Non-European Imperialism and Europeanisation of Law: Complexities of Legal Codification in Imperial Ethiopia

Hailegabriel G. Feyissa*

Abstract
This article focuses on the European standard of civilisation regarding domestic legal systems and its application in imperial Ethiopia. It establishes a link between European legal imperialism, Abyssinian imperialism, and imperial Ethiopia’s domestic legal regime overhaul. More specifically, it examines imperial Ethiopia’s response to charges of inadequate domestic legal regime (notably, civil codification) and its relationship to the ideological views and interests of the Abyssinian elites concerned with the consolidation of a unique Horn of African empire in the shadow of semi-colonialism. It argues that civil codification in imperial Ethiopia was embedded in an imperialism bent on expanding the Abyssinian image of Ethiopia into the juridical realm. The 1960 Ethiopian Civil Code, which did not make concessions to non-Orthodox Christian gobbled of imperial Ethiopia’s peripheries, is a pronouncement of Abyssinian paramountcy in imperial Ethiopia. By showing the 1960 Ethiopian Civil Code, imperial Ethiopia’s most recognisable response to European legal imperialism was reflective of Abyssinian imperialism, not just its semi-colonialism, the article highlights the importance of considering the multiple historical (imperial) contexts for semi-colonial polities’ responses to European legal imperialism.

Key words
semi-colonialism; Abyssinian imperialism; standard of civilisation; extraterritoriality

1 Introduction
The Ethiopian Empire - known officially as Abyssinia for much of the first half of the 20th century - emerged in its present territorial shape during the scramble for the Horn of Africa in the late 19th century.¹ As it entered the 20th century system of international relations dominated by European powers, the Ethiopian Empire hardly resembled its distant frontrunner, historic Abyssinia, that dominated the northern half of Ethiopia

* LLB, LLM, PhD. Former Lecturer of Law, Addis Ababa University, Ethiopia. My thanks to the TWAIL Review Editorial Collective and the anonymous reviewers. Any errors in the text are mine.

for centuries. Its victory over Italy at Adwa (in the north) in 1896 and successful competition for territories with Europeans (in the south) meant that Ethiopia was itself a smaller empire that was subjected to the informal imperialism of larger empires. Seen from the point of view of the inhabitants of the Ethiopian empire, their escape from formal European colonialism did not just mean semi-colonialism, that is informal economic, political, and legal controls by European states (particularly France and Britain). It primarily involved subjection to a non-European imperial entanglement, of which European semi-colonialism remains understudied.

Focusing on a major legal codification project that many consider as Ethiopia’s tardy response to semi-colonialism, this article shows the convergence of European and non-European imperialism through specific legal practices. It argues that civil codification in Ethiopia was embedded in imperialism committed to expanding the Abyssinian image of Ethiopia into the juristic realm. The 1960 Ethiopian Civil Code is an articulation of Abyssinian supremacy in imperial Ethiopia. It did not make concessions to non-Abyssinian Ethiopians, particularly the non-Orthodox Christian gebbars of imperial Ethiopia’s peripheries. The code is an official statement of what counts as modern and Ethiopian are legal texts from historic Abyssinia garbed in European forms. The peripheral subjects were written out. Imperial Ethiopia’s most recognisable response to European legal imperialism was thus reflective of Abyssinian imperialism, and not just semi-colonialism. This article contributes to the literature on Ethiopia’s encounter with European standards of civilization in the 20th century. As illustrated below, existing scholarship is mainly produced by western scholars. These scholars focus on the issue of slavery and Ethiopia’s admission to the League of Nations with little or no regard to Ethiopia’s own imperialism that informed imperial Ethiopia’s responses to European legal imperialism. This paper attempts to remedy this gap in the literature through an examination of Ethiopia’s encounter with European standards of civilization from the perspectives of the local elites and subjects of the Ethiopian Empire. By doing so, I also confirm the importance of emerging perspectives that call for a turn to the Global South as a site of knowledge production (and contestation), to a better understanding of Third World states’ past and present encounters with international law.²

In this paper, I use ‘semi-colonial Ethiopia’ and 'imperial Ethiopia’ interchangeably to refer to the Horn of African polity, whose responses to European legal imperialism is the object of this study. Imperial Ethiopia can be distinguished from ‘civilised’ members of the family of nations of the early 20th century (e.g. Italy, France, and Britain). This African empire was subjected to European control through

various technologies of informal imperialism. As a result, it is often compared to non-European countries that retained their formal sovereignty during the ‘age of empire.’

Imperial Ethiopia is therefore conceptualised as a semi-colony of Italy, France and Britain. The markers of imperial Ethiopia’s semi-coloniality are the extension of judicial and legislative powers of European states into Ethiopia (extraterritoriality), the control of economic and financial sectors by Europeans (including their colonial subjects), absence of autonomy in decision-making regarding the appointment of foreign advisors or the imposition of tariffs on imported goods. The precariousness of imperial Ethiopia’s semi-colonial status can be discerned from its relegation to a colony of Italy (1936-1941) and the significant role of the British after Ethiopia’s liberation from Italy in 1941. The relationship between Britain and Ethiopia in the 1940s and 1950s has been described as ‘de facto’ protectorateship. This involved a British military presence in Ethiopia until the mid 1950s. These controls were often justified by a selective and fluctuating standard of civilisation (see section A below for more detail). The semi-colonial polities responded to these standards of civilization with a view to attaining autonomy in decision-making in various fields, including legislation and adjudication of disputes involving Europeans.

I have thus far signalled to my interest in the combined effects of European and Abyssinian imperialism on the making of Ethiopia’s legal system. I have also outlined the markers of semi-colonialism in Ethiopia. What remains is a brief description of what I mean by Abyssinian imperialism, before delving into the central claims that are pursued in this paper. Abyssinian imperialism here refers to the non-European imperialism that transformed the state-society relationships in the Ethiopian Empire. This process was arguably more important than the largely indirect colonial

---


5 Feyissa (2016).


relationship between imperial Ethiopia and European imperialist powers. As a socio-political process, it was unleashed by the expansion of Abyssinian rule beyond the northern half of today’s Ethiopia where various non-Abyssinian kingdoms, sultanates and polities maintained autonomous existence. An important marker of Abyssinian imperialism in semi-colonial Ethiopia was the nefagna-gebbar system, a colonial landholding system that facilitated the exploitation of the Indigenous inhabitants of yeqign agber (‘conquered territory’) in southern Ethiopia in the hands of the Abyssinian ruling class. I use peripheries to refer to southern parts of the Ethiopian Empire conquered by Abyssinians.

