

# A History of Ethiopian Legal and Justice Systems: From Antiquity to Post-1991 Reforms

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## Abstract

This paper systematically traces the evolution of Ethiopia's legal and judicial systems from antiquity to post-1991 reforms, revealing core tensions in its legal history: the conflict between "unification and pluralism," "modern form and autocratic substance," and "law as a tool of political control." In the pre-modern period (before 1907), Ethiopia was characterized by coexisting plural legal traditions: the feudal-monarchical law of the northern Christian Solomonic monarchy (symbolized by the *Fetha Negast*), the deliberative customary law of southern societies (e.g., the *Ya Joka* of the Gurage and the *Gadaa* system of the Oromo), and Islamic Sharia law for Muslim communities. This created a vertical "top-down law" (from the throne) and horizontal "bottom-up law" (from the people) dichotomy.

During the Imperial period (1907–1974), the state launched a codification and modernization project, transplanting European models (e.g., the 1931/1955 Constitutions, 1930/1957 Penal Codes, 1960 Civil Code) to unify plural laws. However, in practice, the imperial prerogative (the *Zufan Chilot*) coexisted with codified laws, creating a split between "law in books" and "law in action."

The Derg era (1974–1991, socialist regime) redefined law as a tool of class struggle: it dismantled the imperial legal order, established "people's justice" (community courts), and enforced state terror (special military tribunals), but ultimately failed due to economic collapse and ethnic conflicts.

In the Federal Democratic Republic era (1991–present), the 1995 Constitution introduced "ethnic

federalism" and "constitutional pluralism," recognizing ethnic self-determination and customary law. Yet, de facto one-party dominance (EPRDF/Prosperity Party) created tension between constitutional text and political practice, with limited judicial independence and frequent ethnic violence.

The conclusion highlights that Ethiopia's legal history centers on the challenge of institutionalizing the "rule of law" to bind sovereign power, balancing ethnic autonomy and national unity. Its experience reveals the complexity of law as a tool of political legitimacy, and the future requires a sustainable equilibrium between plural recognition and a shared political community.

**Key words:** Ethiopia; Legal History; Judicial System; Legal Pluralism; Imperial Period; Derg Era; Federal Democratic Republic; Constitutional Reform

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## INTRODUCTION

Ethiopia's legal history is not merely a chronicle of changing laws, but a profound narrative of state-building, ideological transformation, and the perennial struggle to impose order upon profound diversity. From the pluralistic legal worlds of its pre-modern societies to the ambitious, often contradictory projects of the modern state, the evolution of its justice systems reveals a central, unresolved tension: the challenge of establishing a genuine **rule of law** and a meaningful **separation of powers**. Across the Imperial, Derg, EPRDF, and now Prosperity Party regimes, legal institutions have repeatedly been shaped—and subverted—by the

imperative of central control. Whether under the sacred mantle of the Solomonic Emperor, the ideological dictates of a socialist vanguard, or the dominant-party machinery of ethnic federalism, the judiciary and the concept of legal autonomy have consistently struggled against the overwhelming gravitational pull of executive authority. This analysis, structured through four constitutive eras, traces how each regime's legal project sought to answer the fundamental questions of authority, justice, and unity, while simultaneously grappling with the enduring legacies of Ethiopia's pluralistic past.

## 1. ANTECEDENTS— THE PLURAL LEGAL TRADITIONS OF PRE-1907 ETHIOPIA

### 1.1 Introduction: Legal Pluralism as the Foundational Reality

Long before the advent of a centralized Ethiopian state, the region was a tapestry of distinct, sophisticated legal orders. This was not anarchy, but a complex system of legal pluralism where authority flowed from multiple sources. In the northern highlands, the Christian Solomonic monarchy projected a **feudal-monarchical** legal culture centered on the Emperor as the fount of justice. The *Fetha Negast* served as a symbolic, composite code blending Christian, Roman, and Islamic legal thought, yet its application was inconsistent, filtered through a literate clergy and overshadowed by the Emperor's personal adjudication in the *Zufan Chilot*. Here, justice was an extension of sovereign prerogative, manifested in brutal, retributive punishments, but also in unique communal investigative practices like *Afersata* (collective inquest) and *Levashai*, which revealed an underlying reliance on community participation.

In stark contrast, southern societies like the Gurage and the Oromo operated through **decentralized, customary systems** where law emerged from below. The Gurage's *Ya Joka* and *Ye-Gordena Sera* assemblies and the Oromo's cyclical *Gadaa* system embodied deliberative, consensus-based governance with clear separations between legislative, executive, and judicial functions. Their justice was restorative, emphasizing social harmony, compensation, and reintegration over corporal punishment, enforced through social sanctions like ostracism and spiritual curses. Alongside these, Islamic *Sharia* law provided a transnational jurisprudential framework for Muslim communities. This pre-1907 landscape was thus defined by a fundamental dichotomy: a vertical, imperial model of law-from-the-throne coexisted with horizontal, communal models of law-from-the-people.

