

LAW AND POLITICS IN REVOLUTIONARY ETHIOPIA*

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The attention of the world focussed on Ethiopia, briefly, when Emperor Haile Sellassie I, once considered the inviolable descendent of Solomon and Sheba and the Elect of God, was deposed on 12 September, 1974, and when on 23 November, 1974, 60 public and military officials were executed without trial. This paper will describe and interpret the momentous events that have occurred in Ethiopia within a relatively short period of time, with a view towards assessing their impact upon the development of public law. It must be stressed that events and legal changes have, to date, only had a significant effect on the urban areas of Ethiopia. Although the revolutionary movement was undertaken by the military in the name of the peasants, the Provisional Military Administrative Council's (PMAC's) promise to pursue rural development and land reform has, to date, remained a mere promise.

The PMAC, also known as the Derg and termed the Coordinating Committee in its early stages, formally assumed power under Proclamation No. 1 of 1974 (Neg. Gaz. 34/1), which deposed the Emperor and "suspended" the 1955 Revised Constitution, while providing that all other laws and regulations remain in force. De facto, of course, the entire legal system remains in suspense, and the emerging Grundnorm or basic postulate of Ethiopian public law has become the as yet vague philosophy of Ethiopia *Tikdem*, defined as encompassing the tenets of Ethiopian Socialism. These and related legal changes are evolving into a new "constitutional" law and are truly revolutionary: "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 anticipated¹."

In addition to surveying changes in constitutional law, the article will detail the manner in which the Derg has chosen to implement revolutionary justice — the attempt to rid Ethiopia of "enemies of the people". From the legal standpoint, this concept is extremely interesting as it throws into sharp contrast Western legal values, such as the Rule of Law and the principle of legality, and theories of socialist law and the place of law in a revolutionary situation. Edmund Burke, for example, described a malignant aspect of the French Revolution:

Criminal means once tolerated are soon preferred . . . Justifying perfidy and murder for public benefit, public benefit would soon become the pretext, and perfidy and murder the end; until rapacity, malice, revenge and fear more dreadful than revenge, could satiate their insatiable appetites. Such must be the consequences of losing, in the splendor of these triumphs of the rights of men, all natural sense of wrong and right².

* Ethiopian constitutional and legal aspects had been previously discussed in this Revue by J. Vanderlinden: *Quelques aspects fondamentaux du développement juridique éthiopien*, VRÜ 1970, p. 167; K. v. Keussler: *Die äthiopische Verfassung (Revised Constitution) von 1955*, VRÜ 1971 1971, p. 319 B.-O. Bryde: *Rechts-technik und Gerechtigkeit — zur Rezeption formaler Rechtsnormen in Äthiopien*, VRÜ 1972, p. 295.

¹ Kelsen, quoted by Udoma, C. J. in *Uganda v. Commissioner of Prisons, Ex Parte Matovu* (1966) E. Af. L. R. 514, 536.

² Burke, *Reflections on the Revolution in France* 79 (1964).

Can the same type of criticism appropriately be levelled against the Ethiopian Revolution? That exploitation and feudalism must be liquidated cannot be denied: the issue is, rather, the validity of the means chosen to accomplish this end. In sum, this paper represents a case study of the ways in which law is used by a military group to further its revolutionary aims.

Political Changes³

Throughout 1973, a drought in Central and Northern Ethiopia that was particularly severe in Wollo Province claimed the lives of an estimated 200,000 people. The intentional concealment of the drought and the substantial evidence of maladministration, particularly in Wollo, became festering causes of dissatisfaction among the urbanized Ethiopian intelligentsia. February, 1974, saw many strikes among urban groups: students were engaging in their "annual" class boycotts, taxi drivers protested a 50% increase in petrol prices, and teachers demanded higher pay and gained the support of parents in opposing the implementation of an Education Sector Review which, it was argued, would perpetuate the elitist character of Ethiopian education. The Armed Forces demanded and received two pay increases — on 24 February, largely as a result of the mutiny of troops along the Somali border and on 1 March, as a result of the seizure of Ethiopia's second largest city, Asmara, by the Military. On each occasion, the Armed Forces thanked the Emperor and pledged continuing loyalty.

At this juncture, the Cabinet of Prime Minister Aklilu Habte Wold resigned and was replaced by a Cabinet under the leadership of Endalkatchew Mekonnen, who was unable to gain the support of the intelligentsia. The Confederation of Ethiopian Labour Unions delivered a 16-point ultimatum that was backed up by Ethiopia's first general strike on 7 March. The strikers agreed to go back to work on 10 March and teachers ended their strike on 16 March after wage demands were fulfilled and promises made concerning political demands.

It appears that the group which later became the Derg had its genesis in an "Armed Forces Joint Committee", formed to resolve disputes between graduates of the elitist Harar Military Academy and the practically-oriented Guenet Military School. This Committee invited other units to join a "Movement", and presented a series of proposals (demands, really) to the Emperor, including: the release of most political prisoners and the arrest of many former officials, the creation of a Conference to draft a new Constitution, and the maintenance of close contact between the Military and Government. On 31 July, this Committee (now popularly known by the Amharic equivalent of Committee, Derg) banned all public meetings except those supporting Ethiopia Tikdem, enforced a curfew and assumed control of the radio station.

³ Much footnoting has been omitted in this section, which is largely drawn from *Ethiopian Herald* reports and reliable informants (i. e., those persons with good sources of information whose reports proved to be both accurate and consistent with other information). No two people can agree upon the precise sequence and interpretation of recent events in Ethiopia, and our analyses are therefore somewhat impressionistic. The section is not a definite history; it attempts, rather, to provide a background for the subsequent analysis of concrete legal events. For reliable international reports concerning Ethiopian political changes see: P. Berntel, "La Grande Secousse", *Jeune Afrique* No. 688, Mars, 1974, p. 18; P. Enahoro, "Africa's Melting Pot", *Africa*, May, 1974, p. 15; Enahoro, "Ethiopia: Army Tightens Grip", *Africa*, Nov., 1974, p. 16; "Inside the Junta", *Newsweek* (Euro. ed.) Dec. 16, 1974, p. 30; and C. Legum, "Dilemmas on the Horn of Africa", *The Observer*, Dec. 1, 1974, p. 13.

