

# LAW AND SOCIAL CHANGE IN AFRICA

## PRELIMINARY LOOK AT THE ETHIOPIAN EXPERIENCE

by Daniel Haile\*

National development is a term which encompasses at a minimum social and political development as well as economic development in the building of national identity.<sup>1</sup> Unfortunately while the amount of literature on economic development has reached massive proportions, works and studies on the other equally important aspects of development have been minimal. The emphasis on economic development has been so unproportional that to most people development has come to mean nothing but "man's application of technologies to the control of nature's resources in order to bring about a marked increase in the growth of output per head of population",<sup>2</sup> in short economic or industrial growth.

However, even if one limits the term development to mean industrialization as indicated above, in order to attain even this very limited goal a society will have to undergo through certain social changes in order to create values, attitudes and institutions conducive to the attainment of such a goal. "For by industrialization what is really meant is not simply a combination of scientific knowledge and applied technique but the motives and values of a society which has the will to use and develop this knowledge and whose institutions reflect and support their system of values."<sup>3</sup> Although all African governments do accept the aim of economic development "their societies shaped by their earlier and quite different necessities, still contain within them, as living forces the personal attitudes and social institutions of the older world."<sup>4</sup>

Animistic institutions such as witchcraft, sorcery, the evil eye etc., are still prevalent and play a dominant role in the lives of many Africans.<sup>5</sup> As G. Savard points out witches generally aim at the man who does not respect tradition, who does not conform, who in practice is more successful by modern standards. It is thus very easy to see how negative the forces of witchcraft can be and why many Africans speak of the 'spirit of jealousy' as one of the greatest evils plaguing them."<sup>6</sup>

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1. G. Meier, *Leading issues in Economic Development* (1970) p. 5
2. M. Weiner, *Modernization* (1966), p. 3.
3. G. Hunter, *The New Societies of Tropical Africa* (1966), p. 71.
4. *Ibid.*, 71-72.
5. These animistic institutions are known under various names in Ethiopia: *buda*, *teib*, *tchirak*, *shetana*, *zar*, *wokabi*, etc. and the professionals who can manipulate the secret forces are the *tankwae*, the *Kalicha*, etc.
6. G. Savard, *The People of Ethiopia* (unpublished, Haile Sellassie I University-library), vol. 3, p. 38.

In addition to these anachronistic institutions most African societies are also plagued with attitudes and values which are a hindrance to development.

If I may take the society that I am most familiar with, the Ethiopian society, (particularly relevant to highland Ethiopia) as an example, one can see how the peoples' attitude towards life and its betterment; attitudes towards work in general and certain crafts in particular are incompatible to the needs of development.

The Ethiopian peoples' attitudes towards life and its betterment have been greatly influenced and coloured by the teachings of the Ethiopian Orthodox Church whose teachings were succinctly stated by Ato Mesfin Woldemariam as the glorification of death, sanctification and institutionalization of begging and the villification and deprecation of life.<sup>7</sup> The teachings of the church by putting undue emphasis on life after death and by viewing life on this earth merely as a preparation for the death which is the beginning of a new and an everlasting life; by making the accumulation and enjoyment of wealth vulgar and by treating poverty not as a social evil but as one of the most desirable spiritual assets for the entry into paradise<sup>8</sup> have been one of the main cause to corrode the peoples' capacity to create and to engage in the betterment of their lives. In addition its repeated sermons that everything is guided by an Omnipresent, Omniscient and an Almighty God and that we, including the sheep and the flowers, are all in his hands have been inculcated into the peoples' mind that they now "have come to believe that everything that happens is 'God's will' and that the ordinary man can do little to influence the course of events."<sup>9</sup> The effect of this pre-determinist view was stated clearly by Assefa Bekele and Eshetu Chole, two prominent Ethiopian economists, when they said that this belief has lead to unrealistic resignation and fatalism, among the population, which rejects all endeavour towards the making of a better world on earth. The belief that this life is meant for Lucifer and his accomplices and that paradise is lost as a consequence of the wrath and dictates of God have arrested men's attitudes towards change and any drive to be master over nature.<sup>10</sup>

This alone may succeed to nip any idea of development while it is in the bud; but even if the idea somehow succeeds to grow up the very unconducive social attitudes, the attitude toward work will definitely strangle it. As president Julius Nyerere has said, "Everybody wants development, but not everybody understands and accepts the basic requirement for development. The basic requirement is hard work."<sup>11</sup> Although of general application, this statement is even more true for the developing nations which have large supplies of labour at their disposal but very limited capital resources. Since these nations have to basically rely on their labour supplies in order to develop, its proper utilization is of utmost importance. Although Ethiopia falls in this category of nations the attitudes towards work held by the population are *antithetical* to those expressed above. Not only is it reported that there are something like 150 holidays for commemorating the various saints of the

7. Mesfin Woldemariam, *Cultural Problems of Development* (unpublished, Haile Sellassie I University Library), p. 9.

8. It is much easier for the camel to pass through the eye of the needle than the rich should enter the kingdom of heaven.