Before the centralizing projects of the 20th century, the territory known today as Ethiopia was not a unified legal entity but a mosaic of distinct legal cultures. The fundamental characteristic of the pre-modern period was

**legal pluralism**, where multiple, overlapping legal orders operated simultaneously, each deriving authority from different sources: divine revelation, royal decree, ancestral custom, or communal consensus. These systems were not merely procedural variants but reflected profoundly different worldviews about justice, authority, and social order. The year 1907 serves as a conventional watershed, not because it marked an abrupt break, but because it heralded the beginning of a sustained state-led project to impose uniformity upon this pluralistic landscape. To understand the depth and resistance of this project, one must first appreciate the sophistication and resilience of the pre-existing systems. This section examines the three dominant legal traditions: the **feudal-monarchical system of the northern Amhara/Tigrayan highlands**, the **decentralized customary systems of southern societies** like the **Gurage and Oromo**, and the **transnational Islamic legal tradition** operating within Muslim communities. Each constituted a coherent, self-justifying universe of law.

### 1.2 The Northern Feudal-Monarchical System: Law from the Throne

The political and legal culture of the Christian highland kingdom was hierarchical, theocentric, and centered on the Solomonic Emperor (*Neguse Negast*). Law was conceived not as a social contract but as an emanation of divine and royal authority.

#### 1.2.1 The *Fetha Negast*: The Symbolic Code

The *Fetha Negast* (Law of the Kings) stood as the paramount written legal authority. Translated into Ge'ez from an Arabic Coptic nomocanon in the 14th–15th centuries, it was a composite text. Its first part dealt with ecclesiastical (canon) law, the second with secular matters, blending prescriptions from the Bible, Roman law (via Byzantine intermediaries), and Islamic *fiqh* (Malikite school) (Sand, 1980; Vanderlinde, 1966). Its practical application, however, was more symbolic than systematic. As Haile (2007) notes, it was “venerated, supported and applied by both the government of our Empire and by the church,” yet it was **not exhaustive nor uniformly accessible**. Written in Ge'ez, a liturgical language, its contents were often filtered through clergy and literate judges. It served less as a practical manual for daily adjudication and more as a legitimizing totem, invoked to sanctify royal authority and provide a patina of timeless legality to the state. Emperor Haile Selassie himself later instrumentalized this symbolism, framing the 1930 Penal Code as a “revision” of the *Fetha Negast* to ease its acceptance.

#### 1.2.2 The Architecture of Royal Justice: Courts and Kings

The administration of justice was inseparable from the exercise of political power. The court system was a vertical extension of the imperial hierarchy.

**Lower Courts (*Mislene, Chiqashum*):** Local lords and appointed officials (*melkegna*) acted as judges, handling civil disputes and minor offences. Their authority flowed from the crown, and their rulings could be arbitrary, often reflecting local power dynamics rather than codified principle.

**The Imperial Zufan Chilot:** At the apex was the Emperor's court, the ultimate arbiter of both appeal and first-instance cases of great import. The *Zufan Chilot* was theatre and tribunal combined—a ritualized performance of sovereignty where the monarch, surrounded by clergy and nobility, dispensed justice as personal favor, political reward, or brutal punishment. As observed in the thesis, judgments here were rarely references to specific articles of law but exercises of **sovereign prerogative**, guided by political expediency, personal mood, or the counsel of attending dignitaries (Haile, 2007).

### 1.2.3 Indigenous Legal Mechanisms: Community as Investigator

Beneath the royal superstructure operated unique indigenous institutions for law enforcement and fact-finding, revealing a communal approach to justice.

**Levashai:** Beneath the royal superstructure operated unique indigenous institutions for law enforcement and fact-finding. The *Levashai* (literally, *thief searcher*) was a form of **supernatural-aided criminal investigation** used primarily in theft cases. A boy, administered a secret substance by a licensed practitioner, would enter a trance and allegedly lead authorities to the culprit's home or hiding place. Controlled by licensed families under state oversight, it represented a blend of shamanistic practice and formalized detective work in the absence of a professional police force (Eadie, 2000; Haile, 2007).

**Afersata (Collective Inquest):** In cases of serious unknown crimes (murder, arson), the entire adult male population of a district could be summoned. Under oath, each man was obligated to reveal any knowledge of the crime. Absence or silence was fined. This mechanism leveraged **collective responsibility and social pressure**, treating the community as both witness and jury. It declined with the rise of professional police but persisted as a testament to a legal philosophy where the community was the primary guarantor of order (Fisher, 1969).

**Quragna (Chained Litigants):** Plaintiffs and defendants in unresolved disputes could be physically chained together, forced to accompany each other until they appealed to a higher court or reached a settlement. This practice, noted by Bahru Zewde (1995), was a powerful physical manifestation of the legal bond between disputants and the state's coercive role in forcing resolution.

**Punishment** in this system was predominantly retributive and often spectacular: execution (by hanging or spear), mutilation (amputation, blinding), flogging,

and heavy fines. The body of the criminal was a site for displaying state power. Yet, the Mosaic «eye for an eye» principle coexisted with compensatory payments, particularly in homicide, where blood money could avert clan vendettas—a concession to older customary norms.