The Draft Constitution was presented to Michael Imru, the new Prime Minister, on 6 August and was rejected by the Derg. From 16 August, the Derg began to specifically relax Haile Sellassie's grip upon Government, and jet fighters screamed overhead and armoured vehicles paraded in the streets of Addis Ababa before cheering crowds. Scathing attacks against the Emperor began in early September, when he was accused of embezzling public funds and hoarding money in Swiss banks.

On 12 September the Emperor was deposed. Parliament dissolved and the Constitution suspended. With the suspension of the Constitution and the rejection of the Draft Constitution, such meagre protection of Ethiopian human rights as exists is to be found in the Universal Declaration of Human Rights, since Covenants that offer more extensive protection have never been signed by Ethiopia.

The Chairman of the Derg has few formal powers and is drawn from outside its ranks. The first Chairman, Gen. Aman Michael Andom, was English-educated and, which is rare in Ethiopia for so prominent a spokesman, an Eritrean and a Protestant. His policies of pragmatic moderation were opposed by a substantial segment within the Derg, and, a few days after the selection of a young poorly-educated firebrand — Maj. Mengistu Haile Mariam — as Vice Chairman, it was announced that Gen. Aman had been relieved of his post.

The next day, 24 November, a "political" decision was announced: 60 persons, mostly top military and civilian officials in the former regime, were executed without trial for gross abuse of authority, maladministration and attempts to create dissension within the Armed Forces. Prime Ministers Aklilu and Endalkatchew and one of the Emperor's grandsons were among those executed, and it was later announced that Gen. Aman was killed in a shoot-out when he refused to give himself up.

The General Assembly of the United Nations condemned the executions and expressed fears for the safety of the Emperor and other officials. On 5 December, the Derg responded to Secretary-General Waldheim's cable by asserting that the executions were an internal Ethiopian affair and that "equal social and economic opportunities will be assured and justice based on the rule of law will prevail⁴". The reaction of the U.N. and the African states in particular reflect the fact that, as in South Africa, the U.N. and OAU are becoming more involved in securing minimal human rights in situations that had been previously considered the internal affairs of member states.

Ethiopia Tikdem (Ethiopia First or Forward) was initially a mere motto, but is developing into a vague "philosophy", as a result of impromptu and consequently ambiguous applications to justify particular actions. Early formulations make no reference to God in a deeply religious country and few references to tradition, and stress social justice, brotherhood, mutual respect in the world community, prevention of moral degeneracy and Lincoln's government of, by and for the people. On 21 December, Ethiopia was declared a socialist state and Ethiopia Tikdem was defined as encompassing the tenets of Ethiopian Socialism: self-reliance, respect for hard work, elimination of the "limitless idolatry of private gain", and public participation in local administration. The first steps taken to implement this policy are the nationalization of banks and insurance companies on 1 January, 1975, and the nationalization, on 3 February, of 100 of Ethiopia's

⁴ Ethiopian Herald, Dec. 5, 1974, p. 3.

largest companies. These steps were an attempt to capture the “commanding heights”, so as to monitor the rest of the economy⁵.

At the outset of the “Revolutionary Movement”, the Military convinced even cynics that it had no intention of taking power. This attitude lasted only so long as the Derg felt that it lacked urban mass support and, although the Derg claims to be paving the way towards a “people’s democracy”, anything that vaguely smacks of political activity is suppressed. As in many other Third World States, the Ethiopian Military is a “heavy” institution in a “light” society with a low level of social discipline and a weak government. As in other coup situations, the actions of the military illuminated both the foundations and failures of the old regime. Modernisation of the Military created a competence gap between it and government, and the military tried to short-circuit power conflicts by attempting to create policy without politics⁶. Old problems are solved but new ones arise.

The Evolution of Ethiopian Public Law

The distinction between private and public law, stressed in continental legal systems, is particularly appropriate in Ethiopia. Private laws were imported virtually wholesale, while public (constitutional, administration and penal) law is more of a home-grown product. The tendency in the area of public law has been to adopt Western institutional models that are cast in Ethiopian legal moulds, and to then let chance determine whether these institutions acquire significant functions⁷. As in many other states, the operative theory of Ethiopian public law is Austinian: law is the command of the sovereign, sometimes described as “orders backed by threats” or “the gunman situation writ large”. Notions of natural rights or the implementation of non-governmental demands and interests obtain little practical recognition, and the legal “command” is not always precise.

The “style” of Ethiopian public law, the rough-and-ready formulation of rules involving broad grants of discretion to the executive and bureaucracy has lead to the creation of a chaotic and unconnected body of law which increases the likelihood of incoherent or arbitrary decisions, particularly in the field of local administration. Such a situation breeds cynicism and lack of respect for law, particularly where rules are not enforced or are enforced unequally.

The 1955 Revised Constitution

The 1931 Ethiopian Constitution, based on the 1889 Japanese Meiji Constitution that was, in turn, influenced by the 1871 German Constitution, was replaced by a Revised Constitution in 1955, on the 25th Anniversary of Haile Selassie’s coronation. Under this Constitution, the gap between law and reality was great indeed, and Western “jural postulates” — basic values underlying the written Constitution — were neutralized by traditional jural postulates and events and traditional practices outside of the document’s frame of reference.

⁵ E. g., “Declaration on Economic Policy of Socialist Ethiopia”, Addis Ababa, Feb. 7, 1975; and “72 Companies Made Public Property”, Ethiopian Herald, Feb. 4, 1975, 1.

⁶ See E. Lefever, Spear and Scepter 20 (1970) and R. First, The Barrel of a Gun 112, 465 (1972).

⁷ C. Clapham, Haile Selassie’s Government 182 (1969).

