

A Christian Oasis: The Role of Christianity and Custom in the Laws of Ethiopia

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Introduction

The Federal Democratic Republic of Ethiopia is unique to the African continent and the world. Until 2017, Ethiopia’s Great Rift Valley was long held out as the cradle of humanity because of the earliest human fossils having been found there.¹ With nearly three-thousand years of recorded history,² Ethiopia has a pedigree only matched by a few states. From the native population’s written accounts to the tales and descriptions of voyag-

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1. Sarah Knapton, *Human evolved 100,000 year earlier than thought and East Africa is not ‘cradle of mankind’, says experts*, THE TELEGRAPH (June 7, 2017, 6:00 PM), <http://www.telegraph.co.uk/science/2017/06/07/humans-evolved-100000-years-earlier-thought-east-africa-not/> [https://perma.cc/9QKL-7AMF].

2. See Tsegaye Beru, *Brief History of the Ethiopian Legal Systems—Past and Present*, 41 INT’L J. LEGAL INFO. 335, 335 (2013).

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ing traders,³ Ethiopia's well-documented history provides a rare glimpse into the past of a Sub-Saharan African nation, one that was allowed to develop and evolve relatively undisturbed.⁴ That is not to say that Ethiopia was isolated; rather, it is to say that the kingdom sheltered in the plateaus of the Ethiopian highlands⁵ developed in the absence of culture-deposing conquest.

Thrice have European nations entered into Ethiopia and sought to influence it, the ultimate incursion being the most successful.⁶ The Portuguese and Jesuit priests were the first to arrive to Ethiopia and did so to "save" the kingdom against rebelling Muslims, yet they overstayed their welcome when they attempted to convert the population to Catholicism.⁷ They failed on the latter score.⁸ The second and third interaction between Europeans and Ethiopians were the First and Second Italo-Ethiopian Wars. The outcome of the First Italo-Ethiopian war is arguably Ethiopia's crowning achievement. Ethiopia is one of only two countries on the African continent to have never been colonized by Europeans.⁹ This point is what makes Ethiopia so unique; it has had the ability to decide how much, or how little, it would incorporate Western institutions and values into its system,¹⁰ notwithstanding the occupation and annexation that followed the Second Italo-Ethiopian War.

3. See *id.* at 335–36.

4. See Merrill Johnson, *Ethiopia, in the Footsteps of the First Christians*, YouTube (June 5, 2011), <https://www.youtube.com/watch?v=MAUGHYzByB0>.

5. See *id.*

6. See FED. RESEARCH DIV., U.S. LIBRARY OF CONG., *ETHIOPIA: A COUNTRY STUDY* 37–38 (Thomas P. Ofcansky & LaVerle Berry eds., 4th ed. 1991) (explaining the Italian invasion, annexation, and occupation of Ethiopia and Eritrea).

7. See Steven Kaplan, *Dominance and Diversity: Kingship, Ethnicity, and Christianity in Orthodox Ethiopia*, 89 *CHURCH HIST. & RELIGIOUS CULTURE* 291, 301 (2009). Due to the combination of Portuguese conversion of Emperor Susenyos and the destruction caused by the conquest by Ahmad b. Ibrahim and his Muslim insurgents, the country rallied together, forced the abdication of the emperor, and closed itself off from outsiders. See *id.*

8. See FED. RESEARCH DIV., *supra* note 6, at 22.

9. Titus Kivite, *Liberia and Ethiopia; the never colonized African countries*, STREAM AFRICA, <http://streamafrica.com/culture/liberia-ethiopia-never-colonized-african-countries/> [<https://perma.cc/R37Q-GJ95>] (last visited Sept. 30, 2017).

10. The only other nation not colonized by a European power is Liberia. However, one cannot forget to consider that Liberia is a nation established by the United States for the purposes of repatriating American slaves. Because of their establishment by America, Liberians designed their government structure based on the American model. Compare Bairu Tafla, Review, 39 *Verfassung und Recht in Übersee / Law and Politics in Africa, Asia and Latin America* 361 (2006) (reviewing HEINRICH SCHOLLER, *ESSAYS ON ETHIOPIAN CONSTITUTIONAL DEVELOPMENT*) ((distinguishing four periods of Ethiopian legal history: the pre-Menilik era, the Menilik era, the pre-Italian-Ethiopian war era, and the contemporary period), with Titus Kivite, *Liberia and Ethiopia; the never colonized African countries*, STREAM AFRICA, <http://streamafrica.com/culture/liberia-ethiopia-never-colonized-african-countries/> [<https://perma.cc/W79R-L7AY>] (last visited Sept. 30, 2017) (documenting the relationship between the United States and Liberia, the only other African nation considered uncolonized), and 1 SIR HARRY HAMILTON JOHNSTON & OTTO STAPE, *LIBERIA* 218 (1906) (noting the American influence on the Liberian Constitution).

The saliency of Ethiopia's independence, both cultural and political, cannot be overstated; however, Ethiopia is still distinct from the other African nations by virtue of its long Christian heritage. The state is amongst the oldest Christian nations in the world. It adopted Christianity in the fourth century C.E. when Emperor Ezana of Aksum declared it the state religion.¹¹ Therefore, in one key aspect, Ethiopia is akin to Europe in that its religious history is marked by a long adherence to a monotheistic religion that is premised on strict exclusivity.¹² Given Ethiopia's Sub-Saharan identity yet Christian culture, a few questions become apparent. What effects of Ethiopia's Christian values are manifested in its legal system, both past and present; and, what is the place of customary law in a country that is markedly ethnically diverse?

The same mountainous topography that protected the early Ethiopians in the Kingdom of Axum also served as a barrier to the population; thus, to this day Ethiopia is incredibly diverse.¹³ The cultural diversity, and more importantly the customary diversity, has been the limiting factor in creating a homogenized and unified legal system.¹⁴ Like its fellow African states, the presence of numerous linguistic groups and tribes require the broad applicability of federal laws and even state laws. Therefore, Ethiopia had to develop a robust system of secular laws. Further, it has to continue to allow provisions to maintain the customary law of the other ethnicities under the current constitution.¹⁵ However, with upwards of sixty percent of Ethiopia's population identifying as Christian,¹⁶ one could conclude that customs vary little, both at present and in antiquity. This Note hopes to determine Christianity's impact on the Ethiopian legal system by comparing ancient Christian-centered legislation to modern laws in Ethiopia.

Part I of this Note will analyze the history of Ethiopia's legal system. The spread of Christianity in Ethiopia was not the product of a grass-roots movement.¹⁷ Whereas Christianity in Europe initially flourished and spread in the grass roots of the Roman empire, in Ethiopia the religion took the opposite course. Emperor Ezana established Christianity as the religion of the state, but Christianity remained a religion of the upper-class and

11. See HISTORY WORLD, *History of Ethiopia*, <http://www.historyworld.net/wrldhis/PlainTextHistories.asp?historyid=AB92#2110> [<https://perma.cc/WYG8-D5BD>] (last visited Dec. 20, 2018). Ethiopia also has the distinction of being mentioned in the bible. See Acts 8: 27-39; Psalms 68:31; 2 Chronicles 14: 9-15.