## 1.3 Southern Customary Systems: Law from the Community

In contrast to the top-down, vertical model of the north, southern societies like the Gurage and Oromo generated law horizontally, through communal participation and consensus. Their systems were **decentralized, deliberative, and restorative** in emphasis.

### 1.3.1 The Gurage Systems: *Ya Joka* and *Ye-Gordena Sera*

The Gurage, an ethnolinguistically complex group, developed sophisticated self-governing institutions to manage internal order amidst a caste-like social hierarchy.

**Ya Joka (Sebat Bet Gurage):** Meaning «place of the Podocarpus tree,» *Ya Joka* was the general assembly and supreme judicial council. Disputes were heard publicly, with elders (*shimagele*) mediating. A unique feature was the *Yemsseye Dane*—a small, ad-hoc committee of respected men who would withdraw from the public debate, deliberate in private, and return with a binding verdict aimed at consensus, not merely majority rule (Shack, 1966; Bahru Zewde, 2002).

**Ye-Gordena Sera (Kistane Gurage):** This was a hierarchical council system, from the patrilineal lineage council (*Ye-Abotold Shengo*) to the village (*Sabugnnat*), parish (*Ye-Ager Shengo*), and finally the all-Kistane assembly (*Ye-Gordena Shengo*). Each level had jurisdiction over disputes of corresponding gravity, with appeals moving upward. The system balanced kinship solidarity with territorial governance.

**Law enforcement** was social and spiritual, not carceral:

- **Gurda:** Moral obligation and social pressure to conform.
- **Yeka:** Geometric hospitality—a transgressor who refused a judgment would be visited by an ever-increasing number of «guests» he was obliged to feed, imposing economic and social shame.
- **Ostracism:** Complete social and economic boycott, the ultimate sanction.
- **Berche:** The fear of spiritual curse for false oath or transgression.

Capital punishment was rare. For murder, exile and compensation were preferred, followed by a formal reconciliation (*gudda*) ceremony to restore social harmony. Justice aimed at **reintegrating the offender and healing the community**, not just punishing the act.

### 1.3.2 The Oromo *Gadaa* System: A Cyclical Constitution

The Oromo *Gadaa* system represents perhaps the most

elaborate indigenous African legal-political philosophy. It was a **time-based, generational system** of governance where power rotated every eight years among age sets (*luba*).

**Legislation:** The *Coffee* (assembly) was the sovereign legislative body. Laws (*seera*) were proclaimed, revised, or reaffirmed at the eight-year transfer of power (*buttaa*). The process involved widespread deliberation. The *Abba Seera* (father of law) recited existing laws, while the *Abba Gadaa* (political leader) proclaimed new ones (Baxter & Almagar, 1978).

**Adjudication:** A separate judicial branch (*Jilba Sadeen*) existed. Courts were hierarchical (*Shanachaa, Bokku, Odaa*), with the *Odaa* (the sycamore tree, a symbol of peace) serving as the supreme court. Proceedings were public, reliant on oratory, witness testimony, and oath-taking. Judges (*hayyuu*) were elders knowledgeable in custom.

**Philosophy:** The system embodied **checks and balances**, separation of powers, and popular participation long before European contact.

The subsequent history of Ethiopian law is, in essence, the story of the state's relentless, and never fully successful, attempt to unify this mosaic under a single, sovereign authority.

## 2. UNIFICATION & MODERNIZATION, 1907–1974: THE IMPERIAL PROJECT OF LEGAL CODIFICATION

### 2.1 Introduction: The Imperative of Centralization

The period from 1907 to 1974 represents the decisive, state-driven campaign to forge a modern, unified Ethiopian nation-state through law. This project was born of geopolitical necessity and internal consolidation following Emperor Menelik II's military expansions, which by the late 19th century had created an empire of stunning ethnic and legal diversity. The fundamental contradiction facing the Solomonic state was this: **how to govern a vast, heterogeneous territory using a legal system that was parochial, unwritten, and personalistic**. The answer was a deliberate, if often inconsistent, program of legal modernization that sought to transplant European-style legal institutions and codes onto Ethiopian soil while preserving the absolutist core of imperial power.

This phase can be divided into two distinct eras: the foundational, ad-hoc efforts under Menelik II and his successors (c. 1907–1935), and the intensive, systematic codification under Emperor Haile Selassie I, spanning the pre-Italian (1930–1935) and post-liberation (1941–1974) periods. Throughout, the process was characterized by a central tension: the coexistence of **rhetorical modernity** (constitutions, codes, courts) with persistent

**traditionalism** (imperial prerogative, the *Zufan Chilot*, customary pluralism).

### 2.2 Menelik II and the Genesis of the Modern Bureaucratic State (c. 1907–1913)

Menelik II is rightly credited as the architect of modern Ethiopia, not only in its territorial shape but also in its administrative skeleton. His legal reforms were pragmatic, incremental, and aimed primarily at strengthening central control and facilitating interaction with European powers.