9. G. Lipsky, *Ethiopia, its People, its Society, its Culture* (1962) p. 142.

10. Assefa Bekele and Eshetu Chole, *A profile of the Ethiopian Economy* (unpublished, Department of Economics, HSIU), p. 8.

11. G. Savard, cited in note 6, p. 15.

orthodox church,<sup>12</sup> but in addition there are about 250 fasting days each year during which people who belong to the Ethiopian Orthodox Church are not only supposed not to eat nutritional food, such as milk, butter and meat; but sometimes they are ordered not to eat until midday. This coupled with the already existing deficiency<sup>13</sup> in nutrition results in low labour productivity. "Moreover, it was found out that the concept of workless days might have created in the minds of the people that work may be considered shameful, and that not to work on certain days is a mark of the good christian in the eyes of God, priests and fellow christians. Hence an aversion for work as dirty and drudgery has developed in the minds of the citizens."<sup>14</sup>

Eventhough work in general is looked down upon, manual labour and certain crafts are particularly stigmatized. An Amharic saying which goes as follows: የእጅ ፡ ሥራ ፡ ባርነት ፡ የእፍ ፡ ብልሃት ፡ ጌትነት ፡ meaning manual skill is slavery and oral skill is mastery<sup>15</sup> clearly shows the disdain that prevails for this kind of work. "In addition potters, blacksmiths, tanners and weavers together with their necessary and useful skills were condemned to sub-human status. They were forbidden to intermarry with other groups and they were treated with a mixture of contempt and fear."<sup>16</sup>

In our view it is imperative that these and other similar attitudes be made compatible with the needs of development even if the limited goal of industrialization is to be achieved.

The instruments most frequently pointed out for modernizing man's values and attitudes are education, communication, ideology and government authority.<sup>17</sup> An attempt to discuss the role of all of these instruments in changing or maintaining certain prevalent attitudes and structures would not only be a task of such a formidable magnitude that it can hardly be undertaken in such a short paper but would also require tools of analysis far beyond what my legal education and competence can offer. Thus in this paper we shall not be concerned with all these instrumentalities of social change and shall limit our discussion only to the last:— Government Authority—which we shall take to mean the legal order.

The terms law and legal order have been defined in so many ways and identified with so many things that at times one is led to believe that the two mean practically anything. A reason commonly given for this web of unclarity about the nature and functions of law is the fact that most legal thinkers try to capture

12. Assefa Begele and Eshetu Chole, cited in note 10, p. 9. According to Dr. Teshome Wagaw, however, the total number of holidays in evrey month for 13 months in a given year is 1281 days. See Teshome Wagaw, *Multiplicity of holidays in Ethiopia and their Possible Effect on Psycho-socio-economic Development of the Country* (unpublished, Haile Selassie I University Library), p. 13.

13. With regard to nutrition, it is estimated that the average caloric intake per day per person is around 2200 calories, considering the altitude and level of manual activity it is said that there is a caloric deficiency of around 400 calories per day per person. D.S. Simic, "Nutrition and Dieties" as cited in *Economic Journal*, Vol. 1 (1968), p. 19.

14. Teshome Wagaw, *Multiplicity of Holidays in Ethiopia and their Possible Effect on Psycho-socio-economic Development of the Country* (unpublished, Haile Selliassie I University Library) p.35.

15. Mesfin Woldemariam, cited in note 7, p. 13.

16. *Ibid.*, p. 11.