12. See e.g., Exodus 20:3 ("Thou shalt have no other gods before me.").

13. See Beru, *supra* note 2, at 336-37.

14. See *id.*

15. See e.g., CONST. OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA Dec. 8, 1994, art. 39, para. 3 ("Every Nation, Nationality, and People in Ethiopia has the right to a full measure of self-government which includes the right to establish institutions of government in the territory that it inhabits and to equitable representation in state and Federal governments.").

16. See FED. DEMOCRATIC REPUBLIC OF ETHIOPIA POPULATION CENSUS COMM'N, SUMMARY AND STATISTICAL REPORT OF THE 2007 POPULATION AND HOUSING CENSUS (2007) (reporting that 33.9 percent of the state's population is Islamic and 62.1 percent of the population is Christian).

17. See Kaplan, *supra* note 7, at 294.

slowly trickled down and became widespread under Kaleb.¹⁸ Ezana's adoption and imposition of Christianity, from his declaration to his licensing of the first bishop Frumentius,¹⁹ set the precedent that the monarchy would have power over the Ethiopian-Orthodox church.²⁰ Hence, from the outset, Christianity in Ethiopia was incorporated in the legal and political sphere of the state.

Part II of this Note focuses on modern Ethiopia and seeks to scrutinize Ethiopia's Civil Code, Constitution, and other legislation. Written into the new constitution of Ethiopia is a declaration of secularism,²¹ similar to the United States and South Africa. Yet, in a nation that has existed as a Christian state for at least a millennium, it is nigh on impossible for Ethiopia to fully divest itself of its cultural mores with mere constitutional edict. The question is, therefore, what is to be made of traditional beliefs that are religious in nature but enter the governmental realm? The Constitution provides the framework, but an analysis of other legislative documents will determine the Ethiopian government's success in establishing a secular legal system for a population largely made up of Christians and Muslims. A look into the modern legal codes will make for a good juxtaposition with past codes and will illustrate whether there is continued modern legal adherence to previous ubiquitous Christian values.

This Note hopes to shed light on the fact that religion and customs are embedded in the cultural mindset of people. Simply wishing to create a secular legal system with the aim of inclusion, while a noble endeavor, shall not result in the changes a legal system needs to divest itself of centuries of cultural and religious domination. By contrasting the religious influence on past and present legislation, there is hope that certain peculiarities will become apparent. The effect of a lengthy adherence to Christianity versus the effect of *de jure* secularization on a people holds promise of interesting revelations.

I. Pre-Modern Ethiopia

A. The Divine Right of Kings

The Ethiopian emperors, from whom the power derives, form the entity that is necessarily the alpha of any discussion on the customary and religious basis for the Ethiopian legal system of antiquity.²² Monarchy is said to rest on the cultural identity and the symbolism of the society it

18. See *id.*

19. See *id.* at 293-94 (explaining that the tradition of Ethiopian bishops that began with Frumentius was predicated upon the goodwill of the monarch of Ethiopia as they were chosen by the head of the Egyptian church; hence, they tended to be Egyptian and not Ethiopian).

20. See *id.* ("The comparative weakness of the Church's *de jure* leader was contrasted with the power of its *de facto* leader, the Emperor.")

21. See CONST. OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA Dec. 8, 1994, art. 11.

22. See Joseph Kostiner, *Monarchy*, ENCYCLOPAEDIA BRITANNICA (July 4, 2016), <https://www.britannica.com/topic/monarchy> [<https://perma.cc/BDJ4-LBJH>].

represents;²³ the Ethiopian monarchy is a stark example of that. As diverse as Ethiopia was (and is), religion and government unified the peoples of the Ethiopian Highlands.²⁴ The Ethiopian monarchy was arguably the embodiment of both: the status as emperor necessitated governmental rule; and, in addition, the monarch derived, in part, his divine right to rule from his purported Solomonic heritage.²⁵

In the sixth century, *Kebra Nagast* emerged as the codification of the legend of Israelite lineage in Ethiopia.²⁶ From the region of Aksum, the Queen Makeda (also known as the Queen of Sheba) traveled to Jerusalem seeking King Solomon, who was renowned for his wisdom and faith in the Lord.²⁷ According to the bible, Solomon's wisdom impressed Makeda;²⁸ however, the legend continues, Solomon tricked her into sexual relations, and upon returning to Aksum, she bore his son, Menelik.²⁹ Upon becoming a man, Menelik journeyed to Israel to meet Solomon; the king received him, and because Menelik returned to Aksum, the king commanded the first-born sons of Israel's priests and elders to go with Menelik.³⁰ Thus, the monarchs and people of Ethiopia (previously Aksum) were tied to the bible not only as the descendants of Noah's son Ham,³¹ but also as the descendants from God's chosen people, the Israelites.³²

Since the establishment of the *Kebra Nagast*, all Ethiopian monarchs claimed descent from either the bloodline of Solomon or those of the retinue that accompanied Menelik back to Ethiopia from Jerusalem.³³ The combination of religious and governmental threads in the Ethiopian monarch is potent because it resulted in a universally recognized dominance in the multi-ethnic kingdom.³⁴ The power of a monarch is directly tied to the monarch's subjects; thus, the mandate of the people is purported to be the

23. *Id.*

24. See John Markakis, *An Interpretation of Political Tradition in Ethiopia*, 66 *PRÉSENCEAFRICANE* 79, 82 (1968).

25. See Kaplan, *supra* note 7, at 296 (describing the strategy that played into the monarch's mandate of heaven in the form of Kaleb's claim of Israelite heritage and war against a Jewish leader in Arabia).

26. *Id.* at 295.

27. See *id.* at 296; see also 1 Kings 10:1 (detailing the motive of the Queen of Sheba for seeking King Solomon out).

28. See 1 Kings 10:6-9

29. See Kaplan, *supra* note 7, at 296 (revealing the purported lineage of Ethiopian monarchs from Israelites).

30. See *id.*

31. See Genesis 10: 6-8 (recording the nations that sprang from Ham, most notably Sheba).

32. See Kaplan, *supra* note 7, at 296.

33. See *id.* The kings of Aksum were not the only ones to justify their rule through Israelite heritage. The Zagwe dynasty, who ruled from Lalibela (a three-day-and-twelve-hour walk from Aksum), justified their rule in the same way with the exception that they descended from the relations between Solomon and one of the Queen's retainers. Moreover, the Beta Israel group of Jewish settlers in Ethiopia claimed to be the descendants of some of the priests who accompanied Menelik but were left behind when they chose to honor the Sabbath and rest. See *id.* at 296-97.

34. See *id.*

real source of power for any monarchy.³⁵ In Ethiopia, the sheer diversity of the monarch's subjects prevented the monarchy from justifying its rule through the veneration of a war hero's bloodline—most likely because a war hero to one group is a villain to another. Therefore, to build a unified kingdom, the Ethiopian monarchs found a strand of commonality amongst the people, Christianity.³⁶ Moreover, premised on the idea of the top-down entrenchment of Christianity in Ethiopia³⁷ and the monarch's position as *de facto* leader of the church,³⁸ the monarch's promulgations carried the full force of the government and the church.