#### 2.2.1 The 1907 Cabinet and the Ministry of Justice

The seminal act was the October 1907 announcement of a Council of Ministers, modeled loosely on European cabinets. Among these was the *Yefirid Minister* (Minister of Judgment), later the Ministry of Justice. This was a revolutionary shift from justice as a personal function of the monarch and his vassals to a **bureaucratic function of the state**. The Ministry was tasked with "ensuring fair administration of justice" and supervising courts, though it tellingly combined executive and judicial review powers from its inception. Its department of *Yefirid Mirmira* examined lower court judgments for legal compliance, signaling a move towards standardized justice (Haile, 2007).

#### 2.2.2 Early Legislation: Proclamations as Tools of Specificity

Menelik's legislation (*awaj, tiza*) was not systematic codification but responsive statecraft. Proclamations addressed immediate, discrete problems:

**Monetary Policy:** Forcing acceptance of new currency (Haile, 2007).

**Public Order:** Establishing a police force (1901 E.C.) and urban curfews to combat banditry (*shiftas*) and disorder.

**Social Policy:** Reversing Yohannes IV's forced conversions and tobacco bans to foster unity, and issuing edicts against discrimination towards occupational castes (Paulos Gnogno, 1984 E.C.).

**Territorial Sovereignty:** The 1908 Klobukowski Treaty with France, while granting extraterritorial consular courts, was a strategic diplomatic engagement that formalized Ethiopia's international legal personality, albeit at a cost to full sovereignty.

These laws were disseminated via public readings in markets and churches, a traditional practice now serving a modernizing agenda. They represented a shift from law as immutable custom to law as the **will of the sovereign**, applicable uniformly across his domain.

#### 2.2.3 Judicial Reorganization: A Hybrid Hierarchy

Menelik regularized a five-tier court system that blended traditional titles with a nascent state structure:

- Local Courts (*Mislene, Chiqashum, Balegult*): For minor civil matters.

- *Yeshalega* (Womber) Courts: For appeals and minor criminal cases.
- Central *Yemengist Womber Chilot* (the «Court of Twelve Judges»): A new appellate layer in Addis Ababa.
- *Afe Negus Chilot*: The Minister of Justice as a high court judge.
- Imperial *Zufan Chilot*: The Emperor as supreme arbiter.

This structure was crucial. It created **formal avenues of appeal to the center**, drawing litigation away from regional nobles and into the imperial orbit. However, the system remained porous and inefficient; litigants could appeal seemingly endlessly, and case backlogs were immense even in this early period (Haile, 2007).

### 2.3 Haile Selassie I: Codification as the Engine of Modernity

Haile Selassie's reign transformed Menelik's ad-hoc foundations into a comprehensive, ideological project. Law became the primary vehicle for presenting Ethiopia as a civilized, sovereign state to the world while simultaneously consolidating absolute power at home.

#### 2.3.1 The 1931 Constitution: Modern Façade, Autocratic Core

Ethiopia's first written constitution was a landmark of symbolic modernity. Drafted with the aid of European advisors, it introduced a bicameral parliament (Senate and Chamber of Deputies) and the formal language of separation of powers. In reality, it was an instrument of **autocratic consolidation**. As Teklehawaryat argued, its primary mission was "breaking the power of the powerful *Rases*" (Haile, 2007).

**Imperial Supremacy:** All power flowed from the Emperor. Parliament met irregularly, and could only discuss, not veto, imperial decrees. Its members were *Amakariwoch* (counselors), not representatives.

**Legal Hierarchy:** It distinguished between Statutes (approved by Parliament), Decrees (imperial emergency measures), and Orders (executive acts), formalizing a legislative pyramid capped by the Emperor's will.

The Constitution's true significance was **ideological and diplomatic**: it provided a modern legal fig leaf for absolutism, aimed at frustrating colonial powers' "civilizing mission" pretexts and securing Ethiopia's admission to the League of Nations.

#### 2.3.2 The 1930 Penal Code: The First Modern Code

This code, though justified as a "revision" of the *Fetha Negast*, marked a decisive break. It replaced religious and customary penal standards with a **secular, systematic, and graduated** list of crimes and punishments. Severity could be modulated by the social status of the offender, a feudal vestige, but the principle of *nulla poena sine lege* (no punishment without law) was introduced. It was a tool for social control, particularly in suppressing banditry and dissent.

#### 2.3.3 The Post-1941 "Second Phase": Systematic Codification

The restoration of Haile Selassie's regime after the Italian occupation (1941–1974) saw the most intensive legislative activity in Ethiopian history. The driving forces were:

**The Imperative of Sovereignty:** To eliminate the humiliating extraterritorial rights (*capitulations*) still enjoyed by foreign powers.

**The Challenge of Eritrea:** The 1952 federation with Eritrea, which had a more developed legal system, created pressure for legal modernization to legitimize Ethiopian dominance.

**A Development Ideology:** Law was seen as an instrument to catalyze economic and social progress along capitalist lines.