Two traditional jural postulates can be identified. The Constitution consolidated the power of the Monarchy and furthered its legitimacy. The Emperor, descendant of Solomon and Sheba (Art. 2) and Elect of God (Preamble) possessed “supreme authority over all the affairs of the Empire . . .” (Art. 26), including: the powers and duties of Ministries and local government, Commander-in-Chief of the Armed Forces, the direction of foreign relations, convening and dissolving Parliament, promulgating laws when Parliament was not in session, maintaining justice, and all necessary residual powers (Arts. 27—30, 33, 35—36 and 92). The second traditional postulate was the continuance of the religious character of Ethiopia through the mutuality of support between the State and the Orthodox Church (Arts. 126—127) — the faith professed by roughly 35% of the people. These provisions, combined with Art. 125 which makes Amharic the official language, ensured the continuing Amhara domination of Ethiopian political life.

Five Western jural postulates can be identified: the modernisation of administration, the widening of political participation through Parliament, the establishment of an independent judiciary committed to the Rule of Law, the doctrine of separation of powers, and the inclusion of a catalogue of human rights. These postulates were substantially weakened because law was unable to prevent the intervention of the traditional political system. The inherent conflict between provisions furthering the Emperor’s overarching participation at all levels of Government activity and, for example, separation of powers provisions (parts of Arts. 66—112) could only, in Ethiopia, be resolved by the application of traditional political power. Separation of powers therefore existed only below the level of the Emperor’s authority; those few areas, in effect, where he chose not to intervene directly. The pace of administrative and executive modernisation was controlled (and retarded) by the Emperor, to whom each minister was individually responsible (Art. 68). There was no collective responsibility or independent ministerial power bases⁸. Likewise, Parliament lacked an independent power base, such as could have been based upon political parties, was unrepresentative and had few functions of any practical significance (See Arts. 76—92). Despite the assurance that judges shall “. . . submit to no other authority than that of the law” (Art. 110), courts were treated, particularly at the lower levels, as an appendage of the bureaucracy. The numerous qualifications placed upon human rights provisions (Arts. 37—65) severely circumscribed their beneficial application, and courts were typically not eager to invoke them against the interests of Government.

The 1955 Constitution was “suspended” on 12 September, 1974, by the Provisional Military Government Establishment Proclamation⁹, a few days after the 1974 Draft Constitution was rejected by the Derg. Legal coherence required that the Constitution be suspended since the new law-making process created by the Derg is in direct conflict with its provisions, and the Derg does not have to face (theoretically possible) constitutional challenges. The use of the word “suspended” rather than “repealed” with regard to the Constitution reflects the facts that, initially at least, the Derg considered itself to be a temporary institution, and the Derg’s Proclamations retain several important institutions: the Monarchy

⁸ For the purposes of simplification, discussion of the convoluted Order 44 of 1966, which had little practical effect, has been omitted.

⁹ No. 1 of 1974 (12 Sept.), Negarit Gazeta (Neg. Gaz.) 34/1, Art. 5 (a).

remains (albeit in altered form), Parliament acquires a de facto successor in the Provisional National Advisory Commission, and a concern for the protection of human rights continues, at least as a goal to be attained in the indefinite future. The Preamble to Proclamation No. 1 suggests, however, that the 1955 Constitution is void, and it is unlikely that it will be reinstated at some future date. The Constitution could not, by its very nature, contain recent power struggles, since it reinforced the traditional authority that the Derg is displacing and it failed to deal with what had become the most pressing political issues (socialist) development and land reform.

The 1974 Draft Constitution

It is difficult to assess this Constitution, as the effect of law-in-action cannot be observed, the Minutes of the Constitutional Conference have not been made public, and there is no official English translation (the translation used here is by a National University law student). The gap between the proposed constitutional law and political reality is, if anything, greater than the gap which existed under the 1955 Constitution; events had, by August, 1974, completely overtaken the sluggish Drafting Committee of the Constitutional Conference. The somewhat ambiguous Grundnorm of the Constitution refers both to a constitutional monarchy (Art. 5(1)) and the people as the origin of all governmental authority (Art. 1 (ii)), and attempts were made to reconcile the previous Imperial Grundnorm with an emerging nationalist-socialist ideology, as understood by the draftsmen.

Their understanding was rejected by the Derg, who held that the absence of any reference to Ethiopia Tikdem was the critical defect: Art. 5(b) of Proclamation No. 1 of 1974 provides that the Draft Constitution would be "... put into effect after necessary improvements are made to include provisions reflecting the social, economic and political philosophy of the new Ethiopia ..." The Draft Constitution had only partially anticipated Ethiopian Socialism.

The most striking changes that were made, in comparison with the 1955 Constitution, concern the powers of the Emperor, who was reduced to the nominal position of Head of State and "symbol of the nation's unity and history" (Art. 7), possessing only symbolic law-making functions (Arts. 19, 20, 61(b)). References to the Judaic background of the Monarchy and an Ethiopian "Empire" have been excluded and more prosaic and democratic references substituted. There is no provision that establishes the Ethiopian Orthodox Church as a State institution, and a separation of Church and State is obviously intended. A substantial weakening of traditional jural postulates, including Amhara domination of the political process, can be noted in the Draft.

This can be seen most clearly in Draft Constitution Articles providing for a genuine separation of powers, including checks and balances, between branches of Government. The Emperor is Commander-in-Chief of the Armed Forces (Art. 20 — a provision that was heavily criticized) but his duties were to be limited by law. His other duties must be performed in accordance with the resolutions of the Council of Ministers (Art. 19(ii)). The bicameral National Assembly "shall have the final authority in all matters of legislative activity" (Art. 60(ii)), and 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 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 fail to gain the Assembly’s approval (Arts. 76—77). Provisions detailing the rights and duties of the judiciary parallel those of the 1955 Constitution, except that the Emperor’s right to intervene in the judicial process has been abolished and a Supreme Judicial Council headed by a powerful Chief Justice (Afe Negus) would attempt to ensure judicial independence (Arts. 102—121). A new institution was to be created by Arts. 143—146: an ombudsman would collect information and complaints about administrative malpractices and report to the Prime Minister and National Assembly.