B. The *Fetha Nagast*: Background

The *Fetha Nagast*, the book of laws that governed the Ethiopian empire for centuries, perhaps best illustrates the influence and place of religion in the law and government. On its face, the *Fetha Nagast*, which translates to "The Law of the Kings,"³⁹ is the imperial law which governs the people of the Empire of Ethiopia, yet the compilation begins with the church's governing law and rules of organization and conduct.⁴⁰ The structure of the *Fetha Nagast* can thus be separated into two sections, the spiritual and the secular.⁴¹ The presence of religious laws in the collection of laws that governed the Empire of Ethiopia points to the centrality of religion in the state; it indicates that the laws of the king govern all subjects under the monarch's sovereignty without exception. This position eerily compares to the church's status in Europe during the same period.⁴²

Despite its Ge'ez⁴³ name, the *Fetha Nagast* is not entirely native to Ethi-

35. See Kostiner, *supra* note 22 (elucidating that the fall of monarchies around the world are the result of the emerging ideas of secularism and individual rights. The traditional monarchy's history as the descendants of heroes, or other famous people of national prestige, would no longer bind the people to the monarch: the mandate of the people—a term coined by Reinhard Bendix—would be the sole way any monarchy could derive rule hence forth).

36. See Kaplan, *supra* note 7, at 295.

37. See *id.* ("His [Kaleb's] name would appear to indicate that Christianity was no longer merely the religion of the king and the court, but that of the state.")

38. It is not known whether lay people understood the power of the king over the Ethiopian head bishop; however, the king's acceptance of the bishop from Egypt is necessarily predicated on his good will. Therefore, the bishop stood in a precarious position to prevent his ouster by keeping the peace with the king. Lest the bishop court a situation like that of King Henry the VIII. See *id.* at 294.

39. See THE FETHA NAGAST: THE LAW OF KINGS xv (Peter L. Strauss ed., Abba Paulos Tzadua trans., 1968).

40. See generally *id.*

41. See *id.* at xv.

42. See *id.* at xvii (inferring that the *Fetha Nagast* was adopted sometime in the middle of the Fifteenth Century). Comparatively, the Roman Catholic church in England was being bent to the will of King Henry VIII, eventually mirroring the status of the Orthodox Church of England under the reign of Queen Elizabeth I. Cf. THE CHURCH OF ENGLAND, *History of the Church of England*, <https://www.churchofengland.org/more/media-centre/church-england-glance/history-church-england> [<https://perma.cc/LWL2-7GYS>].

43. Ge'ez is an ancient language of Ethiopia from the South Semitic language family. Its modern descendants are Tigre and Tigrinya. See Ge'ez language, ENCYCLOPAEDIA

opia. The *Fetha Nagast* is a collection of precepts and laws from Christian-Ethiopia that were practiced throughout the centuries.⁴⁴ However, the *Fetha Nagast* is further based on adopted laws from the major Christian nations of antiquity. In this way, the history of how the legal amalgamation was adopted into the kingdom is somewhat antithetical in the sub-Saharan region, whose history is largely characterized by the imposition of legal systems onto the territory, and is more reminiscent of the Mediterranean and European nations. The *Fetha Nagast* contains many provisions that stem from Roman and Byzantine law;⁴⁵ that is certainly indicative of the bulk of the legal foundations. Indeed, the *Fetha Nagast* is the Ethiopian version of an Arabic collection of laws by Ibn al-Assal,⁴⁶ who drew upon the works of four books (aside from the bible): the “Procheiros Nomos,” which was a handbook of Roman-Byzantine laws passed from 870 to 878 CE; the “Syro-Roman Law book,” which was a purported didactic handbook of laws dated to 480 CE; the *Ecloga* of the Emperors Leo II and Constantine V, which was published in Constantinople in 726 CE; and finally, the “Precepts of the Old Testament,” which was the compilation of precepts from the Pentateuch and Christian interpolations.⁴⁷ Noticeably, the core aspect of these books and the *Fetha Nagast* are laws that are derived from Christian notions of morality. To impose such laws upon the native Africans of the West and South was to impose upon them an alien world view and concept of morality; yet to the Ethiopians, or Abyssinians,⁴⁸ these laws were well in keeping with their notions of justice, fairness, and morality.⁴⁹ The preface of the *Fetha Nagast* illustrates this through the acknowledged preeminence of the members of the Council of Nicea.⁵⁰

The scope of the *Fetha Nagast*'s applicability should be mentioned: the judicial applicability of the *Fetha Nagast* pertained almost exclusively to Christian Ethiopia.⁵¹ It is often easy to focus on the majority at the

BRITANNICA (July 4, 2016), <https://www.britannica.com/topic/Geez-language> [<https://perma.cc/UG8A-MLCD>].

44. See The FETHA NAGAST, *supra* note 39, at xv.

45. See *id.* at xvi.

46. See *id.* at xv.

47. See *id.* at xv-xvi.

48. Term used interchangeably with Ethiopia or Ethiopians but has been used by western scholars as a term to denote the people who were directly ruled over and adhered to the ancient Ethiopian kingdoms. Ethiopian is used to denote the modern Ethiopian which encompasses ethnic groups that retain their own customs and traditions. Kaplan, *supra* note 7, at 292; see also Markakis, *supra* note 24, at 80 (“Western writers have customarily identified the dominant group as Abyssinians, in contrast to the more inclusive term, Ethiopians. The Ethiopians themselves do not use this term in the same sense as foreigners have done. Nor does the historical record provide adequate justification for the customary usage.”).

49. The fact the books were given further legitimacy from the assertion that the books were the collection of knowledge from the Fathers of Nicea indicates that the Council held prestige amongst the Christians in Ethiopia. Such prestige leads to the inference that the Council's conclusions carry the consent of the people. In summation, it appears to be a mandate by the Ethiopians to the Niceans. See *supra* note 48.

50. See The FETHA NAGAST, *supra* note 39, at 1, 5 (mentioning the Fathers of Nicea the term used to speak of the attendees of the Council of Nicea.).

51. *Id.* at xxi.

expense of the minority, however, it must be stated that customary legal systems were allowed to develop independently.⁵² In the Western Christian tradition, propagation of Christianity amongst the people was one's designated Christian duty; arguably, however, the Ethiopian Orthodox did not hold that mentality because the introduction of the *Fetha Nagast* did not overthrow the customary legal systems of the other ethnicities in the kingdom.⁵³ Yet, despite the lack of proselytizing, one can consider that many of those laws and taboos diffused to the other cultures. For the most part, the *Fetha Nagast* remained the law of kings and clergy, but with some instances of judicial application.⁵⁴ The interaction of customary law and Christian law in Ethiopia is particularly interesting in the context of using Christian morals to invalidate customary laws amongst the colonized African nations.⁵⁵ From a layperson's standpoint, Ethiopia may seem like an utopic example of what European colonization's influence could have been on local customs: that is, the customs would have been free to develop, changing only through the natural process of cultural accretion. Nevertheless, this idea is inaccurate. The Ethiopian legal system of antiquity (i.e., the Christian legal system codified in the *Fetha Nagast*), may have existed harmoniously with the customary legal traditions of other ethnicities, but the long history of adherence to Christianity and its position as the law of the dominant ethnic group (the Amhara) would seem to have engrained the *Fetha Nagast* in the culture and mindset of the nation itself.