##### Key Institutional Developments:

- ***Negarit Gazeta* (1943):** The official government gazette. The very name—»Drum Gazette»—encapsulated the fusion of tradition (the drum proclaiming law) and modernity (the printed state bulletin). It was the mandatory medium for promulgation, creating a **unified, official source of law**.

- **The Codification Commission:** Haile Selassie's speech to this commission revealed the project's philosophy: Ethiopia must integrate with the «larger world community» and adopt «the best that they respond and can be adopted to the genius of our particular institutions» (Haile, 2007). The Commission, composed of Ethiopian notables and foreign jurists (notably French and Swiss), was tasked with navigating the treacherous path between tradition and modernity.

#### 2.3.4 The Mega-Codes and Their Contradictions (1957–1965)

**The 1955 Revised Constitution:** An expanded, more sophisticated version of the 1931 document. It included a bill of rights but rendered them void by affirming the Emperor's sacred, irrefutable, and absolute power. It entrenched Orthodox Christian supremacy and formalized male-only Solomonic succession, legally encoding **religious and gender hierarchies** (Haile, 2007).

**The 1957 Penal Code:** Drafted by Swiss professor Jean Graven, it was a progressive code for its time, emphasizing rehabilitation and individual responsibility. Yet, Parliament insisted on retaining **flogging** as a traditional deterrent. It was a clear import—primarily from the Swiss Penal Code of 1937—but selectively indigenized.

**The 1960 Civil Code:** The crown jewel of the project, drafted by the renowned French comparative jurist René David. It aimed to provide a unified framework for private law. Its approach to custom was the defining contradiction:

**Article 3347:** This notorious article stated that «in conformity with [this] Code,» all prior laws were repealed. This was interpreted by centralizing modernists as abolishing customary law.

• **Article 3348 & Practice:** It protected rights acquired under prior laws. More importantly, in practice, the Code created **legal dualism**. As noted in the thesis, it was designed to apply first to the “developed sections of the highland population” (p. 60). In vast rural areas, customary laws on marriage, land, and succession continued *de facto*. The state tacitly accepted this, allowing *de facto* unions and elders’ arbitration to persist. The Code thus did not unify law but **stratified it**, creating a modern, urban legal sphere superimposed on a persistent customary substratum. This was not just an *accidental* gap but a *pragmatic state tactic*: imposing modern law where it was useful (urban centers, commerce) while avoiding the immense social cost of eradicating customary law in rural strongholds.

**The Commercial (1960) and Maritime Codes:** Almost entirely foreign transplants (Italian, German, international conventions), designed to facilitate Ethiopia’s integration into the global capitalist economy. They had the weakest connection to indigenous legal thought.

### 2.3.5 The Justice System in Practice: The Persistence of the *Zufan Chilot*

Despite the new codes and courts, the heart of the imperial justice system remained the **personalized, extra-legal authority of the Emperor**. The *Zufan Chilot* continued to operate, not as a court of law but as a court of equity and prerogative. Analysis of its records shows:

Cases were decided by **political and administrative expediency**, not legal doctrine.

The Emperor acted as a **fount of charity** (granting money, medical aid) and a **political manager** (settling land disputes among elites).

The ritual of the *Chilot*—with its strict protocol, recited oaths, and the *Afe Negus* as the Emperor’s mouthpiece—reinforced the sacred, paternalistic image of the monarch as the ultimate source of justice (Haile, 2007).

This created a fundamental dissonance: a modern, codified legal system existed on paper, while in practice, the **rule of law was subordinate to the rule of the Emperor**.

### 2.4 Foreign Influence and Sovereignty: A Negotiated Modernity

Legal modernization was inextricably linked to foreign power.

**Pre-1935:** French legal influence was predominant, exemplified by the 1908 Treaty and the advisors who helped draft the 1931 Constitution.

**Post-1941:** British influence was paramount. The 1942 Anglo-Ethiopian Agreement gave Britain overwhelming control over security, finance, and the judiciary (even appointing British judges to the High Court). This was a **neo-colonial imposition** justified by wartime alliance. The «Evacuation of Italians Proclamation» (1942) handed extraordinary police and judicial powers to British military command.

**The Codifiers:** The substantive law was shaped by European jurists (David, Graven). The Codes were acts of **legal transplantation**, albeit with conscious, if limited, efforts at “Ethiopianization” through the Codification Commission’s debates—e.g., debates over permissible kinship for marriage reflected tensions between Amhara custom and Oromo practices (Haile, 2007).

### 2.5 Conclusion: An Ambiguous Legacy

The imperial legal project (1907–1974) was a monumental, state-building exercise of profound ambiguity. It succeeded in creating the **institutional shell of a modern legal state**: a hierarchy of courts, a set of sophisticated codes, and a formal constitution. It was instrumental in abolishing extraterritoriality and presenting Ethiopia as a sovereign equal in the international community. However, it failed in its core unifying and modernizing missions because of inherent contradictions:

**Modern Form vs. Autocratic Substance:** The codes and constitution were undermined by the persistence of the *Zufan Chilot* and the Emperor’s absolute power. The «rule of law» was never allowed to threaten the «rule of the king.»