The argument that imperial Ethiopia’s response to European legal imperialism was shaped by Abyssinian imperialism is made in four stages. The next section reviews international legal scholarship’s renditions of European legal imperialism in imperial Ethiopia and highlights literature, both then and now, that focused on slavery to describe Ethiopia’s ‘civilisational’ journey. This scholarship however rarely engages with the history of Abyssinian imperialism. Section B examines the unequal treaties semi-colonial Ethiopia entered into with European powers and the specific provisions detailing Ethiopia’s domestic overhaul of the legal system. This section documents the scope of European legal imperialism in semi-colonial Ethiopia as broader than what is described in the existing literature on the encounter between semi-colonial Ethiopia and imperialist Europe during the League of Nations. It also links the 1960 Ethiopian Civil Code, a well-known symbol of imperial Ethiopia’s legal modernisation projects of the 1960s, to imperial Ethiopia’s semi-colonialism. In the penultimate section, I show that the 1960 Ethiopian Civil Code does not only reflect imperial Ethiopia’s semi-colonialism, but also Abyssinian imperialism.


2 Imperial Ethiopia, Semi-colonialism, and European Standards of Civilisation

In his influential text, The Standard of ‘Civilization’ in International Society, Gerrit W. Gong argues that there were five preconditions that had to be fulfilled for a non-European country to be admitted to the family of ‘civilised nations’. These standards concerned (1) the guaranteeing of basic rights, especially of foreign nationals, (2) political organisation, (3) adherence to international law and maintenance of a domestic legal regime guaranteeing legal justice for foreigners and natives alike, (4) diplomatic interchange and communication, and (5) the elimination of ‘uncivilised’ practices (e.g. polygamy and slavery). Gong also documents the experience of select former semi-colonial polities (including Ethiopia) with these standards of civilisation during the 19th century and early 20th century.

Ethiopia’s admission to the League of Nations was conditional upon the abolition of slavery. As a result, the assessment of Ethiopia’s experience with Gong’s fifth criteria dominate scholarly discussions regarding European legal imperialism in Ethiopia. The struggles over the question of the abolition of slavery and the slave trade during Ethiopia’s admission to the League of Nations in the 1920s and its relationship to what came to be known as the Abyssinian Crisis of the 1930s have distracted scholars from the fact that before and after the League of Nations, the focus of European legal imperialism in Ethiopia was on the Europeanisation of the Ethiopian legal system, and not on the abolition of slavery. Therefore, semi-colonial Ethiopia’s experience with standards of civilization, other than the abolition of slavery and the slave trade, remain marginal. This is especially the case in regard to international law (and international relations) scholarship on European legal imperialism vis-à-vis semi-colonial Ethiopia. Despite including Abyssinia as one of his cases of the conditional entry of non-European countries into the extending European International Society, Gong himself appears to suggest that early 20th century Ethiopia’s status as a civilised nation or European powers’ intervention into its domestic affairs were primarily based on the criteria of abolition of slavery and the slave trade.


\[15\] Ibid.

\[16\] Ibid, 97-237.


Similarly, Jean Allain has studied Ethiopia’s experience with the abolition of slavery as a standard of civilisation and its role in ‘the emergence of slavery as the ‘first’ human rights given voice internationally.’¹⁹ Allain appears to hold the view that 1920’s Ethiopia met all but the fifth standard of civilization identified by Gong.²⁰ However, as I will elaborate below, imperial Ethiopia’s encounter with European standards of civilisation was not limited to Gong’s fifth criterion. Historical scholarship on the emergence, function, and abolition of extraterritoriality in semi-colonial Ethiopia has long suggested that imperial Ethiopia’s status as a ‘civilised’ nation was also assessed on the third and perhaps the most consequential criteria from the point of view of the Abyssinian ruling elites: the standard pertaining to domestic legal regime.²¹

The question of the abolition of slavery was pivotal to the League of Nations’ debate over Ethiopia’s admission and the periodic assessment of whether Ethiopia conformed to the fluctuating standard of civilisation set by Europeans during the Abyssinian Crisis. Focus on this theme undeniably contributed to the current understanding of the role of early 20th century international law in facilitating European intervention in, and war on, the ‘less-than-civilised’ Ethiopia. Nevertheless, attention to imperial Ethiopia’s experience with other standards of civilisation contributes to our understanding of the multifariousness of European legal imperialism in semi-colonial Ethiopia and the complexity of imperial Ethiopia’s responses to it that were not always driven by the desire to be admitted to the League of Nations or the demands of the Abyssinian Crisis of the 1930s.

Recently, there has been a growing body of critical scholarship on the role of European legal imperialism and semi-colonialism in the universalisation of international law,²² the development of distinctive forms of nation building,²³ the diffusion of capitalism,²⁴ and the consolidation of non-western imperialism.²⁵ There are also calls for knowledge production from below including careful examinations of


²⁰ Ibid, 216.