17. G. Weiner, cited in note 2, p. 8.

the essence of law in a single sentence which like all single sentence<sup>18</sup> formulations leave out far too much and are likely to mislead.<sup>19</sup> However, without going into this jurisprudential labyrinth for our purposes we shall take the working definition suggested by Professor William B. Harvey and consider law as "a technique of social ordering deriving its essential characteristic from its ultimate reliance on the reserved monopoly of systematically threatened or applied force in politically organized society."<sup>20</sup> Although this definition may be criticized for being too positivist,<sup>21</sup> it is this particular characteristic which is appealing to us. For by viewing law as amoral or neutral tool this definition helps us to focus our attention on the causal connection between law and social change, without any moral or ethical consideration eclipsing our analysis.

Not only has its definition been vague but in addition the desirability and feasibility of using this social technique in the engineering of social changes have always been a controversial subject. As Friedman puts it "the controversy between those who believe that law should essentially follow, not lead and that it should do so slowly, in response to clearly formulated social sentiment and those who believe that the law should be a determined agent in the creation of new norms is one of recurrent themes of the history of legal thought."<sup>21</sup> Two prominent schools of thought that reject both the desirability and feasibility of law in inducing changes are the Historical school and the Marxian school of thought. To attempt to present a detailed analysis of the various reasons presented by these two schools in few lines would be presumptuous. What is attempted here is to select the basic reasons on the basis of which the two have rejected both the desirability and feasibility of law in inducing social changes and examine whether these are valid in the African arena.

To Savigny, the founder of the historical school, law was something that is connected with the being and character of the people and he maintained that it "grows with the growth of the people and strengthens with the strength of the people and finally dies away as the nation loses its nationality."<sup>22</sup> Similarly classical marxist theory, "regarding law as a superstructure on technology and economy considered it to be inconceivable for law to bring about changes—in the basis technology and economy of society."<sup>23</sup>

We find the views of these two schools of thought on this point to be generally out of tune with modern reality<sup>24</sup> and totally inapplicable in the African arena. Although social change may be revolutionary, it normally comes about in a more or less orderly manner, out of the conscious and unconscious attempts of people

18. See K. Redden, *An introductory survey of the place of Law in our civilization* (1946) chapter II, where more than fifty of such one sentence definitions are cited.

19. Howard and Summers, *Law: its nature, functions and limits* (1965), p. 7.

20. W. Harvey, *Law and Social Change in Ghana* (1966), p. 343.

21. W. Friedman, *Law in a Changing Society* (1959), p. 3.

22. Simpson and Stone, *Law and Society* (1948) p. 243.

23. Y. Dror, "Law and Social Change," *Tulane L. Rev.*, Vol. 33, (1958-59), p. 800

24. Even Engels had warned against this oversimplified conception of the "economic foundation" as the only cause and the "legal superstructure" as merely the effect from his letters written not long before his death, it follows that, though dependent on the economy as the cause and, as such, an effect law may "react in its turn upon the economy" and thus becomes the cause. V. Souski, *Soviet Civil Law* as cited in Lloyd, *Introduction to Jurisprudence* (1965) p. 291.

to solve social problems through collective action. It is purposive and rational and involves definition of a state of affairs as a "problem" and an attempt to solve that problem by rational means.<sup>25</sup> "In Africa as elsewhere rapid rational social change implies the utilization of society's most potential tool-state power. It requires that law be employed as a means of social engineering."<sup>26</sup> The fact that most African countries gained their independence only very recently and sectarian or tribal sentiments are still rampant is an important factor that enhances the role of law as a means of social engineering. Certainly, education may be the best solution for this, but taking the amount of time that it takes and considering the fact that these nations are trying to accomplish in the life span of one or two generations what took centuries, the appeal of this remedy becomes very low. Under these circumstances, we are of the opinion that it is essential to use the law to give legitimacy to the state action and to erode the power of groups adverse to it.<sup>27</sup>

Not only is there a great need for legal programming in the African countries, but as these nations are undergoing more rapid change than their industrialized counterparts, capitalist or socialist, this rapid rate of growth accentuates the resulting pressure on the legal system.<sup>28</sup> "In this sense the scope and need for legal engineering are far greater in the countries of the third world than in Europe or North America, where changes can be brought gradually, by incremental process or by well established legislative mechanisms."<sup>29</sup>

The fact that many African countries have adopted laws based on foreign models as a means of revamping or overhauling their socio-economic systems even after attaining independence is by itself a concrete evidence of the wide acceptance and legitimacy that the law as a means of social engineering has received in these countries, negating the views of both the Historical and Marxist school of thought.