**Unification vs. Pluralism:** The Civil Code, rather than eradicating custom, institutionalized a new form of legal pluralism, creating a gap between state law and lived experience.

**Imported Models vs. Social Reality:** The foreign-inspired codes often existed as «law in books,» with weak penetration into the legal consciousness of the majority rural populace. Justice in the lower courts remained slow, corrupt, and influenced by local power structures (Geraghty, 1969).

Thus, by 1974, Ethiopia possessed a **dual legal reality**: a superficially modern, codified system serving the state and urban elites, existing alongside resilient realms of customary practice and personalized imperial authority. This fragile and contradictory edifice would be violently swept away by the 1974 revolution, which sought not to fulfill the modernizing promise of the codes, but to obliterate the entire imperial order and replace it with a radically different legal ideology.

## 3. THE DERG ERA (1974–1991) – THE SOCIALIST LEGAL REVOLUTION

### 3.1 Introduction: Law as an Instrument of Class Struggle

The overthrow of Haile Selassie’s imperial regime in 1974 by the Marxist-Leninist *Derg* (Coordinating Committee of the Armed Forces, Police, and Territorial Army) marked a radical rupture in Ethiopian legal history. The *Derg* viewed law not as a framework for justice or social harmony, but as a **superstructural instrument of the**

**ruling class** that had to be smashed and reconstructed to serve the goals of the socialist revolution. The period was characterized by the systematic dismantling of the imperial legal order, its replacement by «people's justice,» and the subordination of all legal institutions to the single-party state. This was a transition from the imperial «rule by law» to a revolutionary «rule *through* law»—where law became a direct tool for enforcing ideological orthodoxy, economic transformation, and political terror.

### 3.2 Dismantling the Imperial Legal Order (1974–1976)

The Derg's initial legal acts were destructive, aimed at eradicating the feudal and capitalist foundations of the old state.

**Nationalization of Land and Key Sectors (1975):** The **Rural Land Proclamation** of 1975 was the cornerstone of the revolution. It abolished private ownership of land, declaring it «the collective property of the Ethiopian people» under state control. This single act dismantled the economic base of the feudal aristocracy and the imperial state itself. Similar proclamations nationalized all major industries, financial institutions, and urban rental properties (*Urban Land Proclamation*). Legally, this represented the **erasure of the core concepts of the Civil and Commercial Codes**—private property, contract, and inheritance—rendering vast portions of Haile Selassie's codification project obsolete.

**Abolition of the Monarchy and Imperial Institutions:** The monarchy, the nobility, and the 1955 Revised Constitution were abolished by decree. The *Zufan Chilot*, the Ministry of Pen, and other symbols of imperial justice were dissolved. The Supreme Imperial Court was replaced by a Supreme Court answerable to the Provisional Military Administrative Council (PMAC).

**Suspension of the Legal Profession:** The Ethiopian Lawyers' Association was dissolved, and many judges and lawyers from the old regime were purged, imprisoned, or fled. Legal education at Haile Selassie I University (now Addis Ababa University) was disrupted and reoriented towards Marxist-Leninist doctrine.

### 3.3 Constructing “People's Justice”: The **Kebelle** and **Peasant Association Courts**

To replace the “bourgeois” imperial judiciary, the Derg created a parallel system of **lay adjudication** designed to be accessible, swift, and ideologically pure.

**Kebelle (Urban Dwellers' Association) Courts:** Established in every urban neighborhood, these courts were staffed by elected, politically vetted residents with no formal legal training. Their jurisdiction covered a wide range of civil disputes and minor crimes.

**Peasant Association Courts:** The rural equivalent, established under the 1975 land reform, handled local disputes within the new agricultural collectives.

These courts were lauded as embodying “**socialist legality**”—justice by the people, for the people. In practice, they served as instruments of social control and ideological indoctrination at the grassroots level. Procedures were informal, appeals limited, and outcomes often dictated by local Derg cadres or the demands of revolutionary campaigns. Their justice was substantive (focused on the class background of litigants) rather than procedural, inverting the formalist ideals of the previous codes (Brietzke, 1982).

### 3.4 The 1987 Constitution: Legalizing the Party-State

After over a decade of rule by military decree, the Derg promulgated the **Constitution of the People's Democratic Republic of Ethiopia (PDRE)** in 1987. This document marked the formal transition from military rule to a single-party state under the Workers' Party of Ethiopia (WPE).

• **Supremacy of the Party:** The Constitution declared the WPE the «leading force of state and society.» All state organs, including courts, were to operate under its guidance. This constitutionalized the **erosion of judicial independence**, making judges agents of the party line.

• **Centralized Unitarism:** It abolished the faint federal tendencies seen in the imperial handling of Eritrea, establishing a highly centralized unitary state with ethnically-based administrative regions possessing no real autonomy.

• **Socialist Rights:** It contained a list of socioeconomic rights (to work, education, health) but subordinated them to the «interests of the people and the revolution.» Civil and political rights were severely circumscribed.

