no need of an elaborate
    philosophy to stimulate or excuse discontent, and anything of the kind
    appears to them merely an amusement of the idle rich."

17 T. Farer, _War Clouds on the Horn of Africa_ 1, 6 (1976). _See_ Moore,
    op.cit. 5 and Chap. 1, Sec. I, _passim._

18 K. Boulding, 'Review'/of Rawls's _Theory of Justice_7, 7 J. Economic
    Issues 667, at 667-8 (1973). Boulding attributes this statement to
    Bacon.

19 Dahrendorf, _op.cit._ 6.

20 Russell, _op.cit._ 700. See also Feinberg, _op.cit._ 96 and Dahrendorf,
    op.cit. 45-7.

21 _See_ Moore, Jr., _op.cit._ 22, 38.

22 G. Mosca, _The Ruling Class_ 287 (1939).

23 C. Jeffrey, 'Social Change and Criminal Law', in S. Nagel, ed., _Law
    and Social Change_ 45, at 45 (1970); P. Merkl, _Modern Comparative Pol-
    itics_ 464 (1970); M. Freeman, _The Legal Structure_ 186 (1974); Uphoff
    and Ilchman, _The Political Economy of Change_ 38; Friedrich, _op.cit._
    21-2; and Stein and Shand, _op.cit._ 61-6.

24 _See_ Moore, Jr., _op.cit._ 29 and Moore, Jr., _Social Origins of Dictator-
    ship and Democracy_ 410, 507-8 (1973).

25 Merkl, _op.cit._ 463. See also: P. Schwab, 'Human Rights in Ethiopia',
    14 J. Mod. Af. Studs. 155 (1975); H. Groves, _Comparative Constitutional
    Law_ 277-9 (1963); R. v. Halliday (1917) A.C. 260, 270; Stein and Shand,
    op.cit. 157; and Mosca, _op.cit._ 143. Laws and institutions which
    protect the rights of the weak and guarantee universal suffrage are
    ironical when /as in Ethiopia7 wealth is concentrated in a few hands (_Id._)

26   See: Maurice Cranston, cited by Stein and Shand, op.cit. 158;
R. Dias, Jurisprudence 160 (4th Ed., 1976); J. Hazard, Communists and
Their Law 8 (1969); I. Duchacek, Rights and Liberties in the World
Today 110-14 (1973); and H. Berman, Justice in the U.S.S.R. 378-80
(1963).

27   See: Chap. 5, passim; R. Baldwin, Social Justice 235-7 (1966);
G. Marshall, Constitutional Theory 146, 152-3 (1971); I. Szabo,
'Fundamental Questions Concerning the History of Citizen's Rights'
in J. Halasz, ed., Socialist Conception of Human Rights 27, at
29, 32, 38 (1966); Unger, op.cit. 238; Berman, op.cit. 380; and Merkl,
op.cit. 463. Harold Brookfield (Interdependent Development 197,
1975) discovers "a fundamental contradiction in society": "the
endlessly reproduced, universally present, and continually reconciled
yet ultimately irreconcilable conflict between private and collective
goals." Albert Camus (quoted in Duchacek, op.cit. 95) argues that, if
absolute freedom mocks justice, absolute equality mocks liberty and
absolute freedom denies equality. The semantic difficulties raised
by this topic are immense, but one of the most oft-quoted (e.g., by
W. Friedmann, The State and the Rule of Law in a Mixed Economy 32,
1971) comments on Western responses to Brookfield's "contradiction"
is Anatole France's: "the law, in majestic impartiality, forbids the
rich and the poor alike to sleep on the embankment." Robert Lee
Hale (Freedom through Law 385, 1952) adds that:
> Inequalities of fortune, based ultimately on governmental
> assignment and protection of property rights and enforcement of
> contracts, are inequalities in individual liberty. Legal oblig-
> ations to respect other people's property bear more heavily on
> those to whom the law assigns little property . . . . A rich
> man has more economic freedom than a poor man. . . . In assign-
> ing and enforcing property and contract rights, however,
> government has not planned the specific economic inequalities
> which ensue. It has conceived itself as . . . letting the chips
> fall where they may.

It is but a small step from the positions taken by Hale and Anatole
France to the one adopted, in volume 3 of Kapital, by Marx (quoted by
E. Fisher, Marx in his own Words 29 (1973):
> the realm of freedom actually begins only where labour which is
> determined by necessity and mundane considerations ceases; thus
> in the very nature of things it lies beyond the sphere of
> actual material production.

Lawrence Friedman (The Legal System. . . 187 (1975)) contrasts the two
systems that have resulted:
> in societies governed by the "rule of law", important prople
> more or less harness state power for their benefit, wealth and
> power pull together, and government is controlled by them.
> In the "repressive" states, the government is a juggernaut,
> subject to no outside restraints; and even the rich, if they run
> afoul of the state, find they cannot buy their way out.