C. *Fetha Nagast*: Lex Æthiops

Writing allowed ancient cultures to commemorate their histories, legends, and myths. But, most importantly, writing ensured the commitment to a single widely recognized legal order. The *Fetha Nagast* is indisputably the progenitor of Ethiopian Christian customs and laws. A thorough investigation into the laws and rules of the *Fetha Nagast* is essential for an informed study of the modern customs and religious values enshrined in the 1995 Federal Constitution of Ethiopia, the Civil Code, and other legislation. The laws and customs governing marriage in general, succession laws, and the law governing judges are the areas of law in the *Fetha Nagast* that will be focused on. These areas of law are specifically chosen for their comparability to modern notions of civil law.

D. Marriage, Concubines, and Marriage Bonds

Marriage is found in many forms, but Ethiopian Christian marriages are comprehensible to the Westerner. The *Fetha Nagast* begins its elucidation of the laws and customs that govern marriage by stating the purpose

52. See *id.*

53. See *id.*

54. See *id.* at xxi-xxv ("It was widely known only in Christian Ethiopia, and was never applied *in toto* even there. . . . [T]he fact that it was considered and applied as law is evidenced by many records.").

55. See Muna Ndulo, *African Customary Law, Customs, and Women's Rights*, 18 IND. J. GLOBAL LEGAL STUD. 87, 95-96 (2011).

of the institution.⁵⁶ Marriage is used to fulfill three ends: to procreate, to remove concupiscence, and to be united and bestow mutual help.⁵⁷ After outlining the three purposes, the text continues by detailing the laws of marriage. Polygamy was not allowed, because it is a manifestation of fornication.⁵⁸ Marriages of relatives was prohibited by the relations by consanguinity,⁵⁹ law,⁶⁰ affinity,⁶¹ guardianship,⁶² and slavery.⁶³ Further prohibited marriages include, marriage between a Christian and a non-believer; marriage to a person with whom a carnal union is impeded;⁶⁴ marriage to an adulterous woman; fourth marriage onwards; marriage to nuns; marriage to women older than sixty; marriage to a widow or widower who is still in mourning (the mourning period is set at a year, or ten months).⁶⁵ Continuing the trend of prohibitions, the taking of a concubine⁶⁶ was strictly prohibited, because it was contrary to lawful marriage.⁶⁷ If the concubine were a free woman, the man is required to abstain and marry the woman, or face expulsion;⁶⁸ contrastingly, if the concubine were a slave, he can marry her or send her away if he deems her unworthy of legal marriage.⁶⁹

The *Fetha Nagast's* laws for marital relations naturally reflect the same determinations made by the other Christian institutions.⁷⁰ The customary

56. See *supra* note 39, at 130.

57. See *id.* It is also interesting to note, the *Fetha Nagast* explicitly states that marriage is only a tool by which fornication is prevented. The text states, “[i]t is good for the one who can overcome concupiscence by the goodness of his temper, by his good habit, or by the good example which he follows, to abstain from marriage. . . . [I]t is a good thing for man not to approach woman, but for avoiding fornication let every man live with his own wife and every woman live with her own husband” See *id.*

58. See *id.* at 132 (“Taking a second or a third wife in addition to the lawful one is not allowed, because it is manifest fornication.”).

59. See *id.* (establishing the bounds of cousin marriages. There was debate amongst the Christian groups about the closest degree of relation that would allow marriage. Some held up to the fourth degree are prohibited, others stated up to the sixth degree was prohibited.)

60. See *id.* at 135 (explaining that god parents are considered familial relations for the purposes of prohibiting marriage).

61. *Id.* at 136.

62. See *id.* (clarifying that a guardian is unable to marry the woman he is charged with keeping; nor are his sons able to be betrothed to the charge).

63. See *id.* (“It is not good that the wife of the master marry the slave her husband manumitted.”)

64. See *id.* at 137 (“Every impediment to the carnal union necessary in marriage [is an impediment to marriage].”)

65. The punishment for marriage to a spouse still in mourning is a bar from inheriting what was bequeathed by the deceased spouse. Betrothals are allowed in this period, however. See *id.*

66. From the *Fetha Nagast's* use of the term, concubine takes the meaning akin to a mistress.

67. See *id.* at 155.

68. *Id.*

69. *Id.*

70. See e.g., *Sacrament of Holy Matrimony*, COPTIC ORTHODOX CHURCH NETWORK, http://www.copticchurch.net/topics/thecopticchurch/sacraments/6_matrimony.html [<https://perma.cc/CEK7-W4PN>] (last visited Dec. 20, 2018) (revealing the beliefs of the Coptic church with regards to marriage which is applicable because most of the Ethio-

implications of these laws are particularly apparent in the marital context, because of the explicit detail and explanations provided by the *Fetha Nagast*; of note is the entrenched taboo of fornication. Polygamy and the taking of a concubine were both frowned upon and prohibited, but it was their conflation with fornication in the *Fetha Nagast* that makes the latter a worse offense.⁷¹ One of the most beneficial qualities of the *Fetha Nagast*, from the researcher's standpoint, is that it provides the rationale and reasoning of the people at the time: in the case of marriage, not only does it reveal that concupiscence only leads to detriment⁷² but also that if the irrational animals, such as turtles and doves, can practice monogamy then it behooves men as the rational animal to do the same. Therefore, similar to what happened in the nations of Europe, it can be said that expressions of sexuality outside the traditional Christian framework, and even some within that framework,⁷³ were impermissible—and this has implications for the non-Christian ethnicities. While it has been stated previously that the laws of the *Fetha Nagast* were applicable only to Christians, arguably the dominance of Ethiopian Christians over the other ethnicities had the same influence as European culture had on the customary laws of African nations. Especially due to the highly public nature of marriage and cohabitation, one could theorize that the sexual and marital practices of the subservient ethnicities would change over time to comport with the Christian traditions, beginning with the leaders of those groups who would adopt the practices of the elites to gain a status symbol,⁷⁴ then spreading to the lower social strata as they try to elevate themselves through the adoption of mannerisms of their leaders and the elites.

E. Succession Laws

The approach of the Abyssinians to succession is intricate and rather complicated. First, it must be noted that before any proceedings, any determination of who will inherit, and any collection upon the debts and loans of the estate, a nine-day mourning period must be strictly adhered to.⁷⁵ Before the estate vests in the inheritor, all funeral expenses will be paid from the estate, and alms given to the poor, but only if the deceased was a good Christian.⁷⁶ For the testate, the estate shall distribute in the following order; the spouse, children, siblings (with brothers receiving ahead of sisters), and parents (fathers inherit separately, mothers inherit an amount

pian Christian literature and tenants are tied directly with the Egyptian Coptic tradition).

71. See *supra* note 39, at 132, 155.

72. See *id.* at 130, 132.

73. See *id.* at 155 (arguing that despite Kings David and Solomon taking concubines, the practice should not be continued, because God has already filled the earth with people, unlike in David and Solomon's time).