The 1987 Constitution was a classic example of **socialist constitutionalism**: a document meant to codify and legitimize the existing power structure, not to limit it. It created a facade of legal order over a system built on coercion.

### 3.5 The Machinery of Terror: Special Courts and the Red Terror

Beneath the structures of “people's justice” operated a parallel system of **political justice** designed to eliminate opposition.

**The “Red Terror” (1977–78):** This was a period of **state-sanctioned, extra-legal violence** orchestrated by the Derg against rival leftist groups (notably the Ethiopian Peoples Revolutionary Party - EPRP) and real or perceived “counter-revolutionaries.” Thousands were summarily executed by *Kebelle* defense squads or security forces without any pretense of legal process. Law was suspended in favor of revolutionary violence.

**Special Military Courts and the Special Prosecutor's Office:** Established to try «economic sabotage,» «anti-revolutionary activities,» and other political crimes. These courts operated with **military**

**procedure**, limited rights of defense, and imposed harsh sentences, including execution. They were a legalized instrument of political repression, giving a veneer of judicial process to the elimination of dissent (Tiruneh, 1993).

### 3.6 The Fate of Customary and Religious Law

The Derg's ideology was hostile to all forms of "backward" particularism. **Customary law** was denounced as feudal and regressive, and its official recognition was withdrawn. In practice, it persisted in remote areas where state institutions were weak, but it lost any state sanction. **Islamic and religious family laws** were also suppressed in favor of a secular, state-centric vision of social organization. The *Kadis' Courts* lost their official standing, though they continued to operate informally within Muslim communities.

### 3.7 Conclusion: The Legacy of Socialist Legality

The Derg's legal revolution left a deep and ambiguous legacy:

- **Destruction of Institutional Continuity:** It severed the link to the imperial legal tradition and professional judiciary, creating a generation of legal personnel trained in ideology rather than jurisprudence.
- **Statization of Social Life:** By nationalizing property and politicizing justice at the neighborhood level, it extended the reach of the state into spheres of life previously governed by custom, market, or family.
- **Culture of Legal Instrumentalism:** It entrenched the idea of law as a malleable tool of state policy, undermining concepts of legal neutrality, predictability, and rights-based individualism.
- **Centralized Unitarism:** Its brutal suppression of ethnic nationalism, particularly in Eritrea and Tigray, created the very grievances that would fuel the ethno-nationalist movements that ultimately overthrew it.

The Derg's legal project was, in the end, a failure. Its attempt to impose a homogenizing, class-based socialist legality collapsed under the weight of economic ruin, famines, and relentless armed insurgencies. Its demise in 1991 opened the door for a new, radically different constitutional project that would seek to manage diversity not through class unity, but through explicit ethnic pluralism.

## 4. THE FEDERAL DEMOCRATIC REPUBLIC (1991–PRESENT): CONSTITUTIONAL PLURALISM AND ITS DISCONTENTS

### 4.1 Introduction: From Revolutionary to Constitutional Legitimacy

The victory of the Ethiopian People's Revolutionary Democratic Front (EPRDF) coalition in 1991 initiated

Ethiopia's most profound constitutional experiment since Menelik's unification. The new order explicitly rejected both the imperial model of assimilationist centralization and the Derg's violent unitarism. Its foundational principle, derived from the EPRDF's Marxist-Leninist origins reworked into a pragmatic governing ideology, was **ethnic federalism**. The 1995 Constitution of the Federal Democratic Republic of Ethiopia (FDRE) attempted to reconstruct state legitimacy by legally recognizing and institutionalizing ethnic diversity to manage it. However, this radical constitutional blueprint operated within the de facto one-party framework of the EPRDF, creating a fundamental tension between text and practice. This era is defined by the tension between a liberal-pluralist constitutional text and an **authoritarian-centralist political practice**.

### 4.2 The 1995 Constitution: A Radical Blueprint

The FDRE Constitution is one of the most ambitious and controversial in the world, establishing uncommon political-legal architecture.

- **Ethnic Federalism and the Right to Secession (Article 39):** The state is restructured into nine (initially eleven) ethnic-based regional states (*killiloch*) and two chartered cities. Article 39 grants every nation, nationality, and people the unconditional right to **self-determination, up to and including secession**. This was a direct, legalistic response to the historical grievances that fueled decades of civil war. It transformed ethnicity from a suppressed social category into the primary **organizing principle of the state**.

- **A Rigid, Parliamentary Federation:** It establishes a bicameral parliament: the House of Peoples' Representatives (lower house) and the House of Federation (upper house), the latter composed of representatives of ethnic groups, tasked with interpreting the constitution and settling inter-state disputes.

- **Comprehensive Bill of Rights (Chapter Three):** Incorporates a full range of civil, political, economic, social, and cultural rights, adhering to international human rights standards.

- **Separation of State and Religion (Article 11):** Declares the state secular, a clear break from the Orthodox hegemony of the imperial era.

- **Legal Pluralism (Article 34(5)):** Explicitly recognizes the jurisdiction of customary and religious dispute resolution mechanisms in personal and family matters, provided they are consistent with constitutional rights and accepted by the parties. This **constitutionalizes the legal pluralism** that had always existed de facto.