When compared to the 1955 Constitution, Arts. 21—59 of the Draft contain a more extensive and precisely-defined catalogue of human rights in, for the most part, the 19th century liberal tradition. It is therefore surprising that one of the Derg’s stated reasons for rejecting the Draft Constitution was the need to more fully ensure human rights. Under Arts. 111—113, human rights could have been abridged upon a declaration of a state of emergency or defensive war, or proclamation of military administration. The recent experience of Ethiopia and other African countries suggests that these would have been potentially significant limitations on human rights. A significant omission, when compared to Art. 44 of the 1955 Constitution, is the absence of a guaranteed right of property ownership, which was to be “within the limits of the law” (Art. 136). No mention is made of the right to dispose of property or procedural safeguards against unwarranted expropriations, except for “payment of a legally determined just compensation” (Art. 136). Several interesting provisions should be mentioned. Art. 55 recognizes the right to free education, health care and retirement benefits, “the level of development and wealth of the country permitting”. The duties of citizens are also prescribed; the payment of taxes, the education of children by their parents to at least primary level (Arts. 52, 56—57) and, in addition to obeying the Constitution, “(e)very Ethiopian has the duty to defend the country and the society against all enemies and to perform public services . . .” (Art. 51). This provision implies the draftsmen’s recognition of an emerging class struggle and the ongoing identification of enemies of society.

Taken as a whole, the Draft Constitution was another attempt to compromise the interests of the old regime with new and non-formal sources of power. The Constitutional Conference, like the Commission of Enquiry and the short-lived Cabinet of Endalkatchew Mekonnen, was an intermediate institution through which, it was hoped, the conflicting interests of the Emperor and the Military could be mediated and the pace and direction of the revolution controlled. The Conference and Cabinet were, by their very nature, weak, and their efforts could only be destroyed by the pressure of fast-moving events.

“Constitutional” Law Since September, 1974

New laws are evolving gradually as a result of the emergence of new military and civil service elites with new value preferences. These laws are constitutional in the positivist sense: under the Grundnorm of Ethiopia Tirkdem the Derg’s Proclamations (definitely the “commands of the sovereign”) provide the jural postulates under which Government now operates. These Proclamations have a marked effect on the lives of urban Ethiopians, but have barely touched the rural areas, where the major changes that can be noted are that peasants in some parts of the country have either introduced their own “land reform” measures or are rebelling against the prospect of land reform. Recent Proclamations show that the Derg values the stamp of legality upon its programme as a means of furthering political stability and legitimacy.

The seizure of power by the Derg along with the deposal of the Emperor was, in effect, retroactively validated by Art. 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.

According to Art. 3 of Proclamation No. 1, the Monarchy was to continue within the line of Haile Sellassie, with Crown Prince Asfa Wossen assuming the functions of a King (not Emperor) when he returned from Geneva — functions that are entirely symbolic. The Preamble of the Proclamation refers to Monarchy as a highly-esteemed Ethiopian institution, not corrupt in itself, but abused by the deposed Emperor:

(A)lthough 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 Sellassie 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 . . .

Many of the institutions existing under the suspended 1955 Constitution, such as the Crown Council and the Emperor’s Chilot Court, were simply abolished by a public statement from the Derg. This was also true of “intermediate” institutions like the Constitutional Conference and Endalkatchew’ Cabinet.

The Chamber of Deputies and the Senate have been dissolved and there will be no further deliberations by these bodies until a new Parliament (under a new constitution and electoral law) has been created. The law-making process established by the suspended Constitution, defining proclamations (enacted by Parliament and the Emperor) or decrees and orders (the Emperor acting alone) has been replaced by a new process of enactment. Proclamation No. 2 of 1974, Arts. 4, 6 (Neg. Gaz. 34/2) states that:

(The Provisional Military Administrative Council) 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.

(A)ll treaties of peace and all treaties and international agreements 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 (Military) Council, be deliberated upon by the Council of Ministers and the same shall be submitted to the Council for ratification.

Under this new constitutional law, the Derg and its subcommittees and regional committees has concentrated and almost unlimited power, with the merger of legislative and executive functions in its hands and its collective exercise of the functions of Head of State under Proclamation No. 2, Art. 2, pending the unlikely return of the Crown Prince. Given recent political changes, the law could hardly read otherwise. The new Proclamations are not intended to regulate the decision-making process within the Derg, and factions and even violent conflict have occurred and are likely to continue in the future. It is unlikely, however, that law could have contained these tendencies. The few limitations on the Derg's powers (which are, in effect, self-limitations) will not necessarily lead to the advancement of the Rule of Law in Ethiopia. The November executions, for example, were unlawful and showed that the Derg is prepared to intervene in the judicial process when political interests are at stake.

Over time, the Derg has evolved from a mere junta to a type of "revolutionary parliament". Obviously, the 120 representatives of the Military and Police do not represent the people in the true sense of that word, yet, in the absence of any other genuinely representative institutions, they articulate some of the interests of some of the people. If a return to "civilian" rule takes place, it is likely that the Derg and Ethiopia Tikdem will constitute the nuclear structure and ideology of a one-party state.

With the abolition of Parliament, there must have been a felt need for a new body to assume its de facto functions — advice and debates without any real power, and to appease public (and, to some extent, military) demands for progress towards civilian rule. More specific legislation was provided for the Provisional National Advisory Commission by Proclamation No. 12 of 1974¹⁰, although the Commission had begun to function under a vague mandate in Proclamation No. 2. Although labour, religious groups, teachers, businessmen and Government bodies elected Commission members, the Commission, like the Parliament before it, is unrepresentative of the peasants who constitute the vast majority of Ethiopians. The "law-making" process, as carried out by the PMAC and the Commission, is similar to the procedure formerly employed by the Emperor and Parliament and the Commission has no real power.

Revolutionary Justice

The Derg has stated that participation in the previous government or opposition to the Derg and Ethiopia Tikdem is very strong evidence of complicity in exploitation. Penal and procedural law changes promulgated by the Derg are

¹⁰ Provisional National Advisory Commission Establishment Proclamation, No. 12 of 1974 (16 Dec.), Neg. Gaz. 34/11.

designed to increase the speed and certainty of conviction of “enemies of the people”, with the primary aims of fostering the Derg’s stability and legitimacy and generating fundamental social and political change through coercion.