74. For example, the Ethiopian Christian emperors and nobility.

75. See *The FETHA NAGAST*, *supra* 39, at 236.

76. See *id.* at 235.

equal to what is given to brothers).⁷⁷ Should a person die intestate, the *Fetha Nagast* states that their natural relatives alone are entitled to inherit, the chain of succession extends twenty-two degrees and the paternal side must be exhausted before consideration of the maternal relatives.⁷⁸ Additional constraints upon the inheritance of the estate of the deceased are, the share of the estate of the deceased's daughter is determined in relation to the price of her wedding dress;⁷⁹ children from a sinful, or unlawful, marriage, or a disobedient and neglectful heir will not inherit anything unless mentioned in the will.⁸⁰ And an apostate can never inherit, even if he is in a will, unless they once again take up the faith.⁸¹

Nagastian succession is a robust and complex system that belies a European concept of property ownership.⁸² The familiarity of the Abyssinian system to the Westerner is naturally due to the Judeo-Christian mindset that pulsed in the empire, as such the androcentricity of their laws are neither alien nor appalling. On its face, the *Nagastian* laws of succession are comparatively progressive in that there is no primogeniture: all children regardless of their sex are entitled to inherit from the parent's estate, and so too is the widow and widower.⁸³ Upon closer inspection, however, there is a subtle slant in the succession that would see the paternal family inherit before the maternal, and male relatives (e.g., brothers, uncles, and fathers) inherit before the female relatives. While it can be argued that the succession laws are equal, because women can inherit at all, and that there are no explicit indications that men get preferential treatment, the *Fetha Nagast's* grounding in scripture, and the reduction or exclusion of daughters from their inheritance depending on the price of their

77. See *id.* at 236. From the text, these categories of people always inherit by the mechanics of the will. The *Fetha Nagast* says that specific persons can be bequeathed with wealth from the estate because the testator cannot give away more than a half and a fourth part of what he owns (the fourth is strictly reserved for his inheritors). See *id.* at 235.

78. See *id.* at 236-37. The twenty-two degrees are, children (sons and daughters equally), grandchildren of the son of the deceased, father of the deceased, blood siblings and mother of the deceased in equal parts, half-siblings from the father of the deceased, half-siblings from the mother of the deceased, nieces and nephews of the deceased's brothers (in equal parts), children of the deceased's nephew, the deceased's grandfather, the deceased's grandmother, the deceased's uncles, the deceased's cousins from their uncles, the children of the deceased's daughters, the nieces and nephews of the deceased's sisters, the children of the deceased's nieces and nephews from their sisters, the grandchildren of the deceased's paternal uncles, the deceased's aunts, the deceased's maternal grandfather, the deceased's maternal grandmother, the deceased's maternal uncles and their children, the deceased's maternal aunts and their children, and the deceased's great-grandparents. See *id.* at 236-37.

79. See *id.* at 239. If the wedding outfit is equal in value to the share she is supposed to receive from the estate, then the daughter gets nothing. If the daughter's wedding outfit is worth less than her share then she is will receive something to make her inheritance equal to her siblings, but she is entitled to no more even if there was a prior agreement with the deceased. See *id.*

80. See *id.* at 239, 246.

81. See *id.* at 246.

82. That property is owned by a single person and can be bequeathed to another person through a will or will pass to relatives if the decedent is intestate.

83. See *supra* note 77.

wedding dress,⁸⁴ would seem to indicate that the *Fetha Nagast* reflects Abyssinian cultural disparagement of women. Additionally, the *Fetha Nagast's* enshrinement of alms giving is interesting. In the Roman Catholic and Protestant traditions, there are a plethora of views with regards to tithes and offerings (the closest equivalent to alms giving).⁸⁵ Many traditions see the two acts as optional which makes the giving of alms, tithes, and offerings a more pious and charitable endeavor. Contrarily, the requirement of alms giving from the estate of a “good” Christian, would lead one to infer that a culture of giving to the poor for the benefit of society would be fostered in tandem with an otherization of non-Christians and “bad” Christians from whom alms can assumingly never be taken.

F. Laws Governing Judges

The final point of analysis is the law that governs who can be a judge, what their qualifications are, and from where they derive their power. Primarily, judges are to be “fair and must abide by the Lord’s will,” for their station is divinely ordained.⁸⁶ Further, judges must be men from the highest echelon of priesthood,⁸⁷ because men are more mentally mature than boys, men are superior to women (and a judge has to be superior), and women cannot be a part of the clergy.⁸⁸ In keeping with the religious requirements of judges, the *Fetha Nagast* establishes that all judges are to be Orthodox Christians, and know the word of the Divine Books, the contents of the accepted books, the arguments and areas of divergence amongst the canons and the saintly and learned Fathers, and they must be able to draw analogies from these.⁸⁹ Indeed, a judge must not only be fluent in the religious books, laws, and procedures but also he must be intelligent and knowledgeable, in general and as compared to the litigants.⁹⁰ In addition to his competence, other requirements related to the judges status: he may not be afflicted with illness such as leprosy; and, he must be well spoken in all the languages and dialects of his jurisdiction,

84. See *supra* note 79.

85. See, e.g., Thomas Schreiner, *7 Reasons Christians Are Not Required to Tithe*, GOSPEL COALITION (Mar. 28, 2017), <https://www.thegospelcoalition.org/article/7-reasons-christians-not-required-to-tithe/> [<https://perma.cc/K72D-VP5H>]; Chris, *The Tithe*, ST. PATRICK’S ANGLICAN CHURCH (June 3, 2017), <https://www.stpatricksboro.org/the-tithe/> [<https://perma.cc/4YDE-TW66>]; James Rutherford, *Catholic Tithing and Almsgiving*, AQUINAS & MORE CATHOLIC GOODS, <http://www.aquinasandmore.com/catholic-articles/catholic-tithing-and-almsgiving/article/321> [<https://perma.cc/5G7S-869J>] (last visited Dec. 20, 2018).

86. See FETHA NAGAST, *supra* note 39, at 249, 252 (“ . . . [T]he Highest God has said in Book 5 of the Pentateuch: ‘In all your cities which the Lord your God will give you, you shall appoint judges, so that they may deliver just judgments; and they shall not yield to either party at the time of judgment, nor shall they make distinction between person and person, nor accept bribes, because bribes blind the eyes of the wise, so much so that they cannot see the justice, and alter the just word.’”).