### 4.3 Post-1991 Legal Reforms: Building the Federal Legal State

A wave of new legislation sought to give life to the constitutional framework.

- **Revised Family Codes (2000):** Regional states enacted codes that generally set the marriageable age at

18, expanded women's rights in divorce and property, and regulated (but did not always prohibit) polygamy, representing a significant advance in gender equity, albeit unevenly implemented.

**The 2005 Criminal Code:** A major overhaul replacing the 1957 code. It modernized penal provisions, abolished the death penalty for many crimes, criminalized harmful traditional practices (e.g., FGM, child marriage), and strengthened due process guarantees. It reflects a blend of liberal humanitarian and social control priorities.

**Business and Investment Laws:** A series of pro-market laws aimed at attracting foreign direct investment and promoting private sector growth, representing a complete reversal of the Derg's nationalization policies.

**Justice Sector Institutions:** Establishment of the **Federal Supreme Court**, a **Human Rights Commission** (2000), and an **Ombudsman Institution** (2000), designed to monitor government and protect rights, though their effectiveness and independence have been heavily contested.

#### **4.4 The Reality of the EPRDF/Prosperity Party System: The Authoritarian Underside**

For nearly three decades, the constitutional framework operated under the de facto one-party dominance of the EPRDF (and since 2019, its successor, the Prosperity Party). This created a fundamental contradiction:

**Dominant-Party Federalism:** While the constitution devolved significant cultural and administrative powers to regions, the EPRDF's **democratic centralist party structure** ensured tight control from the center. Regional presidents were often party cadres, and genuine political competition was stifled.

**The Shrinking of Civic Space:** Laws were used instrumentally to maintain control. The **Charities and Societies Proclamation (2009)** crippled human rights NGOs by restricting foreign funding. The **Anti-Terrorism Proclamation (2009)** was used extensively to jail journalists, opposition leaders, and bloggers on vague charges, severely undermining constitutional freedoms of expression and assembly (Abbink, 2006).

**Judicial Dependence:** Despite constitutional guarantees of independence, the judiciary, particularly at the federal level, was widely perceived as subject to political influence from the executive and the ruling party, undermining its role as a check on power.

**Land as a Federal Control:** While regions administer land, ultimate ownership remains with the «state and peoples of Ethiopia,» a federal-level control that serves as a powerful lever of central authority.

#### **4.5 Ethnic Federalism in Practice: Achievements and Explosive Tensions**

The system yielded complex outcomes:

**Achievements:** It granted official status to numerous languages, promoted ethnic elites, and created a sense

of political inclusion for many previously marginalized groups. It provided a framework that held a fractious state together for almost 30 years.

**Persistent Tensions:** It also **politicized and hardened ethnic identities**, fueling competition over resources, boundaries, and political representation. Chronic inter-communal violence in areas like the Somali-Oromia border, Konso-Gedeo, and Benishangul-Gumuz highlighted the system's fragility. The **secession clause**, while never invoked successfully (Eritrea's secession was a pre-constitutional war outcome), loomed as a constant specter.

### **5. CONCLUSION: AN UNFINISHED PROJECT**

The journey from the pluralistic legal realms of pre-modern Ethiopia to the contested constitutional order of today reveals a persistent theme: the formidable challenge of institutionalizing a rule of law that binds the sovereign. Each regime—Imperial, Derg, EPRDF—crafted legal systems that reflected its ideological core, yet each, in its own way, ultimately subordinated law and judicial independence to the imperatives of political control and state survival. The imperial state codified law but exempted the Emperor; the socialist state weaponized law for class struggle; the federal state constitutionalized pluralism but constrained it with dominant-party rule. The post-1991 legal order represents the most sustained attempt to constitutionally manage Ethiopia's foundational pluralism. It created a sophisticated, hybrid system that is **simultaneously federal and unitary, liberal and illiberal, pluralist and controlling**. Its great achievement was providing a lexicon of rights and recognition for diverse communities. Its great failure—or perhaps its inherent tragedy—has been its inability to generate a shared political community that transcends ethnicity or to prevent the state's coercive apparatus from being used against its own constituent parts.

The enduring resonance of customary practices and the cyclical resurgence of centralized authority demonstrate that Ethiopia's legal history is an ongoing dialogue, not a settled narrative. The Ethiopian legal system today stands at another crossroads. It bears the layered legacies of its past: the deep roots of custom, the formal structures of imperial codification, the instrumentalism of socialist legality, and the contested framework of ethnic federalism. Whether the next phase will involve the reform, renegotiation, or rupture of the 1995 constitutional compact remains the central, unanswered question of Ethiopian law and politics. The history of Ethiopia's legal systems suggests that any sustainable future order must find a way to authentically reconcile the enduring demand for local autonomy and recognition with the imperative of a peaceful and functional common state. The central

question for the future remains whether a sustainable equilibrium can be found—one that honors the country's foundational pluralism through robust, autonomous institutions, thereby finally achieving a genuine separation of powers where law rules equally over all.

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