The Special Penal Code Proclamation¹¹ was promulgated by the Derg on November 16, 1974 (a week before the executions), and is to be applied only by Special Courts-Martial, and adapts “the criminal laws relating to grave offenses to the changed situation which the new order demands”. Arts. 7—11 of the Proclamation offer direct protection of PMAC members, their families, and the Council’s activities, thereby promoting the political stability of the Derg. The elaborate nature of these provisions suggests that the Derg is intended to be a permanent political institution, and the provisions could, in theory, be used against members of the Derg who order the execution of a fellow member or the incarceration of his family, as has recently occurred.

Special Penal Code Arts. 1—5 accomplish this protective function indirectly by detailing offenses against the State — the Head of State being the Derg. The Special Penal Code contributes to the legitimacy of the Derg and its related institutions by substituting the newly-created institutions for those functioning under the old regime and mentioned in the Penal Code¹². No other changes in wording occur between Special Penal Code and Penal Code Articles detailed below, except for increased penalties, and new institutions are thereby identified with old ones in an attempt to lend continuity to the transition process. In Art. 3 of the Special Penal Code, dealing with armed risings and civil war, “Government” is substituted for Emperor, State and other constitutional authorities. The PMAC replaces constitutional legislative, judicial, public and executive organs as institutions against which outrages or offenses can be committed (Arts. 9, 11). The military is added to the definition of public servant in the offense of compelling breaches of duty (Art. 36) and public servants are added to the military as persons who can violate the breaches of secrecy provision (Art. 38). This is an attempt to firmly equate administrators and the military as servants of the people and to point the way towards military participation in administration.

Special Penal Code Arts. 12—25 and 27 (in part) are primarily concerned with the retroactive punishment of bureaucrats and military officials who supported the previous regime. Most of the provisions merely increase penalties, but Arts. 12, 13, and 27 contain very broad definitions of breach of trust, misuse or waste of Government property and causing distress or famine, when compared to the Penal Code, and can be used to efficiently get rid of the new regime’s potential enemies. It must be stressed that members of the nobility cannot be punished under the Special Penal Code unless they are guilty of some form of maladministration or threatening state security. It is therefore likely that some of the nobles executed on 23 November, 1974, could not have been found guilty of offenses under the Penal Code or Special Penal Code.

As has been noted, most Special Penal Code offenses are verbatim restatements of Penal Code offenses, with, however, radically increased penalties. These penalties go beyond deterrence and towards a vengeance that is no longer acceptable to Western legal theorists. As the Special Penal Code lacks general provisions that would assist in the process of interpretation, it is appropriate to refer to the Penal

11 No. 8 of 1974, Neg. Gaz. 34/8, Prologue.

12 Proclamation No. 158 of 1957.

Code, which states that future legislation will be consistent with it (Art. 3). The Penal Code contains the overarching principle of legality (Art. 2 (1)) and the requirement that punishments not be imposed retroactively (Art. 5(2)).

These principles are, however, seemingly negated by the Prologue to the Special Penal Code:

(M)ost 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 were previously recognized by the Penal Code, the new and increased penalties were not. The notion that new offenses such as those against Ethiopia Tikdem (Art. 35) have long been recognized by natural law (which typically espouses an expansive notion of human rights), custom and "basic legal philosophy" (whatever that means) is absurd. The arguments that even a creative lawyer could make on the basis of these vague standards are severely limited. In theory, the Prologue cannot dispense with the prohibition against retroactivity found in Art. 11(2) of the Universal Declaration of Human Rights, but Ethiopians can take small comfort from this provision (which can also be taken as a statement of "general legal philosophy"), since the Declaration only amounts to a "common standard of achievement" to be promoted through education, rather than a call for total commitment and consistent action or a means of constructive intervention by the international community¹³.

Like the Penal Code provisions on which they are based, many Special Penal Code Articles do not require, on their face, that the prosecutor prove a "state of mind¹⁴". This is often the most difficult element of an offense to prove, and if a provision is interpreted as creating a strict liability offense (in which a state of mind need not be proved) a conviction is easier to obtain and the accused is unable to argue that he possessed "an erroneous appreciation of the true facts" in order to escape liability (Penal Code, Art. 76). Although Ethiopia now has a large number of cases that will tax the talents of prosecutors and judges, it would certainly be out of step with Western jurisprudence if it allowed severely punished, broad and seemingly retroactive Special Penal Code offenses to be interpreted as strict liability crimes. This difficulty can be resolved by referring to Penal Code Arts. 57(1), 58(3) and 59(2) which require proof of intention in all instances where negligence is not an express element of the offense. Intention is defined as "performing an unlawful and punishable act with full knowledge and intent" or committing an act in awareness of and regardless of illegal and punishable consequences (Art. 58(1)). These provisions are often ignored by ordinary courts applying the Penal Code, and it is likely that Special Courts-Martial will overlook them when interpreting the Special Penal Code.

13 M. Moskowitz, *The Politics and Dynamics of Human Rights* 102 (1968). On the principle of legality and prohibition of retroactivity, see G. Williams, *Criminal Law* 575–81 (2d ed. 1961).

14 Special Penal Code Arts. 1, 5, 12, 13, 16, 20, 22–23, 26–7, 37–8 and 41 require that "intending to", "intentionally" and "intend" be proved. Other mental states mentioned — "knowingly" and "knowing" (Arts. 30 (1), 39 (2), 40) and "unlawful" (Arts. 11, 14–5, 29) — are not defined and must be interpreted so as to include the other elements of the intention equations specified in Penal Code Art. 58. The balance of the offense-creating provisions in the Special Penal Code — 2–4, 7–9, 15, 17–19, 21, 28 32–6, and 39 (1) — contain no requisite mental state.

Owing to space limitations, the Special Penal Code cannot be analyzed in detail, and only a few examples can be given. It is expected that a large number of the people charged by the Commission of Enquiry will be tried by Special Courts-Martial under Special Penal Code Art. 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 offence 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) ...