Definitely, the aggressive codification in Ethiopia is based on this basic premise. As the drafter of the Ethiopian Civil Code put it, "like the Soviet Union and communist countries, although with another ideal, Ethiopia and a number of African countries are presently in a revolutionary period. While safeguarding certain values to which she remains profoundly attached, Ethiopia wishes to modify her structure completely, even to the way of life of its people. Consequently, Ethiopians do not expect the new code to be work of consolidation, the methodical and clear statement of actual customary rules. They wish it to be a program envisaging a total transformation of society and they demand that for the most part, it set out new rules appropriate for the society they wish to create."<sup>30</sup>

Having concluded that it is not only desirable but that it is essential to use law in the engineering of social changes, if most African countries are to attain the goals that they have set out for themselves, we shall now proceed to examine the role of the law as an agent of change and as a response or a means to facili-

25. Friedman and Ladinsky, "Social Change and Law of Industrial Accidents" *Columbia L. Rev.* Vol. 67 (1967), p. 50-51

26. R. Seidman, "Research in Africa Law and Processes," Occasional paper No. 3, *African Studies Center*, University of California (1967), p. 7.

27. R. Unger, *Law and development: Some Problems and Hypotheses* (unpublished) p. 17-18.

28. C. Auerbach, "Legal Development in Developing Countries — the American Experience," *American Society of International Law* (1969), p. 93.

29. *Ibid.*, p. 95.

30. R. David, "A New Civil Code for Ethiopia," *Tulane L. Rev.*, Vol. 37 (1962-63), p. 193.

tate social changes and to consider its possibilities and limitations in fulfilling these tasks. Eventhough "society is ordered living together or more accurately put, it is the ordering of the living together of individuals,"<sup>31</sup> this does not mean there is an absolute order (stagnation). In all societies there is a core of orthodox norms and conforming actions round the margins of which continuous experiment goes on.<sup>32</sup> The law by establishing the *norms* which shall be enforced by the sanction of the political authority determines the scope of the orthodox norms and moreover by controlling the other factors — communications, education — that bring about social change controls the degree of experimentation.

Thus the law as an agent of change has direct and indirect role to play. It may create new norms or it may make the atmosphere conducive to change by permitting the other factors that bring social change to have full play. Let us take for example, contact with other societies which certainly is one of the most important elements through which social change can be initiated. The effectiveness of this agent of change is totally dependent on the nature of the visa requirements, censorship of the mass media and the extent of which they encourage or regulate it. Similarly "the absence of freedom to associate and disseminate ideas can prevent, at least delay the spread of new social ideas and thus exert a very important basic influence on the process of social change".<sup>33</sup> On the other hand a law setting up compulsory educational system by enabling the operation of educational institutions may help to speed up the process of social change.<sup>34</sup>

The role of the law, however, is not solely limited to the regulation of forces that bring about social change, at times it directly bring about changes. Although people may have different views as to the impact or efficacy of law to bring about social changes, nevertheless, that it is being used for this purposes is a fact that cannot be denied by all. We saw earlier how the Ethiopian Civil Code is trying to create new norms for the Ethiopian Society of the future. This legal engineering is true of all of the new codes and one can cite various examples where the law has drastically changed deeply ingrained social mores. If we take the institutions and values that we earlier cited as example of those hindering development—witchcraft, attitudes towards life and its betterment, attitudes towards work in general and certain crafts in particular—we can see how the law is trying to reform or eradicate all of these.

As early as the reign of Emperor Menelik attempts to use the law to change or to maintain certain social attitudes have been made. In 1900 (E. C.) for example Emperor Menelik in this attempt to give dignity to work and workers, passed a proclamation in which he stated that those who insulted workers would be insulting him. A rough translation of the proclamation follows.

"Those of you who insult people because of their occupation better discontinue that practice. So far you have called the blacksmith *teib*, the one who made the *Shemma Shemmane*, the literate *Tenquay*, the one who served the Church *Debtera*, the one who cultivated the land and harvested both white and black (grains), the one of

31. Kelson, "The Law as a Special Social Technique," *University of Chicago L. Rev.*, Vol. 9 (1941-42), p. 75.

32. A. Southall, *Social Change in Africa* (1959), p. 14.

33. *Tulane L. Rev.*, Vol. 33, cited in note 23, p. 798.