²⁵ Nita Tzouvala, “And the laws are rude... crude and uncertain’: extraterritoriality and the emergence of territorialised statehood in Siam’ in Daniel S. Margolies et al (eds), The Extraterritoriality of Law: History, Theory, Politics (Routledge, 2019) 134, 142.
coerced or conditioned law reform projects in the Global South (including the 1960 Ethiopian Civil Code) from Third World perspectives. This growth alerts us to both the limits of existing literature on semi-colonialism and European legal imperialism and to the importance of further research into semi-colonial contexts like Ethiopia where non-European regional orders might have influenced engagement with European legal imperialism. For instance, through an intellectual history of Japan’s responses to a regional hegemonic order, Mohammad Shahabuddin has recently established connections between semi-colonial Japan’s responses to European legal imperialism and Japan’s historical engagement with a system of hierarchy local to the Far East. He argues that Japanese engagement with the European idea of the standard of civilisation ‘makes better sense in the context of Japanese responses to the pre-existing hierarchical regional order of the Far East.’ Similarly, in her recent accounts of the international legal personality of imperial Ethiopia, Rose Parfitt has drawn attention to the links between European legal imperialism and imperialism local to the semi-colony. Parfitt suggests that Ethiopia’s response to European imperialism was ‘hybridized’ as it was also shaped by the interests and ideologies of the Abyssinian elites. As Parfitt sets outs in her recent monograph, imperial Ethiopia’s responses to standards of civilisation during the interwar period reinscribed the ‘Abyssinian paradigm’: the narrative propagated by the Abyssinian elite and the Ethiopian Orthodox Church. Parfitt draws out the ideological nature Ethiopia’s responses to European imperialism and ‘the way in which both European and Abyssinian imperialism…have conspired against Ethiopia’s structurally subordinate peoples within the territorial boundaries of the Empire.’ This observation encourages further examination into Ethiopia’s more prominent responses to European legal


30 Parfitt (2013) 870.

31 Ibid, 849.


imperialism, including responses which materialised long after the interwar period and the Abyssinian Crisis.

My own argument incorporates this insight about the hybridity of Ethiopia’s engagement with international law, but it has a different focus. I am more interested in the examination of the convergence of European and non-European imperialism through certain legal practices than the study of the role of European imperialism in either the emergence of the international human rights regime or the diffusion of capitalist mode of production. Consequently, I reorient my attention to one of the most recognizable (at least among students of legal transfer) imperial Ethiopia’s responses to European legal imperialism: the 1960 Ethiopian Civil Code and its making. I believe such reorientation has much to reveal about the significance of Abyssinian imperialism in imperial Ethiopia’s response to the European standard of civilization. Previous studies on imperial Ethiopia’s encounter with the European standard of civilisation, most of which were produced by western scholars, seldom took issue with the non-western form of imperialism that contributed to imperial Ethiopia’s ‘hybridized’ response to European legal imperialism. Furthermore, as seen above, international legal scholars have focused on the abolition of slavery and the slave trade when studying Ethiopia’s status as a member of the expanding family of ‘civilised’ nations. In fact, some of these scholars appear to argue—if only by implication—that imperial Ethiopia was only subjected to the standard pertaining to the abolition of slavery and slave trade. This is inaccurate, since semi-colonial Ethiopia’s encounter with the European standards of civilisation was not limited to the abolition of slavery. Nor was it temporally confined to the League of Nations’ era or the interwar period. The unequal treaties imperial Ethiopia signed with its Europeans the first half of the 20th century and Ethiopia’s legal codification efforts in the 1950s and 1960s show that Ethiopia’s response to European standards of civilisation prominently featured domestic legal reforms. In turn, the content of these legal reforms indicate that they were motivated not only by concerns with Ethiopia’s encounter with European legal imperialism, but also by domestic concerns about domination over Ethiopia’s non-Abyssinian subjects.

---

34 This should not, however, be read as suggesting interests in the study of the link between European standard of civilisation and the emergence of the international human rights regime or the diffusion of capitalism are illegitimate.

35 The 1960 Ethiopian Civil Code, along with the 1995 Ethiopian Constitution, are the two Ethiopian legal texts of the 20th century that attracted the most attention among students of legal transfer. See Feyissa (2017) 14.
3 Unequal Treaties and the Question of Europeanising Imperial Ethiopia’s Legal System

Returning to Gerrit Gong’s scholarship, European standards of civilisation included the maintenance of a domestic legal system (e.g. court systems and codes of laws) modelling those in ‘civilised’ Europe. Semi-colonialism in pre-League of Nations and post-League of Nations Ethiopia appears to be more about Europeans’ concern with the domestic legal system of semi-colonial Ethiopia than the abolition of slavery and slave trade. Imperial Ethiopia’s slow and reluctant response to the demands for domestic legal reform and codification also marked its eventual escape from European extraterritoriality in the 1960s.

The history of Ethiopia’s semi-colonialism is best exemplified by the Mixed Courts of Ethiopia, which were put in place between 1908 and the 1960s. This practice started with the 1908 Franco-Ethiopian Treaty of Amity and Commerce. It ended when, following the completion of the Ethiopia’s mid-20th century codification project and the start of US-sponsored legal education, the last vestiges of British extraterritoriality (the mixed benches of the High Court and Supreme Imperial Court of Ethiopia) vanished.

The unequal treaties that semi-colonial Ethiopia signed with European powers made the abolition of extraterritoriality conditional upon the Europeanisation of its legal system. Article 7 of the Franco-Ethiopian Treaty of Amity and Commerce stipulates: ‘Until such time that the Ethiopian legal system is Europeanised, … disputes involving French citizens or its protégés will remain under French consular jurisdiction.’ Similarly, the more onerous Anglo-Ethiopian Agreement of 1942 was premised on the idea that sovereign Ethiopia, led by ‘uncivilised’ feudal lords who lacked the institutions and knowledge to protect themselves, would jeopardize the protection of subjects of ‘civilised’ nations residing in its territory. Ethiopia should, therefore, compensate for its ‘premature’ sovereignty by going through a ‘period of transition,’ in the form of British extraterritoriality.