87. See *id.* (bishops, patriarchs, and the similarly ranked are the only ones allowed to be judges).

88. See *id.* at 250.

89. See *id.* at 250-51.

90. See *id.* at 250.

have sound hearing and sight, and be a free man.⁹¹ Once a judge has been seated, he has specific powers as laid out in the *Fetha Nagast*. The judge has the power to settle disputes, return property to the titleholders, appoint guardians, execute wills (and serve as administrator should none be named), appoint deputy judges, and establish the veracity of witnesses based on the judge's duty to know all witness.⁹²

The common-law based judiciary evolved from the courts of the Kings of England where cases were decided by the King himself.⁹³ The early judges were those who advised the King,⁹⁴ as the court system began to develop into the recognizable form we know today, King Henry chose five members of his circle to hear the complaints of the realm.⁹⁵ Notwithstanding Ethiopia's long imperial history, the source of the judiciary did not arise out of the monarch's powers. From the *Fetha Nagast's* writings, one could conclude that God is the source of authority behind its laws, thus the priests' closeness to God made them best suited to interpret His laws and met out justice fairly. Whereas in the English tradition, the laws did carry the authority of God, that authority was funneled through the monarch who held the divine right of kings—or, the right to rule that flows directly from God. The Ethiopian tradition, thus, has the more indelible link between the judiciary and religion—one that seems to vest lasting and substantive notions of Christian legality into the cultural consciousness of the people. Primarily, the judiciary was derived from the clergy, which would not only have an intellectual superiority over the public, but a moral one as well. Three-hundred years of clerical judges would certainly lead to the stereotype amongst the people that a judge was a respected member of the community for their moral fortitude, wisdom, and fairness. Further, the requirement to know the community and their language would not only entrench the judge's pre-eminence in the community, but also make the imposition of justice feel less foreign and top-down. Therefore, notwithstanding the secularization of the judiciary after the reforms of Haile Selassie and the Derg, the judiciary should theoretically hold the *Nagastian* virtues as an unspoken rule if not an iron-clad codified one.

II. Reforms Towards a Modern Ethiopia

The *Fetha Nagast's* reign as the law of the land ended in 1931 when Emperor Haile Selassie I established Ethiopia's first modern constitution.⁹⁶ The contrast between the two legal promulgations is striking insofar as the

91. See *id.*

92. See *id.* at 251-52.

93. See *History of the judiciary*, U.K. GOV'T: COURTS AND TRIBUNALS JUDICIARY, <https://www.judiciary.gov.uk/about-the-judiciary/history-of-the-judiciary/> [https://perma.cc/85E5-NKYW] (last visited Dec. 20, 2018).

94. See *id.* ("The very first judges, back in the 12th century, were court officials who had particular experience in advising the King on the settlement of disputes.").

95. *Id.*

96. See Norman J. Singer, *Modernization of Law in Ethiopia: A Study in Process and Personal Values*, 11 HARV. INT'L L.J. 73, 73-78 (1970) (elucidating the historical lineage of the Constitution of Ethiopia).

Fetha Nagast is precipitated on the basis of Christianity while the Selassian Constitution of 1931 is enraptured with the Emperor himself.⁹⁷ The 1931 Constitution is the beginning of a series of changes introduced by Emperor Haile Selassie I in an attempt to modernize his nation⁹⁸—premier amongst those changes was secularization. It is evident from the *Fetha Nagast* that the Ethiopian clergy enjoyed a prominent position in the Ethiopian government as the moral compass of the nation and the source of judges. However, Haile Selassie I's move to secularization, which should not be construed without recognizing the aggregation of power into the Emperor, so divested the church of its earlier prominence that there is nary a mention of the church or Christianity at all in the Constitution.⁹⁹ Since the 1931 Constitution, Ethiopia's government has maintained its conviction towards secularism as a vehicle to modernization as evinced by the 1955 Revised Constitution of Ethiopia, its next of kin the Civil Code of Ethiopia of 1960, and the modern 1995 Constitution of Ethiopia.¹⁰⁰ These legal foundations are *prima facie* secular; yet, their promulgation under the Christian Amhara community would lead one to believe that Christian legal biases, attributable to the *Fetha Nagast*, can be found in these documents of importance.

A. Marriage

First in the line of legal topics to be analyzed is marriage law. Marriage exists in every culture and is considered one of the universal expressions of human social interactions.¹⁰¹ Marriage in the *Fetha Nagast* was luridly described and included many prohibitions and details to be satisfied.¹⁰² Some prohibitions that reflect the morals of the time include: interfaith marriages, marriage to women over the age of sixty, and marriage to a person with whom a carnal union could not be established. Equally reflective, however, are the modern Ethiopian marriage restrictions: the restrictions illustrate the mentality of a modern nation. In general, citizens have the right to choose whom to marry pursuant to general

97. See generally CONST. OF ETHIOPIA, Jul. 16, 1931; FETHA NAGAST, *supra* note 39.

98. This assertion is alluded to, if not directly stated, in the preamble of the 1955 revised Constitution of Ethiopia. See CONST. OF EMPIRE OF ETHIOPIA, revised, Nov. 4, 1955 (“... [A]nd Whereas, being desirous of consolidating the progress achieved and of laying a solid basis for the happiness and prosperity of the present and future generations of Our People, We have prepared a Revised Constitution for Our Empire after many years of searching study and reflection . . .”).

99. See generally CONST. OF ETHIOPIA, Jul. 16, 1931. Indeed, the only mention of Christianity is in article five where it is vaguely alluded to by the term ‘anointed.’ CONST. OF ETHIOPIA, Jul. 16, 1931, art. 5.

100. See generally CONST. OF EMPIRE OF ETHIOPIA, revised, Nov. 4, 1955; Civil Code of Ethiopia; CONST. OF THE FED. DEMOCRATIC REP. OF ETHIOPIA, Dec. 8, 1994 (demonstrating through its articles and provisions, that a cursory glance of the laws and guiding provisions of Ethiopia are devoid of any state imposition of religion upon its subjects).

101. See Richard Feinberg, *Defending ‘Traditional’ Marriage? Whose Definition? What Tradition?*, HUFFPOST: BLOG (Feb. 2, 2016), https://www.huffingtonpost.com/american-anthropological-association/defending-traditional-marriage_b_1460026.html [https://perma.cc/3QT9-T8A4].

102. See THE FETHA NAGAST, *supra* note 39, at 135.

non-discriminatory prohibitions. In the reformed Family Code of Ethiopia, the essentials to marriage number sixteen components;¹⁰³ and, despite the absence of an overly religious foundation, the essential to marry remains reminiscent of Nagastian customs.

Initially, the section which details the conditions for marriage begins with articles six and seven, which dictate that marriage is conditioned upon full consent from both spouses who have attained the age of eighteen.¹⁰⁴ The subsequent four articles are near mirror reflections of the prohibitions found in the *Fetha Nagast*. Article eight on consanguinity states that no one whose affinity in the direct line of ascendants and descendants with their intended spouse is allowed to marry such a partner; furthermore, one is not allowed to marry collaterally, i.e. the sibling of one's spouse.¹⁰⁵ Article nine continues with the relations that are prohibited from the institution of marriage: all relations of affinity in the direct line are equally prohibited from joining in matrimony.¹⁰⁶ Continuing in the same line of thinking, Article 10 establishes that a bond of natural filiation that is commonly known amongst the community is enough to prohibit marriage between the bond mates, even if the filiation is not legally established.¹⁰⁷ On their face, these provisions simply look like laws that prohibit incestuous relations, which is neither an Ethiopian nor Christian specific taboo.¹⁰⁸ Yet, the specifics of these provisions echo the detailed prohibitions against marriages of consanguinity and affinity.¹⁰⁹ Notwithstanding the generality of these provisions, they nonetheless reflect the laws of the *Fetha Nagast* and therefore reflect Christian-Amhara values, as the *Fetha Nagast* is the codification of Amhara laws expressed with biblical justification.