Art. 27 largely restates Art. 509 of the 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 to be imposed. Both (1) and (2) of Art. 27 are single sentences that have been edited in the form presented here, and they give a feeling for the somewhat convoluted drafting style employed in the Penal Code and Special Penal Code. Culpable negligence is not defined, and it should be interpreted as a higher and more blameworthy standard of fault than that provided by the negligence definition in Penal Code Art. 59. Liability under Art. 27 (2) is potentially very broad: there is no reference to a state of mind, and the Special Courts-Martial could impose a heavy criminal penalty upon what seems to be a liability sounding in contract or tort, requiring the accused to show the existence of force majeure in order to escape liability.

Art. 35 of the Special Penal Code contains a novel provision:

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.

There is a real danger that judges will follow the public's practice of concluding that this provision punishes all offenses against Ethiopia Tikdem (discussed *supra*) — an undelimited philosophy that is used to justify every measure taken, in an attempt to stifle criticism. It is essential that, at the very minimum, "intention" as defined in Penal Code Art. 58, be read into Special Penal Code Art. 35. In this instance, the relevant "intention" should be to cause serious public disorder or seriously endanger national security. Other Special Penal Code Articles, such as 10(5), 11, and 37, pose similar threats to freedom of speech. Arts. 17, 19, 20 and 22 attempt to deal with a widespread Ethiopian problem — corruption among civil servants, and are restatements of Penal Code provisions with radically increased penalties. It is unlikely that these new offenses, taken alone, will solve the problem, especially since these provisos are vague and easily avoidable.

Although the vagueness and retroactivity of Special Penal Code offenses pose significant threats to human rights, the Code pales in comparison with Ethiopia's

new detention law¹⁵, which creates an unlimited number of penal offenses existing only in the mind of the Minister of Interior. These measures are justified, in the Prologue, by the necessity for taking “temporary measures” against those who attempt to disrupt Ethiopia’s peaceful change. 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 detain the person 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. Alternatively, a Special Courts-Martial can order the internment of an offender after punishment on similar grounds, under Art. 44 of the Special Penal Code. Habeas Corpus is a theoretically available remedy for persons in detention or internment¹⁶. Ethiopian law is abundantly provided with the means of dealing quickly and effectively with threats to public security, and detention should be utilized only in the event of grave emergency, subject to a judicially-reviewable administrative hearing¹⁷.

Changes in court structure and procedure also reflect the desire for rapid trials and increasing the certainty of conviction and the (albeit imperfect) concern for judicial independence and the rights of the accused found in the (suspended) Constitution, the Judicial Administration Proclamation¹⁸ and the Criminal Procedure Code¹⁹ receives less emphasis. The new Special Courts-Martial Establishment Proclamation²⁰ and Special Criminal Procedure Code Proclamation²¹ voice a bureaucratic type of desire to “provide for an efficient, speedy and decisive machinery of justice . . . , in order to implement the motto Ethiopia Tikdem . . .²²”

General and District Special Courts-Martial have been created to hear charges brought against any person under the Special Penal Code and all other criminal laws. The names of the Courts have been borrowed from the Army Proclamation²³ which is, however, inapplicable to Special Courts-Martial proceedings²⁴. Ordinary courts cannot currently apply the new Special Penal Code, and conflicts between ordinary courts and Special Courts-Martial are resolved by a ruling from the latter. Owing to the heavy caseload in the Special Courts-Martial, legislation is being prepared that will enable ordinary courts to hear minor offenses under the Special Penal Code. The prosecutor determines whether a particular case will be presented in an ordinary court or in a Special Court-Martial²⁵. Choice of court amounts, in effect, to choice of law, and creates serious equal protection problems that are contrary to the spirit of Art. 7 of the Universal Declaration of Human Rights. Different social groups must not be channelled into different courts applying different rules. The International Commission of Jurists recommends that the ordinary courts apply all special forms of law to the general public²⁶.

A delicate balance must obviously be struck between judicial protection of human rights and judicial sensitivity to state policy and the needs of the people in a

15 Public Order and Safety Proclamation, No. 10 of 1974 (16 Nov.) Neg. Gaz. 34/10.

16 See Civil Procedure Code, Decree No. 52 of 1965, Arts. 15 (2) (i), 177—9.

17 International Commission of Jurists, The Rule of Law and Human Rights 13 (1966).

18 No. 323 of 1973, Neg. Gaz. 32/24.

19 Proc. No. 185 of 1961, Neg. Gaz. 21/7.

20 No. 7 of 1974, Neg. Gaz. 34/7.

21 No. 9 of 1974, Neg. Gaz. 34/9.

22 Prologue, Proc. No. 7 of 1974. See. Y. Ghai and J. McAuslan, Public Law and Political Change in Kenya 159—160, 172—173 (1972) for a discussion of parallel legal attitudes in Kenya.

23 No. 68 of 1944, 10 Consolidated Laws of Ethiopia 2.

24 Proc. No. 7 of 1974, Art. 3; and Proc. No. 9 of 1974, Art. 6.

25 Proc. No. 7 of 1975, Arts. 15 (2), 18.

26 International Commission of Jurists, *supra* note 17, at 32.

developing society. It is, however, difficult to maintain such a balance when an ad hoc tribunal, like the 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 have no tenure of judicial office²⁷. Numerous violations of the standards of fairness and impartiality proposed by Art. 10 of the Universal Declaration of Human Rights are therefore possible.

The Special Criminal Procedure Code Proclamation only applies to 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—196)²⁸. 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.

Interesting comparisons can be made between the Ethiopian concept of revolutionary justice and those obtaining during the French and Chinese Revolutions. Although the initial stages of the French Revolution were dominated by the Declaration of the Rights of Man, the steady drift towards the Terror, described by Burke, *supra*, culminated in the Law of 10 June, 1794 (repealed after Robespierre’s downfall) which imposed the death penalty upon anyone who opposed the Government and abolished trial advocates and witness testimony²⁹. If we ignore the November executions, no similar drift towards terror can, to date, be noted in Ethiopia, and penal law has not been used to attack the nobility as a class. Although Special Penal Code provisions are vague enough to generate fears of massive injustice, events have not, to date, confirmed these fears: There is a minimum of interference by the Derg and many cases are either refused by prosecutors or dismissed by the courts. The November executions may have been, it can be argued, a non-recurring expedient, given that stability and legitimacy required that these particular people be disposed of speedily and that proving cases against them would have severely taxed Ethiopian judicial and prosecutorial resources. There can be no doubt, however, that the executions generated an atmosphere of fear and constitute a deplorable violation of the Rule of Law. Justice is expensive and difficult to provide in any state, and there has been no convincing proof that, for example, the executed people were planning an effective counter-coup.