---

37 Feyissa (2016) 132.
39 The unequal treaties the various principalities of historic Abyssinia signed with Europeans before the emergence of the Ethiopian Empire under Menelik II (r.1889-1913) are not considered here for their limited impact in the institutionalisation of European extraterritoriality in the Ethiopian Empire.
41 Feyissa (2016) 113.
42 Feyissa (2016) 119-120.
British extraterritoriality in Ethiopia (1942-1966) saw the emergence of mixed benches appended to Ethiopia’s highest courts. These benches, unlike their early 20th century equivalents, were known for their extensive application of European laws, especially English laws, and they influenced legislative developments in imperial Ethiopia during the 1940s and the 1950s. The termination of Ethiopia’s unequal treaties during the first half of the 20th century was accomplished by the overhaul of its legal system in accordance with European models, notably the adoption of a civil code drawn from the civil law tradition. There is, in fact, a stark parallel between the example of Ethiopia and other semi-colonial countries, such as Japan, Siam or the Ottoman Empire, whose admission into the family of civilised nations in the 19th century was conditioned on their adoption of domestic legal systems in accord with the legal traditions in capitalist Europe. The temporal and substantive scope of European legal imperialism in semi-colonial Ethiopia was, therefore, broader than what the existing literature on the encounter between Ethiopia and European standards of civilisations during the League of Nations’ era suggest. Although the abolition of slavery and slave trade might have been the principal criteria the League of Nations used in assessing Ethiopia’s status as a civilised nation fit for membership, Ethiopia’s subjection to European legal imperialism during the interwar period and beyond was rather marked by the unequal treaties it signed with European members of the League of Nations and the regimes of European extraterritoriality they created.

Despite the unequal treaties’ strong suggestions that imperial Ethiopia’s release from European extraterritoriality was subject to Ethiopia’s importation of European laws, imperial Ethiopia was content to only engage in half-hearted importation of European laws for much of the first half of the 20th century and to incorporate old legal codes from historic Abyssinia, into the emerging statist legal system. To the dismay of Europeans as well as a segment of the local literate classes with a longing for Japanese-style responses to semi-colonialism, efforts to import European legal codes were very slow. Ethiopian courts during the first third of the 20th century (i.e. before the Italian colonisation of Ethiopia, 1936-1941) wrote their judgments largely based on Abyssinian customs and laws. Semi-colonial Ethiopia thus remained bound by the terms of the 1908 Franco-Ethiopian Treaty of Amity and Commerce regarding extraterritoriality during the interwar period. Because imperial Ethiopia did not engage

---

44 Feyissa (2016).
45 Tzouvala (2016) 55-84; see also Turan Kayaoglu, *Legal Imperialisms: Sovereignty and Extraterritoriality in Japan, the Ottoman Empire, and China* (Cambridge University Press, 2010).
46 Feyissa (2017) 80-86.
in a domestic legal system overhaul that satisfied its European paramounts during the first three decades of the 20th century, it continued to be subjected to European informal imperialism for decades after both the abolition of extraterritoriality in other parts of the semi-colonial world and the replacement of the League of Nations by the United Nations (to which Ethiopia was one of the founding members).48

When imperial Ethiopia finally decided to proactively respond to European demands for an overhaul of its domestic legal system through, inter alia, legal codification, it was at the back of a brief but consequential period of Italian colonialism (1936-1941) and British paramountcy (1940s) that seriously undermined the African empire’s confidence over its legal system. There was a realisation on the part of the ruling elites that legal codification could not be postponed any longer, lest it continue to attract unfavourable attention and justify subjection to European extraterritoriality as semi-colonial and colonial polities were gaining independence.49 A codification commission, composed of European judges of imperial Ethiopia’s last mixed courts was set up in 1952 and European jurists were retained.50

The 1960 Ethiopian Civil Code was one of the outcomes of the codification process that took a little over a decade (1952-1965).51 Compared with civil codes imported by other semi-colonial polities as part of their response to European legal imperialism, the 1960 Civil Code was a popular object of legal transfer52 and it symbolised imperial Ethiopia’s late legal modernisation.53 However, unlike, for example, the Turkish Civil Code of 1926, it was known as a failed legal transfer.54 Furthermore, although its links to Ethiopia’s semi-colonialism were acknowledged by

48 Feyissa (2016).
49 Feyissa (2017) 95.
51 Ibid.
some students of imperial Ethiopia’s legal modernisation\textsuperscript{55} attempts to understand the 1960 Ethiopian Civil Code as imperial Ethiopia’s complex response to European legal imperialism and thereby complicate the still dominant ‘modernist story\textsuperscript{56} of the 1960 Ethiopian Civil Code remain next to none.

4 Responding to European Legal Imperialism while Preserving Abyssinian Supremacy in Imperial Ethiopia: the 1960 Ethiopian Civil Code\textsuperscript{57}

So far, I have argued that previous studies on imperial Ethiopia’s encounter with European standards of civilisation had a limited focus: the abolition of slavery and slave trade during the Ethiopian Empire’s admission to the League of Nations. I have also shown that the focus of European legal imperialism in imperial Ethiopia included the Europeanisation of the Ethiopian legal system, a prominent example of which was legal codification (e.g. the 1960 Ethiopian Civil Code). This section establishes that the Europeanisation of law in semi-colonial Ethiopia was shaped by Abyssinian imperialism. By reorienting the focus to local elites whose interest in the making of the 1960 Ethiopian Civil Code was not limited to merely responding to European demands for the Europeanisation of laws and institutions, this section elaborates on the usefulness of analysing regional historical contexts (e.g. Abyssinian imperialism) when examining European standards of civilization and imperial Ethiopia’s response to them. To do so, I use examples drawn from the making of the 1960 Ethiopian Civil Code to illustrate the point that non-European ‘imperial purposes’ \textsuperscript{58} explain complexities of semi-colonialism-induced legal codification in imperial Ethiopia.

\textit{Abyssinian imperialism and the making of the new Fetha Negast}

Imperial Ethiopia cannot solely be understood in terms of its semi-colonial relationship with European imperial powers. It should primarily be understood as a polity created as a result of a collision between the expanding Abyssinia and its


\textsuperscript{56} Feyissa (2017) 14.

\textsuperscript{57} The discussion on the 1960 Ethiopian Civil Code in this section draws upon Chapter 5 of my PhD Thesis; Feyissa (2017) 99-129. As neither the Amharic version of the draft Civil Code nor the minutes of the Codification Commission are available, I largely rely upon secondary sources in my reconstruction of the codification process. Lack of access to primary resources (which I believe reflects the low level of institutional memory in Ethiopia’s public institutions) has long been identified as one of the handicaps in research in imperial Ethiopia’s legal codification (see for example, Heinrich Scholler, ‘The Modern Codification of Ethiopian Civil Law and the Revised Family Code’ (2011) 14 Recht in Afrika 201, at 203).