34. *Ibid.*, p. 797.

whom it is said the farmer excels the crown, you have called *ghebere*, and the merchant who bought gold and merchandise was called by you *Yeghetaba Atabi Iij*. You have insulated every one of them because of their respective occupation. The lazy father whose son does not possess any skill whatsoever continue to harass (the society) by insulting the skilled. Originally all mankind came from Adam and Eve and there is no other source. All this is due to lack of education. God told Adam 'thou shall eat by the sweat of thy labour.' If this is not followed and if every body becomes idle, there is no government, there is no country (nation). But in all the countries of Europe, if one invents new technique which God revealed to him and makes cannons, train or any other technique is appreciated not insulted (by the society). As a result the skilled worker improves even much more. But you (people) insult the workers so much that there is a danger of destroying the country and turning it empty by absence of people who can make the plough-share. Keep them imprisoned for one year, chain them and send them to me."<sup>35</sup>

The Revised Constitution by granting equality to all men<sup>36</sup> and the civil<sup>37</sup> and penal laws<sup>38</sup> dealing with defamnation by giving due protection to any injured person are in line with the cornerstone laid down by Emperor Menelik.

Similarly the Penal Code by making it a crime to practice medicine without possessing professional qualification attempts to deter those who practice various forms of witchcraft.<sup>39</sup> On the other hand the public holidays proclamation<sup>40</sup> by cutting the number of public holidays to only fourteen and an employer being required to grant only six days leave out of these fourteen<sup>41</sup> tries to drastically change the work calendar. But even during the above days services essential for life, or essential public services such as the provision of food and drink, essential labour for the maintenance of agriculture, the provision of public entertainment, pharmaceutical and nursing services, transport services are allowed to be undertaken. Finally the mere fact that in the legal system social relations come to be seen as amenable to control and the entire civil order ultimately as a creature of the law, an *artifact* of human desire in itself by rationalizing man's understanding of social life helps in curtailing the fatalism that is prevalent in the society.

One could go on citing similar examples but we feel that the above would suffice to illustrate the point satisfactorily and we shall thus proceed to examine how effective the law can be and has been in achieving its goals or in implementing changes which it desires to introduce.

Eventhough at the outset one can say the obvious: an effective law is one that achieves its purpose, this obvious answer conceals a cluster of problems and thus the defining and measuring the effectiveness of law is neither as simple nor as obvious as it looks at first glance. Questions as to what the purpose(s) of a law is and whether one takes the purpose intended by the drafter or the parliamentarians who voted or of the judges who decided cases interpreting it crop up. In add-

35. Mesfin Woldemariam, cited in note, 2, p. 13-14.

36. Revised Constitution, Art. 37-38.

37. Civ. C., Arts. 2044-2949.

38. Pen C., Arts. 574, 588.

39. Ibid. Art. 518.

40. Public Holidays Proc. 151, *Neg. Gaz.*, Year 15, No. 9.

41. Minimum Labour condition regulations, Art. 6, Legal Notice 302, *Neg. Gaz.*, Year 24, No. 5.

ition, there is the ends and means problem—a law may be designed to channel behavior or control conduct to produce a desired result. It can be ineffective in the usual sense of the term when it fails to channel or control the behavior, it may be ineffective if the desired result does not follow from affecting conduct this way. Moreover, even when the designed conduct produces the desired result there may be unanticipated and undesirable effects.<sup>42</sup> But even though these and other similar factors may shadow our search for a reasonable measure of the effectiveness of law, “that the effectiveness of law, actual or proposed, depends on the response of some public whose interests are at issue is quite clear,”<sup>43</sup> and we shall thus proceed to explore this area.

The legal order is a coercive order and “most legal precepts are designed to influence behaviour in society, either by prescribing what the lawmakers deem to be socially desirable way of doing things or and more often, by prohibiting what the lawmakers deem to be socially undesirable ways of doing things.<sup>44</sup> However, even though it is the lawmakers who propose since it is the society that disposes<sup>45</sup> instances of an uneven correspondence between precept and consequence, purpose and outcome can be found across the board of the laws operatoin.”

The mechanisms of persistence in human beings are numerous, “they range from the stability imposed by genetic properties and the approximate identity of biological structure, from the continuing of personality through conditioned reflexes, biochemical equilibria, memory and self-identification in consequence of a constant agoidal and moral standards to the large variety of modes of self-reproduction of social and cultural system.”<sup>46</sup> This presents a rather formidable coalition and a mighty set of obstacles which the law has to overcome if it is to successfully implement the changes that wants to see introduced into the social fabric. In addition what the people think about the law, lawyers and judges whether there is a respect for law government, tradition; whether other informal means of social control exist in addition to in place of formal ones and how often they are utilized are factors that have a bearing on the efficacy of law.