The "socialist state has the further obligation to secure that citizens
make real use of . . . opportunities as rights" (Szabo, op.cit. 66).
Western commentators often associate this Rousseauean forcing of people
to be free with the persecution of dissidents. The examples Szabo gives
are instructive: freedom of the press requires the state to go beyond

defining and safeguarding that freedom, to "create" the press; and legal opportunities for women are significant only if women actually take part in public activities. There have been many brave attempts to reconcile liberty and equality; a representative example is that of Stein and Shand (op.cit. 142):

> The principle of personal freedom must . . . always be combined with that of equality, so that everyone in the community is equally able to do what he wants, but only to the extent that everyone else may do likewise.

While this hedge against Rawls would lead to a Western society of unrelieved grayness, it is at least theoretically possible. In the Third World, however, that which everyone can do - bearing in mind Marx's assertion, supra - is so meagre that their argument adds nothing to a discussion of development processes. Perhaps the brightest prospect is offered by J. Ortega y Gasset (Concord and Liberty 35 (1946)):

> Man is not free to elude the permanent pressures of the collective body upon his person. But certain nations in certain epochs succeeded in giving that coercion institutional forms of which they fully approved; they shaped the state after their vital preferences. This is what we call "life in freedom".

We would also term it political development. A brave dream but, in dissensus-filled Ethiopia, an irremediably utopian one for the foreseeable future.

28 E.g., Duchacek, op.cit. 42:
> Freedom of speech without social justice may become freedom to die from hunger. Material satisfaction without freedom of expression and creative innovation may result in spiritual starvation or death in a welfare prison.

29 See: G. Kennedy, The Military in the Third World 56 (1974); N. Mouzelis, Organization and Bureaucracy 129 (1967); Russell, op.cit. 622; David Hume, cited by Friedrich, op.cit. 92; Stein and Shand, op.cit. v; and Chap. 2, Part II and Chap. 5, supra.

30 Quoted by Finer, op.cit. 29, 31. See: E. Lefever, Spear and Sceptor 5 (1970); R. Dahrendorf, Class and Class Conflict in Industrial Society 224 (1959); D. Lloyd, 'Meaning of Law', in Lloyd, op.cit. 39, at 46; and Russell, op.cit. 593.

31 Troilus and Cressida I: iii (Ulysses).

32 Quoted by E. Carim, 'Violence and Social Change', New Internationalist 17 (Jan. 1977). See also Fisher, op.cit. 73.

33 Moore, Jr., Reflections . . . 25-8, 37; D. Hume, 'A Treatise of Human Nature', in C. Morris, ed., The Great Legal Philosophers 187, at 191 (1959); and P. Selznick, 'Sociology and Natural Law', in Black and Mileski, op.cit. 16, at 21. While Friedman (op.cit. 179) makes similar assertions, his marketplace imagery contains a slight Western bias (see our discussion of broader 'markets' under conditions of

development, in Chap. 2):

> People trade for their interests as they trade for goods in
> the market; the living code of laws in the society is more or
> less a catalogue of bargains and preferences, sensitive to
> dealings and demands like the daily stock market quotations.

From a similar Western perspective (i.e., of a more fully "positivized"
legal system – see Chap. 2), Lon Fuller ('Human Interaction and the
Law', in Wolff, op.cit. 171, at 202) adds:

> Normally, and by and large, the citizen must of necessity accept
> on faith that his government is playing the game of law fairly.
> But precisely because this faith plays so important a role in
> the functioning of a legal system, a single dramatic disappoint-
> ment of it, or a less conspicuous but persistent disregard of
> legality over a whole branch of law, can undermine the found-
> ations of a legal order – both for those subject to it and for
> those who administer it.

34   See: M. Macdonald, 'Natural Rights', in Lloyd, op.cit. 133, at
135-6; A. d'Entreves, Natural Law 61, 74 (2d Ed. 1970); Baldwin,
op.cit. 205-6; Lenski, op.cit. 30; and Friedrich, op.cit. 93.

35   See: Follett, quoted by H. Cairns, Law and the Social Sciences 150-1
(1969); L. Mayo and E. Jones, 'Law-Policy Decision Process', 33 George
Washington L. Rev. 318, at 360 (1964); Stein and Shand, op.cit. 1;
Friedrich, op.cit. 152; and Friedman, op.cit. 285.

36   Vico, cited by d'Entreves, op.cit. 160; J. Hall, Comparative Law and
Social Policy 75 (1963); and Lloyd, 'Natural Law', in Lloyd, op.cit.
74, at 84. W.J. Rees ('The Theory of Sovereignty', in Lloyd, op.cit.
225, at 225-8) has the same idea in mind: the concept of sovereignty
is properly concerned with authority rather than force or power.
Sovereignty is causally necessary, as government can, in practice,
only be carried out through laws, and law can be effectively administered
only if there is a final authority beyond which there is no legal
appeal. See: Chap. 5; Robert Gordis, quoted by Schur, op.cit. 58;
H. Scholler and P. Brietzke, Ethiopia: Revolution, Law and Politics
115-17 (1976); and Friedrich, op.cit. 173-4.