\textsuperscript{58} Shahabuddin (2019) 15.
multireligious and multiethnic societies in an era of increased European incursions to the Horn of Africa. For much of the 19th century, which witnessed increased encounters with European imperialism in the Horn of Africa, historic Abyssinia was preoccupied by regional rivalries between principalities.\textsuperscript{59} While the rivalry left most of the Christian kingdoms in the northern half of historic Abyssinia exhausted, it allowed the ruler of ‘insulated’ Shewa (the southernmost principality of historic Abyssinia), Menelik II, to consolidate his power and to expand the frontiers of the Abyssinian empire into parts of the Horn of Africa where non-Christian and Muslim polities existed.\textsuperscript{60} The sovereignty of Abyssinian rulers over their new subjects was further consolidated when the borders of the new African empire were rigidified through treaties with European powers that had imperial possessions in the areas surrounding Ethiopia.

Before Italian colonialism in the 1930s, European oversight of imperial Ethiopia’s domestic legal regime remained minimal\textsuperscript{61} and the Ethiopian Empire witnessed a transformation of state-society relationships in largely Abyssinian terms. This was exemplified by the emergence of the neftenya-gabbar system.\textsuperscript{62} The neftenya-gabbar system allowed the Abyssinian ruling class, including the Abyssinian soldiers stationed in the peripheries of this non-capitalist empire, to extract tributes from the non-Abyssinian gebbar.\textsuperscript{63} Unlike the Abyssinian gebbar (whose rights and obligations were prescribed and protected by custom and law they shared with their Abyssinian governors), the non-Abyssinian gebbar had little recourse against a powerful alien landholding class.\textsuperscript{64} Believed to have helped Abyssinians keep Europeans away from their new southern frontiers,\textsuperscript{65} the neftenya-gabbar system was based on traditional Abyssinian land law notions pertaining to conquered territories and their exploitation.\textsuperscript{66} In fact, the effective imposition of Abyssinian land law in early 20th century southern Ethiopia led some commentators to draw parallels between imperial Ethiopia and European powers that took their laws and institutions to their colonies.

\textsuperscript{60} Ibid, 16-24.
\textsuperscript{61} Feyissa (2016) 133-119.
\textsuperscript{64} Ibid.
\textsuperscript{66} J. Mantel-Nieko, ‘The Division of Ethiopia into Regions According to the Native Land Typology in Use at the Turn of the XIXth and XXth Centuries’ in Joseph Tubiana (ed.), \textit{Modern Ethiopia from the Accession of Menilek II to the Present: Proceedings of the Fifth International Conference of Ethiopian Studies} (A.A. Balkema, 1980) 471.
Paul Brietzke, a critic of imperial Ethiopia’s legal transfer projects, noted that divergent normative orders that existed in peripheral parts of Ethiopia were layered by Abyssinian laws and custom before the mid-20th century legal codification. In a rare contribution to the study of the Ethiopian legal system in relation to law and development, Brietzke argued the impact of these Abyssinian laws (the most important of which pertain to landed property) on indigenous norms in the peripheries was comparable to the impact of ‘laws transplanted to the other parts of the Third World under European colonialism.

Legal codes from historic Abyssinia, particularly the *Fetha Negast*, were incorporated into the statist legal system of early 20th century Ethiopia and were relied upon by courts as major sources of law during the early decades of semi-colonialism. Originally in Arabic, the code was likely brought into Ethiopia by Egyptian Coptic priests visiting Coptic Christian Abyssinia. Purportedly in use in Abyssinia since at least the 16th century, the *Fetha Negast* contained rules on a range of secular (civil and penal) and ecclesiastical matters. Its application beyond Abyssinia was assured with the extension of Abyssinian rule to imperial Ethiopia’s new peripheries. These were gradually integrated to the centre of the new empire through, *inter alia*, dispute settlement institutions of Abyssinian origins. The rules’ general outlook was Christian and included provisions that lent support to Abyssinian imperialism. For example, a rule in the *Fetha Negast* prescribed that:

> Let every soul be subject to the higher powers. For there is no power but God; the powers that be are ordained of God…For this cause ye pay tribute also: for they are God’s ministers …Render therefore to all their dues: tribute is to who tribute is due…fear to who fear; honor to whom honor.

---


68 Ibid.


70 Abba Paulos Tzadua, *The Fetha Negast: The Law of the Kings* (Faculty of Law Haile Selassie I University, 1968) xvii.


The application of the *Fetha Negast* was not limited to Ethiopian regular courts, which were used more by Abyssinians than non-Abyssinians. The Special Court of Ethiopia (1922-1935), the mixed court established to give effect to the Franco-Ethiopian Treaty of Amity and Commerce of 1908, was known for writing judgments based on principles embodied in the *Fetha Negast* and Abyssinian customs.

Internalising the civilizing mission ideology of their time, the literate classes of semi-colonial Ethiopia joined their counterparts elsewhere in a modernist critique of state and society relationships in non-European countries. They called for an overhaul of the legal system, including the Europeanizing Abyssinian legal codes. Writing a few years after imperial Ethiopia committed itself to the Franco-Ethiopian Treaty of Amity and Commerce of 1908, Gebre Heywat Baykedagn noted the incongruence between the *Fetha Negast* and European normative orders. He called upon the leaders of the empire to hire jurists and enact a *Fetha Negast* that was compatible with European laws. The abolition of the gebbar system, its replacement with a system of private ownership of land and, more broadly, the facilitation of capitalist development were also among the prescriptions of early 20th century Ethiopian literates dubbed romantically as ‘Ethiopian Japanisers.’ These local literati, who were concerned with the unresponsiveness of Abyssinians to economic, political and social thoughts from ‘civilised’ and powerful Europe, were also cognisant of the role of law in disciplining and recreating non-Abyssinian natives after the image of their Abyssinian rulers. Baykedagn, after all, considered those ‘uncivilised’ subjects to be a lesser category of the human race in comparison to Orthodox Christian Abyssinians.