Continuing with the matrimonial prohibitions is Article 11 which is the prohibition against bigamy. The article states, "a person shall not conclude a marriage as long as [s]he is bound by bonds of a preceding marriage."¹¹⁰ This Note is perhaps the most illustrative of the Christian influence on modern Ethiopia's laws. The *Fetha Nagast* bluntly condemns polygamy, stating the taking of a second wife and beyond are manifestations of fornication¹¹¹—a sin that the institution of marriage was created to

103. See THE REVISED FAMILY CODE [FAM. C.], sec. 2, arts. 6-21 (Eth.).

104. See FAM. C., sec. 2, arts. 6-7. It must be noted that these provisions, while not religiously tied, are indicative of the Ethiopian government's position and morals. These provisions are in keeping with Article 16 of the Convention on the Elimination of All Forms of Discrimination against Women which the government signed and ratified without reservation to Article 16. See Convention on the Elimination of All Forms of Discrimination against Women art. 16, Dec. 18, 1979, 19 I.L.M. 33 (1980).

105. See FAM. C., sec. 2, art. 8.

106. See FAM. C., sec. 2, art. 9.

107. See FAM. C., sec. 2, art. 10.

108. See ABRAHAM ROSMAN, PAULA G. RUBEL & MAXINE WEISGRAU, *THE TAPESTRY OF CULTURE: AN INTRODUCTION TO CULTURAL ANTHROPOLOGY* 101 (9th ed. 2009) (explaining that incestuous relations are nigh on universally taboo in human relations).

109. Cf. *supra* notes 78-81.

110. FAM. C., sec. 2, art. 11.

111. See *supra* note 58.

prevent.¹¹² The groups with the highest incidence of modern polygamy, which is still practiced despite its illegality, happens to be the regions that are majority Muslim.¹¹³ Despite the inaccuracy of extrapolations, one can conclude that these regions have a higher incidence of polygamous marriage, because they are dominated by people who, culturally, have not attached the same stigma to polygamy as the Christian majority. Thus, it follows that this law was implemented in keeping with the mores of the Ethiopian Christians and the *Fetha Nagast*.

Marriage understandably is a highly cultural institution whose practices, traditions, and prohibitions are easily traceable to specific cultures and religions. Hence, discovering the thread of Christian influence in marriage laws was not so daunting, for the terminology was significantly reflective of the *Fetha Nagast*. Equally as cultural an institution, however, is succession and what happens to one's property after death.

B. Laws of Succession

One of the most intricately laid out provisions in the *Fetha Nagast* is that on the laws of succession, primarily because the line of inheriting heirs had to be laid out in detail. While the laws of marriage in the *Fetha Nagast* were directly justified through scripture,¹¹⁴ the laws of succession were not accorded the same extensive treatment.¹¹⁵ Therefore, it can be posited that the laws of succession were founded upon the Amhara's culture and by extension, Christianity.¹¹⁶ After considering the influence of the Amhara culture on the laws of marriage, one is left with the pertinent question: to what extent has the Amhara culture influenced the laws of succession?

In the interest of creating a secular republic, Haile Selassie I tasked government officials and scholars with completely overhauling their legal system. The Civil Code of Ethiopia took the place of the *Fetha Nagast*, thus it introduced laws that applied not only to Christians but also to the broader Ethiopian population. The title which governs succession, Title V of the Civil Code, largely reflects this general applicability. The only conditions that determine succession are that one must survive the deceased and must not be unworthy to succeed the deceased.¹¹⁷ Whereas in the *Fetha Nagast* illegitimate children, apostates, descendants who derided fil-

112. See *id.*

113. See Jetu E. Chewaka, *Bigamous Marriage and the Division of Common Property Under the Ethiopian Law: Regulatory Challenges and Options*, 3 OROMIA L.J. 77, 84 (2013) (reporting the study undertaken by the Ethiopian Demographics and Health Survey in 2001 that published the percentage of women and men who are engaged in polygamous marriages by region).

114. See THE FETHA NAGAST, *supra* note 39, at 130-55.

115. See *id.* at 235-46.

116. As mentioned earlier in this Note, the dominant Amhara culture cannot not be cleanly thought of as separate and distinct from Christian culture. The two have an inextricable link due to centuries of adherence to the religion.

117. See CIVIL CODE OF THE EMPIRE OF ETHIOPIA, tit. V, sec. 1, art. 830 [hereinafter, CIV. C.].

ial piety, and women who were generously gifted upon their wedding day were deemed unworthy to inherit (or, in the case of the women, could only inherit a reduced amount), the Civil Code establishes that one is only deemed unworthy to succeed if one murdered, or attempted to murder, the deceased, a descendant, an ascendant, or the spouse of the deceased.¹¹⁸ Also, if one bears false witness against anyone, the result of which was that the accused was sentenced to death or imprisonment for more than ten years, then one is deemed unworthy to inherit.¹¹⁹ Further, the Civil Code has abolished the nine-day mourning period and the mandatory alms provision of the *Fetha Nagast*.¹²⁰ Notwithstanding the sweeping changes that came with the modernization and secularization of the succession laws, there still remains vestiges of the *Fetha Nagast* that can be gleaned from the laws elucidating the line of succession for the intestate.

The *Fetha Nagast* recognizes twenty-two relationships in the line of succession that can be heirs to a deceased.¹²¹ The Civil Code reduces this number to four relationships and establishes the state as the inheritor should no heir be found.¹²² Notwithstanding the glaring discrepancies between the two legal documents, a closer look reveals that the line of succession mirrors the *Fetha Nagast*: the difference between the two is, similar to marriage laws, that the Civil Code has removed the extraneous details. For example, Article 843 states that the second relationship designates the parents as the heirs of the deceased,¹²³ but the subsequent section stipulates that should the parents have predeceased the deceased then their descendants are their representatives.¹²⁴ This runs parallel with the *Fetha Nagast*'s relationships as the second tier of inheritors are the father of the deceased, the blood siblings of the deceased, the mother of the deceased, and the paternal half-siblings of the deceased, respectively.¹²⁵ It is easy to dispel the notion that the line of succession is directly attributable to the Christian culture of Ethiopia;¹²⁶ however, that would be an unmindful assertion because the similarity between the intricacies of the *Fetha Nagast*'s line of succession, which ends with the great-grandparents like the Civil Code,¹²⁷ certainly outweighs the notion that the Civil Code merely reflects a universal standard for who is designated as an heir.

The succession laws of the Civil Code certainly differ from those of the *Fetha Nagast*, as they were developed to apply to the broader Ethiopian population and for better applicability in a modern world. Yet, despite

118. See CIV. C., tit. V, sec. 1, art. 838.

119. See *id.*

120. See generally CIV. C., tit. V. Cf. THE FETHA NAGAST, *supra* note 39 at 235-46

121. See THE FETHA NAGAST, *supra* note 39.

122. See CIV. C., tit. V, sec. 2, art. 852.

123. See CIV. C., tit. V, sec. 2, art. 843.

124. See CIV. C., tit. V, sec. 2, art. 844.

125. See THE FETHA NAGAST, *supra* note 39.

126. Indeed, one could argue that the line of succession merely reflects what every culture agrees upon with regards to succession—namely, children of the deceased inherit first, then parents, then siblings, and without those then one continues up to other ascendants.