As the bank of quantitative information about the Ethiopian legal system is not available at present, definite answers to all the above cannot be given. However, an empirical study that was made to examine the litigants, attitudes towards lawyers and judges of the lower courts in Ethiopia, which may be taken as an indicator of respect for the judicial system, revealed that the majority of the litigants were of the impression that advocates “purposely try to prolong cases so that extra fees may be collected,” and viewed judges as being “unknowledgeable, corrupt and even cruel”<sup>47</sup> if this is so, such negative attitudes towards advocates and judges will have an impact in reducing the effectiveness of the law and the judicial system.

Although as we stated earlier, due to lack of sufficient data it becomes extremely difficult to reasonably measure the degree of effectiveness of law in the different

42. Friedman and MuCaulay, *Law and Behavioral Sciences* (196), pp. 306.

43. L. Friedman, “Legal Culture and Social Development”, *Law S. Soc. Rev.* Vol. 4 (1969). mimeo. p. 65-66.

44. H. Jones, *The Efficacy of Law* (1968), p. 26-27.

45. *Ibid.*, p. 40.

46. A. Dessi, *Essays on Modernization* Vol. 1 (1971), p. 1.

47. T. Geraghty, “People, Pracrice, Attitudes and Problems in the Lower Courts of Ethiopia,” *J. Eth. L.*, Vol 6 (1969), pp. 476—478.



spheres of life, one can still make some generalizations as regards this issue based on the experience in other countries and the meager data that is available about the Ethiopian legal system.

As the experience of Turkey, which drew its codes from those of European countries in the 1920's, clearly shows. "It seems that the aspects of social action of a mainly instrumental character such as commercial activities were significantly influenced by new law, while those aspects of social action involving expensive activities and basic beliefs and institutions such as family life and marriage habits were very little changed inspite of explicit laws trying to shape them."<sup>48</sup>

Although it is too early to report, the experience of Ethiopia may not be quite different from that of Turkey. An empirical reserach carried out jointly by North Western-Haile Sellassie I University on the impact of the various laws on the Eth' iopian society revealed that in the area of commercial law "some major conflicts in the mercato between law and practice." However, according to the researchers these conflicts appear due to lack of education or knowledge on the part of the merchants with respect to accounting practice and registration requirements and reluctance on the part of authorities to strictly enforce many harsh legal provisions. Little if any, evidence of resistance to these laws on the basis that they are "foreign" to customary way of doing things was detected.<sup>49</sup>

While in the area of family law, it was found that despite the fact that the new law's attempt to break the customary practice of adoption by imposing a requirement of court approval,<sup>50</sup> people are still continuing to adopt according to customary procedures without seeking court approval."<sup>51</sup> Although no empirical research was made and we cannot positively say that the law is not being followed, it is very doubtful whether the Civil Code's requirement that a man be eighteen and a girl be fifteen years old in order to marry is being followed.

In addition one can cite the provisions dealing with names which up to now have been more or less a dead letter.<sup>52</sup>

However, eventhough law as an instrument in achieving the desired results may be slow or weak in matters that affect basic drives and values, the mere fact of affirmation through acts of law and government as it expresses the public worth of one set of norms, of one sub-culture vis-a-vis those of others and demonstrates which cultures have legitimacy and public domination and which do not is significant in itself. Thus the law aside from its effectiveness as an instrument can still have this *symbolic* effect, as an act, decision or gesture important in itself.<sup>53</sup>

Up to now we have been concerned with norm changes initiated by the law to be followed by behavioural changes. But unless we define social change tautologically as identical with norm change, which seems unjustifiable, we must accept three possible

48. *Tulane L. Rev.*, Vol. 33, cited in note 24, p. 800.

49. J. Ross and Zemariam Berhe, "Legal Aspects of Doing Business in Addis Ababa, A profile of the Mercato Businessman and their Reception of new laws," *J. Eth.. L, Occasional paper* No. 1, p. 39.

50. Civ. C., Art. 804 (1).

51. J. Beckstrom, *Adoption in Ethiopia Ten years After the Civil Code* (unpublished, Faculty of Law Library), p. 17.

52. Civ. C., Arts. 32-46.

53. Friedman and MuCaulay, cited in note 42. p. 309-310.

types of change — norm change followed by behavioural change, behavioural change followed by norm change and simultaneous change in behaviour and norms.<sup>54</sup> Under this section we shall consider the second type of change, behavioural change followed by norm change or law as response to change.