---

75 Singer (1970-1971) noted ‘almost all litigation presented to the government courts in the first half of the 20th century came from [ethnic] Amharas’ (Ibid, 311). Dispute settlement in non-Abyssinian localities instead involved native local leaders (see for example, Dena Freeman, *Initiating Change in Highland Ethiopian: Causes and Consequences of Cultural Transformation* (Cambridge University Press, 2004) 31). Hence, the legal dualism that characterised the legal systems of colonial Africa during the first half of the 20th century was also witnessed in imperial Ethiopia, where the role of colonial governors who had to rely on local leaders for the settlement of disputes between natives in the periphery was assumed by non-Europeans (the Abyssinians).


78 Baykedagn, Gebre Heywat እና ይስ ከምሉክ ከምላሸ (Emperor Menelik and Ethiopia) (Addis Ababa, 1912) 22.


80 Gebre Heywat Baykedagnሆ ያርቃ ከምሉክ ከምላሸ (State and Public Administration) (Tafari Mekonnen Printing Press, 1924) 38; Baykedagn (1912) 8-9.

81 Baykedagn (1912) 8-9.

82 Ibid.
Tedla Haile, a Belgian-educated Abyssinian who, like Baykedagn served imperial Ethiopia in various official positions, called for imperial Ethiopia to assimilate its non-Abyssinian subjects (particularly the largest of the non-Abyssinian groups, the Oromos) into Amhara and never allow them ‘to maintain their own traditional chiefs, customs… institutions, and… their language.’ The Europeanisation of law in imperial Ethiopia was, therefore, desirable for more than just its instrumentality in helping Ethiopia secure the respect and recognition of its European paramounts.

The above described prescriptions of the Abyssinian literate class, which also read as a summary of what was already unfolding in southern Ethiopia since the turn of the 20th century, indicate that legal codes (or the Europeanisation of law generally) were sought for the purposes of intensifying the violence of Abyssinian imperialism. With the promulgation of the Ethiopian Civil Code of 1960, the literate classes’ ideas for law reform, particularly a Fetha Negast compatible with European laws materialised. The Ethiopian Civil Code of 1960 was the product of a long codification process. It was drafted by René David, a French professor of comparative law, who was also a staunch advocate of legal harmonisation at the international level. The Amhara landed elites, who were protective of both Abyssinian supremacy in imperial Ethiopia and their class interest vis-à-vis the gebbars of the Ethiopian periphery, were heavily involved in this process.

Once prepared by René David, the draft was vetted by the Imperial Codification Commission and the imperial parliament. The Imperial Codification Commission was composed of Ethiopian and international actors (particularly British-sponsored lawyers who helped Haile Selassie I carry out his post-liberation legal reform). However, given that discussions during the commission meetings were carried out in Amharic, participation was limited to the Ethiopian members. These were male Orthodox Christian Amharas. The draft reviewed by the Commission was further examined by imperial Ethiopia’s parliament, ‘article by article.’ Importantly,


84 Note that the Ethiopian Civil Code of 1960 was considered by some as a new edition of the Fetha Negast. See for example, René David, ‘Sources of the Ethiopian Civil Code’ (1967) 4:2 Journal of Ethiopian Law 341, at 344.


Amhara landed elites, the primary beneficiaries of the colonial \textit{neftagyna-gebbbar} system, were overrepresented in this parliament.\footnote{Jembere (2012) 195; Christopher Clapham, \textit{Haile Selassie's Government} (Longmans, 1969) 135.} Large portions of the draft was retained. However, as illustrated below, in an attempt to expel imperial Ethiopia’s peripheral subjects from the realm of its modern law and accentuate the Abyssinian roots of imperial Ethiopia, some parts of the initial draft suffered major redrafting and/or excision.

\textit{Writing Out Gebbars of the Peripheries}

Réne David seemed to share the views of early 20\textsuperscript{th} century Abyssinian thinkers on the civilisational hierarchy between peoples within Ethiopia (Abyssinian vs non-Abyssinians). For instance, he saw his mission as drafting a civil code for ‘the more developed populations, those inhabiting the plateau of Ethiopia and Erythia [sic].’\footnote{René David, ‘A Civil Code for Ethiopia: Considerations on the Codification of the Civil Law in African Countries’ (1962-1963) \textit{Tulane Law Review} 187, at 202.} Still, he prepared a comprehensive draft that included sections that appeared sensitive to the plurality of imperial Ethiopia’s societies. For instance, the draft civil code introduced in imperial Ethiopia the innovative concept of ‘agricultural communities’ that made Book III of the Ethiopian Civil Code stand out when compared to Romano-Germanic civil codes and their forms of legal modernity.\footnote{For a comparison of the 1960 Ethiopian Civil Code with European civil codes, see Menno Aden, ‘Call for a New Ethiopian Civil Code (NECC)’ (2012). Available at \url{https://tinyurl.com/y4xx4cyj}.} However, the Imperial Codification Commission was ruthless in amputating the draft code’s chapter on ‘agricultural communities.’ The initial draft on agricultural communities was more detailed and included more than ninety articles.\footnote{Harrison Dunning, ‘Land Reform in Ethiopia: A Case Study in Non-Development’ (1970) 18 \textit{UCLA Law Review} 271, at 278.} Nevertheless, the official chapter on \textit{les communautés agraires} is light, albeit ambitious.

The idea of ‘agricultural communities’ is summarised in Article 1489 of the Civil Code, one of the handful of articles surviving the extensive revisions by the Codification Commission:

\begin{quote}
Land owned by an agricultural community such as a village or tribe shall be exploited collectively whenever such mode of exploitation conforms to the tradition and custom of the community concerned.\footnote{\textit{Civil Code of the Empire of Ethiopia, Proclamation No. 165 of 1960}, 245, \url{http://ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=52399&p_country=ETH&p_count=141} (accessed 20 August 2020).}
\end{quote}
According to David, the idea of agricultural communities was based on the USSR’s *kolkhoz* (collective farm) laws. 93 *Kolkhoz* was revolutionary Russia’s answer to ‘bourgeois’ property law that was believed to have ‘constrained many in effectively unfree peasantry.’ 94 The *kolkhoz* helped reconstitute Russian villages into thousands of collective farms/communes. But, David was clear that imperial Ethiopia would not be interested in Soviet-style land reform. As he noted in a scholarly contribution, statutes from socialist countries would not be suitable for imperial Ethiopia because of the latter’s ideological difference from socialist countries. 95 Hence, he could not have been preparing Ethiopia for Soviet-style collective farms, when modelling a chapter of Ethiopia’s civil code on the USSR’s *kolkhoz*.