127. See THE FETHA NAGAST, *supra* note 39, at 236.

those changes, succession laws still maintain a resemblance to the *Fetha Nagast*, be it through design or simply happenstance. Perhaps, what one could predict to be the most divergent from the law of the *Fetha Nagast* is not succession, but the law that governs judges.

C. The Law Governing Judges

Primarily the judges of Ethiopia are governed by the Constitution of Ethiopia, with the most recent iteration being the 1994 Constitution. This poses an interesting area of assessment for establishing the residual influence of the *Fetha Nagast* and Christian custom on the laws of modern Ethiopia, because the Constitution has been revised and overhauled three times prior to the current iteration.¹²⁸ The Constitution begins the section on the powers of the judiciary with the assertion that all judicial powers are vested in the court, and it continues by broadly stating that judges are to exercise their functions in full independence, directed solely by the law.¹²⁹ With regards to the appointment of judges, the Constitution provides that the House of Peoples' Representatives appoint the President and Vice-President of the Federal Supreme Court, with the recommendation of the Prime Minister.¹³⁰ Other judges on the Federal Supreme Court are selected by the Federal Judicial Administration Commission,¹³¹ and State judges are elected by the state equivalents of those bodies.¹³² Further, the Constitution dictates that judges are not to be removed before retirement age unless they violate the disciplinary rules, demonstrate gross incompetence or inefficiency, or are overcome with illness that prevents the judge from carrying out his or her responsibilities.¹³³ The requirements for who can become a judge is a matter not dealt with by the Constitution; but, the conditions are that one must be an Ethiopian who is loyal to the Constitution; has legal training or gained legal skills through experience; has a good reputation for diligence; has a sense of justice and good conduct; consents to becoming a judge; and, is above twenty-five years old.¹³⁴

Once again, these provisions appear neutral with a cursory glance, but an in-depth inspection reveals similarities with the Christian laws of the *Fetha Nagast*. For example, the *Fetha Nagast* dictates that judges must be not be afflicted with illnesses such as leprosy and they must have sound sight and hearing. These conditions are similar, yet one cannot, in good

128. See Singer, *supra* note 96, at 78-79 (detailing the establishment of the 1931 Constitution of Ethiopia and the 1955 Revised Constitution). See generally *infra* note 129 (showcasing the most recent iteration of Ethiopia's constitution, which was promulgated in 1994).

129. See CONST. OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA, Dec. 8, 1994, arts. 1, 3, 79.

130. See *id.* at art. 81.

131. See *id.*

132. See *id.*

133. See *id.* at art. 79.

134. See LEGAL VICE PRESIDENCY, ETHIOPIA: LEGAL AND JUDICIAL SECTOR ASSESSMENT, THE WORLD BANK (2004), available at <http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/EthiopiaSA.pdf> [https://perma.cc/TXC2-C2EE].

conscience, use such a broad provision to argue for *Nagastian* influence. Perhaps the more appropriate examples would be the conditions that require legal training (or legal skills developed through experience), a reputation for diligence, and a sense of justice. It can be asserted that this provision is equally broad and easily attributable to any legal system in the world; however, one could also conclude that these provisions are general attributes developed from the judges of the past who were not only members of the judiciary but also members of the clergy. Therefore, legal skills and diligence which equate to intelligence and knowledge, a sense of justice and good conduct which equate to high morals equivalent of the assumption one makes of clergymen, and older than twenty-five years old which equates to the *Fetha's* assertion that men are more mentally mature than boys recall in their own ways the *Fetha Nagast's* conditions for judges.

The *Fetha Nagast's* laws governing judges are antiquated: women were not allowed to participate as members of the judiciary by virtue of the fact they were not allowed to be members of the clergy; judges had to be well versed in the bible; and, affliction with leprosy meant that one could no longer participate as a judge. The modern requirements and conditions for judges in Ethiopia are more open, while lacking the disqualifying aspect that non-Christian clergymen are the only group able to be judges. Despite such massive differences that were necessarily abolished, subtleties of the *Fetha Nagast* still remain. Notwithstanding the lack of a flashing sign, there truly are similarities between the *Fetha Nagast's* law governing judges and the modern proclamation and constitutional articles that vibrate on the same wavelength.

Conclusion

Christianity has millennia long history in Ethiopia. The religion was entrenched from the top-down by the elites who bore the power to enact legislation and were free to impose it upon their subjects in an act of providence. Many centuries later, it is not surprising that the elites have continued that practice into the current era. The presence of Christian customary influence on these laws does not mean that there is nefariousness afoot; rather, those in power are not infallible nor unbiased in the creation of law. It is difficult to separate one's culture from the laws one makes, and cultures develop and are influenced by long established traditions, rules, customs, and religions.

From the *Fetha Nagast* that was promulgated in the mid-Fifteenth Century,¹³⁵ three areas of law were picked out. Marriage, concubines, and marriage bonds collectively was the first of the three legal subjects that would be compared with its present iteration and was the second most scripture-heavy provision of the three. Marriage was not the highest expression of love a pair could make but was the solution to curtail one's lust and prevent concupiscence. The *Fetha Nagast* dictated who could and

135. See generally THE FETHA NAGAST, *supra* note 39.

could not be married under it, and dictated what marriages were off limits. Understandably, the modern marriage laws are the most conspicuous examples of Christian influence on the modern law of Ethiopia: the prohibition against bigamy being the most blatant example.

Second was the law of succession. The *Nagastian* law was complex and detailed so as to account for any potential discrepancies in application. It is in the details of who is to succeed the deceased that the most fertile ground is found. The commonality of the line of successors would seem to prove to be a nail in the coffin of the theory of Christian influence; but, in actuality, the details of the *Fetha Nagast* and the Civil Code are of a similar nature enough to warrant the original claim.

Finally, the *Fetha Nagast's* laws governing judges was analyzed. Reflecting the time and the dominant religion of the nation, the *Fetha Nagast* revealed that only clergymen were allowed to sit as judges at the time. Women, young men, the disabled, and those perceived as lacking intelligence were all unable to sit as judges according to the *Fetha Nagast*. Naturally, under the 1994 Constitution and promulgations, all of those restrictions on the job were abolished. Women and the disabled can sit on courts and the Constitution holds that the judiciary is beholden to the law, not God.¹³⁶ Yet, there still exist echoes of the *Fetha Nagast* in these provisions. Certainly, the requirements of health, legal skill, and a sense of justice and good conduct reflect similar conditions found within the *Fetha Nagast's* laws. It is not readily apparent, but these similarities do appear substantive enough to validate the idea that secularism is not as entrenched as it could be in the Ethiopian legal system. Many modern laws may simply exhibit certain commonalities that are vague and general enough to apply to any law compared to it; however, the subtleties and details that are revealed through wording arguably push back on that notion. Ethiopia is a secular nation, and has been at least for twenty-four years; but, twenty-four years is not long enough to change the cultural mindset of a people who have been tied to concepts, rules, and taboos for almost five-hundred years.

136. See CONST. OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA, Dec. 8, 1994 art. 79, para. 3.