“In a modern society, the decline of old and the rise of new industries, changes in the strength and balance of classes, new ideas on the value of the individual, on wrongdoing and on family and sex relationship, are continuously disintegrating the old pattern of society, outmoding its machinery here and there, rendering some of its laws and sanctions harsh and inoperative.”<sup>55</sup> The question that one must address himself is thus, when changed ideals and objectives have rendered unpalatable the certainties of a precious generation must social repose be maintained as though it were the sleep of death?<sup>56</sup> The answer is certainly no, and it is imperative that the law in order to facilitate the changes must be made to tune with the times. Unless it can effectively perform this function the law would be as Roscoe Pound remarked “in very truth a government of the living by the dead.”<sup>57</sup> The moral sense of a community changes as the balance of various interests change. An example of such a process can be found in what is presently happening in many of the western countries. Although most of these countries do have laws prohibiting abortion, except for medical reasons, and make homosexuality a crime even when committed by adults in private, the constant lobbying to legalize these lead one to believe that the above laws are lagging behind the moral sense of the societies that they purport to serve. However, such phenomena are neither particular nor limited to these societies. Even in developing societies, such as Ethiopian, one can note this lag between a professed ideal and reality. For example if one examines the Ethiopian Civil Code which is basically designed for the future Ethiopian society and tries to introduce new norms, one can note that some of its provisions are already out of tune with the times. One of the few mandates in the code regarding marital dispute resolution is that the parties should submit the disputes to arbitrators selected by them. Although this system of having relatives, neighbours and friends attempt to resolve a couple’s dispute makes sense in the abstract, litigants with divorce petitions are coming to courts initially in increasing numbers in the cities. “Family arbitration is a codified customary practice with its origins in rural Ethiopia before the rise of cities. In that milieu destinies are closely intertwined. Family friends and community elders are quick to agree and often to volunteer to arbitrate material disputes. But the city filled with migrants, where independence is fostered, it is relatively difficult to get acquaintances to devote the long hours, seldom compensated, that are required by family arbitrators. For this reasons then many couples approach a court to obtain an “order” that arbitrators, whom the parties select shall act in a dispute. It apparently puts the fear of authority into some otherwise reluctant candidates.<sup>58</sup> The reason that the institution of family arbitration does not reduce the court congestion and the fact that the divorces in present Ethiopia demand a degree of expertise not commonly possessed by most family arbitrators are some of the reasons that were given by Aklilu Wolde Amanual to justify his recommendation to

54. A. Southall, cited in note 32, p. 17.

55. P. Ford, *Social Theory and Social Practice* (1968), P. 1-2.

56. W. Gelhorn, “The Law’s responses to the demand of both stability and change,” *Vanderbilt L. Rev.* Vol 17 (1965), p. 91.

57. *Ibid.*, p. 92.

abolish the institution.<sup>59</sup> Constant legislative, judicial and administrative innovation are thus necessary to keep the law abreast of life and this process of innovation requires sociological investigation, for "a mere guess of politicians combined with the skill of legal draftsman is not an adequate basis of law reform, nor is a more armchair analytical legal study of existing alternative rules."<sup>60</sup> But since in most African countries legislators, courts and administrative tribunals do not have the time and personnel to hunt for the relevant data, it may be needed to create new institutions entrusted with the sole duty of law revision.

### CONCLUSION

In this paper we have attempted to examine, by way of examples selected from Ethiopia, how social attitudes and institutions can hamper the process of development and the role that the law plays in making these attitudes and institutions with the need of development. The dual roles of law as an agent of change and as a means of facilitating change (Response) and its possibilities and limitations were considered.

In our opinion law can be an agent of social change although one should not try to use it where it is an inappropriate; i.e. when other more effective means can be restored to without much trouble. Although we may have good intentions as to what ought to do, we should always remember that this special social technique if misused may lead to its disrespect. To know what it can do an empirical study has to be made.

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58. J. Beckstrom, "Divorce in Urban Ethiopia, Ten years after the Civil Code," *J. Eth. L.* Vol. 6 (1969), 290-91.

59. Akhlu Woldemmanuel, "The Fallacies of Family Arbitration under the 1960 Ethiopian Civil Code," *J. Eth. L.*, Vol. 9 (1973)

60. J. Stone, *Province and Function of Law*, (1961) p. 408.