In China, law is regarded as a flexible instrument of party policy, and criminal conduct is not always expressly defined: actions that “endanger the people’s democratic system, . . . destroy our social order, or are dangerous to our society and deserve criminal punishment . . .” constitute crimes. Offenses can be created by analogy from existing legislation or can be created retroactively: “whether an act is an offense at the time of its commission should be determined according to Party and State policies as well as the situation in which the act was committed³⁰”. The contrast between the Ethiopian and Chinese experiences is

27 Proc. No. 7 of 1974, Art. 6.

28 *Id.* Art. 3 (1).

29 J. Brissaud, *A History of French Public Law* 559—565 (J. Garner Transl. 1969).

30 Institute of Criminal Law Research (Chinese People’s Republic) “Lectures on General Principles of Criminal Law” 42—3 (Joint Public Research Service transl. 1962). See A. Stankhe, “The Background and Evolution of Party Policy on the Drafting of Legal Codes in Communist China”, 15 Am. J. Comp. L. 506, 508 (1967).

even more marked. Retroactivity exists in Ethiopia, but is restricted to defined Special Penal Code offenses, and creating offenses by analogy is expressly prohibited by Penal Code Art. 2(1). Although Ethiopian penal offenses are vague, they are far more precisely defined than in China or Revolutionary France, with the notable exception of the detention law and, perhaps, offenses against Ethiopia Tikdem. Viewed in this light, revolutionary justice in Ethiopia represents a rough midpoint between the kinds of techniques employed in Revolutionary France and China and Western ideals associated with legality and the Rule of Law. This may be the result of the impact of world public opinion on Ethiopia, which is far less isolated than China or 18th century France.

Evaluation

Ethiopia's "creeping" revolution has the rare quality of proceeding slowly, making it possible to analyze each stage. The intentional destabilization of the social system through revolution has produced substantial evidence of what Lon Fuller has termed the eight elements of legal failure: ". . . excessive specificity, incommunicativeness, retroactivity, incomprehensibility, contradictoriness, unfulfillable demands, capricious change, and irrelevant administration³¹." Revolutions tend to be anti-legal since law is identified, in the revolutionary's mind, with limitations upon governmental power and the preservation of the status quo. Law temporarily collapses when stability, incremental change and legal functioning no longer "cluster together", yet revolutionary regimes, such as Ethiopia's, soon recognize the need for administrative continuity and an elaborate system of alternate rules that foster stability and legitimacy. The legal "style" of the Ethiopian military has been, to date, one of swift decrees in civil service jargon that emphasize, using Western terms, the administrator's rather than the jurist's approach to law³².

Political and legal changes in Ethiopia demonstrate that Western legal theory, particularly Hans Kelsen's analytical positivism, does not adequately explain actual and potential uses of law in a revolutionary situation. In Kelsen's view, the domestic legality of a regime requires that the "total legal order" remain "by and large" effective³³. This idea considered by courts that upheld an usurpation of power by a Ugandan Prime Minister that was retroactively validated by a new Constitution³⁴, a declaration of martial law in Pakistan³⁵, and the legality of detention laws imposed after the Unilateral Declaration of Independence in Rhodesia³⁶. In the same vein, it cannot be argued that, owing to the suspension of the 1955 Constitution, the legal framework governing the Derg's exercise of power is unlawful because the "total legal system" is no longer "by and large" effective. The Proclamations are viable because they have

³¹ See M. Barkun, "Law and Social Revolution", 6 L. and Soc. Rev. 113, 120—1, 135 (1971).

³² See, *Id.*; and First, *supra* note 6, at 9.

³³ R. Dias, *Jurisprudence* 105, 407, 416 (3d Ed. 1970); and G. Paton, *Jurisprudence* 300—1 (3d Ed. 1969).

³⁴ Matovu, *supra* note 1.

³⁵ *State v. Dosso* (1958) 2 Pak. S.C.R. 180.

³⁶ *Madzimbamuto v. Lardner-Burke*, 1968 (2) S. A. 284. On appeal to the Privy Council — (1968) 3 All E. R. 561, 562 — it was held that the detention laws were invalid: The concepts *de facto* and *de jure* are inappropriate where a legitimate government is trying to regain control from a usurper. The Privy Council was, of course, unable to implement its decision.

been accepted, for a variety of reasons, by Ethiopian judges and citydwellers, and this acceptance has been hastened by propaganda, coercion and the creation of Special Courts-Martial.

The value-neutral or "pure" aspects of Kelsen's theory have little analytical significance in Ethiopia, where the Grundnorm itself is the intensely ideological philosophy of Ethiopia Tikdem and law is consciously used as a political weapon. From the positivist standpoint, Ethiopian public law has been fairly successful in pursuing the Derg's aims efficiently and in securing a measure of order during a revolution. As Goethe, who reportedly influenced Kelsen, put it: "I would rather do injustice than suffer chaos", and "It is better that you suffer wrong than that the world should be without law³⁷." This analytical approach does not, however, permit the evaluation of Ethiopia's legal system at any but the most superficial level. Many jurists would argue that positivist theories must be complemented by broader approaches to law, and advocates of natural law insist that law rests upon moral criteria, as well as purely formal ones: "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 definition³⁸."

How can we determine whether Ethiopian public law constitutes the "capricious orders of a crazy despot", when theories of natural law often conflict and no comprehensive moral code that is related to law has gained acceptance? The partial answer is that a nation's Grundnorm must be more than temporarily effective and, in some sense, must correspond to morality and justice, particularly as moral grounds underlie most revolutions, including Ethiopia's. Isolated governmental acts can be contrary to public and private interests, but each person must find himself the gainer, on balance, since society eventually dissolves in the face of perpetual injustice. African elites are often in a position to grasp whatever power they desire, yet self-limitations on and rationalizations of the exercise of power is the price that must be paid for remaining in power in the long run. In a revolutionary situation, initially-enacted laws will not represent permanent solutions to these problems and the morality of law is usually ignored in the initial "might makes right" situation. Eventually, however, regimes such as Ethiopia's must come to grips with the use of law to implement the interests and demands of the people, or, as Krabbe puts it, "the subjective sense of right in the community³⁹."