Instead, the concept of ‘agricultural communities’ appears to capture David’s two ideas about codification in postcolonial Africa. First, it reflected the French comparatist’s desire to spare African land tenure systems from immediate and rigorous intervention from what he called European individualism. Second, the concept also encapsulated David’s belief about the management of Ethiopia’s legal pluralism through a reduction of ‘the most modern’ of Ethiopian customary land laws into European legal form. Embracing the anti-formalism of his time, David was suspicious of uninhibited faith in the completeness and universal cogency of Romano-Germanic codes. 96

In a conference paper he presented at the 1964 *Ibadan Conference on Integration of Customary and Modern Legal Systems in Africa*, David noted ‘traditional’ realms of life, such as land tenure, must not be interrupted immediately and extensively by laws predicated on European individualism. 97 Still, he was also of the view that diversity in customary laws should not be allowed to totally inhibit legal unification in postcolonial African states. David posited the most modern among the diverse customs must be recast via a ‘modern [rather European] legal form’ if the laws of postcolonial African states are to have national and progressive outlooks without breaking the tie with local mores and customary practices. 98 The most modern among the diverse Ethiopian

---

93 David (1967) 348.
customary land laws for David was that of the Abyssinians whose legal codes and ‘traditional’ agricultural communities were known to him. The ‘modern’ legal form via which Abyssinian customary land norms enter a civil code was ‘agricultural communities,’ a notion that, as noted, was inspired by a Soviet legal concept.

Presumably, such a notion would be welcome in imperial Ethiopia, where efforts were made to ensure the inclusion of Abyssinian norms in the legal codes of ‘modernising’ Ethiopia. However, as noted by some commentators from the 1960s and 1970s, ‘agricultural communities’ appeared to suggest more than just the inclusion of Abyssinian norms in imperial Ethiopia’s largest legal code. Arriving when internal and external push for land reform was beginning to create disquiet on the part of the ruling class, the concept of ‘agricultural communities’ promised moderate land reform. For some, it even suggested tribal autonomy in land tenure and the removal of ‘vast stretches of land in the Empire from the ordinary application of the Civil Code [that is, private ownership of land].’ Imperial Ethiopia was hardly ready for either of these developments. Before the arrival of the Civil Code in 1960, vast stretches of land in the Empire, particularly in the highland peripheries, had been converted into private property. Capitalizing on Italian colonialism’s attack on the neftegna-gebbar system, Ethiopia abolished the gudt rights (service tenement) of its ever-expanding functionaries in the periphery. However, it managed to do so by allowing former functionaries to convert to private property some (in some cases most) of the land over which they used to exercise income rights. Furthermore, the whole of Ethiopian lowland periphery, which were for long spared from the neftegna gebbar system or the ‘era of landlordism’ that followed it in other parts of the peripheries, were placed in the ‘State Domain’ under the 1955 Revised Constitution of the Ethiopian Empire. Accordingly, Ethiopia’s pastoralist territories, an arid but vast

104 John Cohen and Dov Weintraub, Land and Peasants in Imperial Ethiopia (Van Gorcum & Comp.,1975) 43.
107 Dilebo (1990/1) 222.
area that supported the lives of at least 10% of the total population of the empire, belonged to the state. The state could however, decide to hold it as a ‘private domain’ to be granted for local and foreign businesses.\textsuperscript{109} The concept of ‘agricultural communities,’ which presumably supported the primacy of the communal claims on tribal lands was, thus, against such articulations of the relationship between the empire, communities in the peripheries, and the land between them. As such, its skeletal retention in the official version of the code can plausibly be interpreted as evidence only of the continuity of imperial Ethiopia’s policies of affording ‘special protection’ to indigenous land rights of inhabitants of the Abyssinian regions of the Ethiopian Empire.\textsuperscript{110} Otherwise, its massive amputation (as well as indifference to even less profound ideas of land reform)\textsuperscript{111} is indicative of the anxieties of imperial Ethiopia that Europeanizing laws might compromise its projects of subordinating and denying the non-Abyssinian others’ claims to land. The denial of such claims was crucial to the maintenance of ‘the Shoan [Shoa Amhara] ascendancy which has been well established since the time of Menelik II.’\textsuperscript{112}

\textit{Politics of exclusion through codification}

Apart from an elaborate chapter on ‘agricultural communities,’ the initial draft included a section dealing with the relationship between the Civil Code and Islamic personal laws applied by Muslim Courts. Entitled ‘Special Provisions for Persons of the Muslim Religion,’ this section contained a total of 33 articles allowing the continuity of Sharia law rules on various family and succession matters after the Civil Code came into effect.\textsuperscript{113} Given that the point of departure for the Civil Code’s books on family and succession were generally Christian values (European or Abyssinian),\textsuperscript{114} David appears to have included this provision in the draft with the view to accommodating the values of one of the most widespread religious legal traditions in imperial Ethiopia’s periphery.\textsuperscript{115} This was significant for at least two reasons. First, the

\begin{footnotesize}
\begin{itemize}
\item[112] Dunning (1970) 289.
\item[114] Singer (1970) 99-120.
\item[115] On the predominance of Islam in parts of imperial Ethiopia’s periphery (and generally the Horn of Africa) and the uneasy co-existence between Islam and Christianity in the region before and after the advent of European
\end{itemize}
\end{footnotesize}
Civil Code was intended to become the sole source of law ‘concerning matters provided for in [it],’ replacing written and customary law previously in force in the Christian empire with a significant Muslim population.  

Second, the laws enacted as part of imperial Ethiopia’s modernization efforts were affecting the laws applied by Muslim Courts in imperial Ethiopia and Muslim Ethiopians were showing concern about the applicability of Islamic law in post-codification imperial Ethiopia.