37   See: J. Hazard, 'Soviet Socialism and the Due Process of Law', 48
Michigan L. Rev. 1061, 1078 (1950); L. Fuller, 'Positivism and Fidel-
ity to Law', in Lloyd, op.cit. 243, at 243; and Rees, Note 36, supra..
Friedrich (op.cit. 214) adds that order and justice are not in
opposition; they can only be realised jointly in a legal community.

38   See P. Selznick, 'Legal Institutions and Social Controls', 17 Vander-
bilt Law Rev. 79, at 88 (1963) and Chap. 5.

39   Feinberg, op.cit. 118. See: Worku Tafara, 'Judicial Administration
in Ethiopia . . .' 2 (1972); W. James, 'Pragmatism', in Lloyd, op.cit.
427, at 427; Selznick, 'Sociology and Natural Law', at 17, 27, 30;
G. Jacobsohn, Pragmatism, Statesmanship and the Supreme Court 42, 46,
68 (1977); J. Farrar, Introduction to Legal Method 158, 161 (1977);
d'Entreves, op.cit. 33, 160; Hall, op.cit. 75; and Russell, op.cit.
606. Sociological jurisprudence has begun to move in this direction,
but our approach goes far beyond, e.g., Pound's "theory of social
interests" or Benjamin Cardozo's "method of sociology" (see Jacobsohn,
op.cit. 68). Friedman (op.cit. 243-4) has the same idea in mind when

he suggests that courts adopt a "welfare legality" if they are open to change based on criteria which are not merely legal and consider scientific truths and statements of enlightened opinion. This approach parallels Cardozo's, but the appellation "welfare" must be rejected, lest it confuse our approach with what happens in welfare states.

40 See: Selznick, 'Sociology and Natural Law' 27, 30-2; Selznick, 'The Sociology of Law', in R. Merton, et al., eds., Sociology Today 115, at 125-6 (1959); T. McCarthy, 'Introduction', in Habermas, op.cit. vii, at xiv; M. Freeman, The Legal Structure 54-6 (1974); Rees, Note 36 supra; Vico, cited by d'Entreves, op.cit. 160; Dias, op.cit. 164, 172; Arnold Brecht, cited by Friedrich, op.cit. 169-70; and our discussion of legal modernisation, Chap. 2, Sec. II, supra.

41 Barker, quoted by M. Smith, 'The Sociological Framework of Law', in H. and L. Kuper, eds., African Law 24, at 27 (1965). See Feinberg, op.cit. 1-5.

42 Feinberg, op.cit. 117.

43 King, quoted by, e.g., Schur, op.cit. 61. See, to the same effect, Nyerere, op.cit. 8-9, 304.

44 See: Schur, op.cit. 12, 61; Dahrendorf, The New Liberty 42; Smith, 'Institutional and Political Conditions of Pluralism', in Kuper and Smith, eds., Pluralism in Africa 27, at 60 (1969); M. Barkun, 'Law and Social Revolution', 6 Law and Soc. Rev. 113, at 126 (1971); J. Hildebrand, 'The Sociology of Soviet Law. . .', 22 Case Western Reserve L. Rev. 157, at 163 (1971); A. Hunt, 'Law, State and Class Struggle' Marxism Today 178, at 186 (June 1976); and H. Wheeler, Democracy in a Revolutionary Era 225 (1971).

45 Coke's Commentaries on Littleton 97b (1628).

46 Schumacher, op.cit. 162.

47 O. Lewis, 'The Culture of Poverty' Scientific American No. 219, 19 (Oct. 1966). See: D. Waldo, 'Foreword', in Morgan, op.cit. vii, at vii-viii; Kennedy, op.cit. 55; Schumacher, op.cit. 161-2; and Moore, Jr., Reflections . . . 46.

48 Lewis, op.cit. 25. See Id., 20-5 and Schumacher, op.cit. 160-1, 172.

49 Norman Girvan (quoted by Brookfield, op.cit. 176) argues that:
        the search for a 'relevant' economics for underdeveloped
        countries becomes a search for a relevant and valid economics
        for the metropolitan economies as well.
Robert Hutchins ('Natural Law and Jurisprudence', in J. Cogley, ed., Natural Law and Modern Society 29 (1966) adds that:
        It seems clear that in the next generation the great struggle
        in the law is going to be about its fundamental principles. The
    search for a normative jurisprudence is being resumed. /The7
        debunking era is over and the constructive period must begin.

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