As in other Third World countries, three sets of claims, demands and interests struggle for recognition in Ethiopia: one set is predicated upon traditional laws; one set looks for satisfaction under imported Western private laws; and a third set demands national development through the forceful use of public law⁴⁰. These demands are asserted along class lines by subsistence peasants, a tiny group of rudimentary capitalists and the urban middle class, and a small proletariat and the modernizing elite respectively. The emerging dichotomy of Ethiopian law is that, while the Derg asserts the third set of demands and utilizes a revolutionary

37 W. Ebenstein, *The Pure Theory of Law* 100 (1969). See *Id.* at 21, 71.

38 Pollack, quoted in Dias, *supra* note 33, at 550. See: *Id.* at 545; Paton, *supra* note 33; and Ebenstein, *supra* note 37, at 99.

39 See: David Hume, "A Treatise of Human Nature" in *The Great Legal Philosophers* 187, 199 (C. Morris ed. 1959); R. Dias, "Legal Politics", 26 Cambridge L. J. 233, 255-6 (1968); Dias, *supra* note 33, at 551; and Paton, *supra* note 33, at 307.

40 See: R. Seidman, "Law and Economic Development in Independent English-Speaking Sub-Saharan Africa", 1966 *Wis. L. Rev.* 999, 1015-19.

socialist approach to law, the vast majority of the people subscribe to the values embodied in traditional laws, chief among which is the non-interference of Government in the daily lives of the people.

There is abundant evidence to suggest that the Derg — an urbanized elite — is out of touch with rural Ethiopian realities, and that, despite immense changes, politics is still paternal, urbanized and factional. The unwillingness or inability of the Derg to respond to interests asserted under traditional laws, or to convince people of the existence of viable alternatives, may well be the Derg's Achilles Heel from the standpoint of long-term political development.

Public law currently has no effect upon the daily lives of Ethiopians living in huge areas defined, perhaps, as lying beyond a half-day's walk from the nearest all-weather road. Ultimately, participation at the national level, through effective grassroots organizations, is a necessary precondition to the success of the Derg's programme. Otherwise, participation takes the form of ignoring or subverting legal programmes: "Governments propose but the masses dispose⁴¹." Numerous parallels exist between the political events that have been described and the 1969 coup in Somalia. If events continue in parallel, we can predict that, based on Somalia's experience, the Derg will become firmly committed to economic development while increasing the level of political repression. We can also predict that law will play a significant role in this process.

Legal theory can only provide imperfect answers to issues posed by the use of law in contemporary Ethiopia — issues that echo throughout the Third World. Following, for example, the view of law advocated by Stalin rather than that of Pashukanis⁴², law is being used in Socialist Ethiopia to strengthen state authority in the pursuit of economic rights imposed from above. An advocate of Ethiopia's policies would argue that draconian legal measures are justified because of an overriding need to stabilize power in a country where political institutions are fragile and lack national legitimacy, that feudal elements must be liquidated, and that quasi-military discipline must be imposed where social discipline is largely absent. The Western jurist would cite numerous violations of the values he prizes — such as the principle of legality and the Rule of Law — in opposition to these arguments, and as a means of asserting the value of the individual and the supremacy of political rights. This conflict often arises when the role of law in the Third World is analyzed, and legal theory does not provide the means of fully resolving it.

41 A. Allott, "African Law in the 1980s", in *Africa in the Seventies and Eighties* 163, 168 (F. Arkhurst ed. 1970).

42 See: *Soviet Legal Philosophy* 111, 235 (Babb transl. 1951); J. Stone, *Social Dimensions of Law and Justice* 491—4 (1966); and Barkun, *supra* note 31, at 113.

the Guatemalan Auditing Board continued to be a body acting largely in the interests of the government and its followers.

6. The fact that the Costa Rican Auditing Board has proved itself an efficient instrument in the prevention of corruption is due primarily to the liberal political system and cultural climate of the country. Its effectiveness is maintained not alone by the prevailing political party system and the constitutional separation of power but foremost by a critical and politically active public opinion. Notable in this connection is the high standard of the press. By contrast, it appears that deficiencies as apparent in the Auditing Board of Guatemala can largely be traced back to the deficiencies in the country's political system.

Law and Politics in Revolutionary-Ethiopia

By HEINRICH SCHOLLER und PAUL BRIETZKE

Ethiopia's "creeping revolution", when analyzed in stages, illuminates the interrelation of law and politics where direct military intervention occurs in African political life and the tensions between a traditional society and a modernizing urban elite, between the assertion of political and economic rights and between socialist legal values and the rule of law. Ethiopian public law had hitherto conferred broad discretionary authority and consolidated the power of the Amhara-dominated Monarchy, feudalism, bureaucracy and the Orthodox Church. Maladministration and civilian paralysis in the face of mounting socio-economic crises could not be averted and in one year, the Military was able to consolidate power and shift its policy emphasis from progress towards popular government to the implementation of socialist economic policies. The 1974 Draft Constitution, embodying Western jural postulates, was rejected because it did not sufficiently embrace an evolving nationalist-socialist ideology. In its place, the emerging "constitutional law" of the new Proclamations gives the Military's representatives concentrated and almost unlimited power — an accurate reflection of political realities.

Ethiopia is also experiencing a period of revolutionary justice; an attempt to increase the speed and certainty of conviction of "enemies of the people", and the fostering of the Military's political stability and legitimacy and socio-economic change through the coercive use of penal law. New penal laws, for the most part, merely restate Penal Code provisions while radically increasing penalties, although a few new, broad and retroactive offenses have been created. The use of law in revolutionary Ethiopia shows a recognition of the need for administrative continuity and the development of an alternate rule system that embodies the revolutionary ethos. Western legal theory provides imperfect responses to the challenges posed by these revolutionary uses of law, particularly in Ethiopia.