This section that would have perhaps enhanced the symbolic inclusiveness of imperial Ethiopia’s ‘new’ Fetha Negast was rejected by Ethiopian participants of the codification process. In fact, the proposal was rejected prior to the codification process even reaching the parliament. According to legal historian Aberra Jembere, in cutting out the section on Muslim personal laws, the Codification Commission was motivated by the desire to reduce ‘the likelihood of a strong opposition from the parliament that might have led to the rejection of the entire code.’ In rejecting ‘the Special Provisions for Persons of the Muslim Religion,’ Imperial Ethiopia, which apparently wanted its civil code to reflect ‘the genius of Ethiopian legal traditions and institutions,’ appeared to have engaged in what might be called the politics of exclusion through codification.

Imperial Ethiopia’s universalisation of law through codification did not just involve the rejection of Islamic law principles or customary laws indigenous to various ethnic groups in imperial Ethiopia’s peripheries. Apart from the well documented incorporation of Abyssinian values into the personal law books of the Civil Code (Book I and Book II), it was accompanied by express reference to the Fetha Negast in the preface and the recognition of the Ethiopian Orthodox Church, as the only church with legal personality under the code. Clearly, this expressed the Christian nationalism of imperial Ethiopia. It affirmed the continued importance of Orthodox Christianity as the state religion to the definition of Ethiopianess vis-à-vis Islam that has been practiced widely among inhabitants of imperial Ethiopia’s peripheries.

---


116 Art. 3347 (1) Civil Code.


119 Preface, Civil Code.


121 Singer (1970) 99-120.

122 Art. 398 Civil Code.

123 Art. 126 1955 Constitution.
universalized text contemplated to replace, Europeanisation of law through legal codification signified the continuity of imperial Ethiopia’s policies of pushing legal traditions and institutions of the periphery further into the margins as part of a more parochial and less inclusive ‘late nation building.’

As imperial Ethiopia’s turn toward comprehensive Europeanisation of laws and the instantaneous affirmation of the Abyssinian heritage of Ethiopian identity and the sanctity of the property interests of the Amhara landed elites reached its zenith in the 1960s, protests and revolts in various corners of the empire were pushing it to the edge of a revolution that unfolded in the 1970s. One of the consequences of the political developments in the 1970s was the launch of a new round of law reform projects aimed at re-calibrating the relationship between the Ethiopian empire and its peripheral subjects. Partly inspired by law reform projects in other parts of the Third World, the law reform projects of the 1970s laid bare the struggles over imperial Ethiopia’s politics of consolidating Abyssinian imperialism through Europeanisation of domestic laws. The Civil Code’s legal concepts (e.g. individual ownership of land) that favor already-existing structures of power in landed property rights in Ethiopia’s periphery were replaced by new ones (e.g. public ownership of rural lands and peasant association) that were meant to upset such power, particularly in areas with history of the colonial neftegna gebbar system. Still, a truncated and overlaid Civil Code survives imperial Ethiopia and its successor socialist Ethiopia (1974-1991) along with the tensions and contests thereof. Post-socialist Ethiopian politics and the attendant discourses on indigenous land rights, regional autonomy, minority rights—now couched in the language of international law and constitutional law—are linked to those witnessed during the times of imperial Ethiopia. Hence, they are better

125 Dilebo (1990/1) 264-289.
126 Feyissa (2017) 161-188.
understood when examined in tandem with (the legacies of) the non-European imperialism considered here.

5 Conclusion

Imperial Ethiopia’s experience with European standards of civilisation beyond the abolition of slavery and slave trade during the League of Nation’s time has rarely been examined. Furthermore, legal scholarship on European standards of civilisation (particularly those concerning imperial Ethiopia) seldom take issue with the entanglement between European legal imperialism and non-western imperialisms. As a result, it has become increasingly important to consider alternative ways of producing knowledge about European legal imperialism in imperial Ethiopia, lest we reproduce the oversights and Eurocentrism of existing studies on European standards of civilisation and imperial Ethiopia’s responses to them.

Through a closer examination of the local elites’ role in semi-colonialism-induced legal codification in imperial Ethiopia, rather than focusing on Abyssinian slavery, this article illustrated the broader temporal and substantive scope of European legal imperialism in semi-colonial Ethiopia and imperial Ethiopia’s complex responses to it. In fact, I argued that these responses make more sense when seen in light of the encounter between Abyssinia and its non-Abyssinian subjects since the turn of the 20th century. In other words, semi-colonialism was not the only context for imperial Ethiopia’s responses to European legal imperialism. Semi-colonial Ethiopia was, like some of its semi-colonial counterparts elsewhere, a ‘smaller empire’\textsuperscript{133} that was engaged in its own ‘modern imperialism.’\textsuperscript{134} Its responses to European standards of civilisation during the 20th century were reflective of its own imperialism as much as they were of its semi-colonialism. The significant reinscription in the 1960 Ethiopian Civil Code of the views and interests of the Abyssinian political class that was building its own empire in the Horn of Africa region demonstrate this. Codification in imperial Ethiopia was the affirmation of the Abyssinian paramountcy in imperial Ethiopia as much as it was symbolic of imperial Ethiopia’s response to European standard of civilisation regarding domestic legal system.

Overall, the broader message the article hopes to impart is that there were more to legal codifications undertaken in the shadow of European legal imperialism than just subjection or resistance to European cultural and economic penetration. As this article demonstrated, what appears imperial Ethiopia’s tardy embrace of standards of civilisation set by its European paramounts emerge, when placed in its multiple

\textsuperscript{133} Laura Doyle, ‘Inter-Imperality: Dialectics in a Postcolonial World History’ (2014) 16 Interventions 159, at 162.

historical contexts, as a redecoration of a Third World imperialism through selective juristic appropriations. The article thus confirms the value of learning from the Global South\textsuperscript{135} (e.g. through approaches that center actors located in the Global South and encourage the use sources from the Global South) in the production of better knowledge about the multifarious encounter between Third World states like Ethiopia and colonial international law.

\textsuperscript{135} Gathii (2020).