

## Preface to the Second Printing of the Fetha Nagast

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Forty years ago, a modest Roman Catholic priest and scholar completed work on his English translation of the Fetha Nagast,<sup>1</sup> the traditional source of law for Ethiopia's Coptic Christian community and, thus, for its imperial courts as well. Fluent in most of the languages needed for the task,<sup>2</sup> Abba Paulos Tzadua had learned English when he was forced to flee his seminary for England (where he was ordained) during the Italian occupation; returning to Asmara to direct the Cathedral school, in the late '50's he earned degrees in Law and in Political and Social Sciences from the Catholic University of Milan. By 1967 he was in Addis Ababa (Where in 1977 he would become Archbishop) and had completed his translation. He asked James CN Paul, the founding Dean of Ethiopia's national law school, for help in finalizing it; and Dean Paul honored me, then a young lecturer at the law school, with the request to be his editor. Abba Paulos and I spent afternoons during the better part of a year discussing this storied document and the best way of rendering it into what remains, to date, its final language. A gentle, unassuming man of remarkable intelligence, Abba Paulos would rise through the Catholic hierarchy to the rank of Cardinal... the first Ethiopian to attain that rank in the history of his church. Remembered by Pope John Paul II in his homily as "a zealous priest and Bishop," a pastor of "outstanding concern for lay people," this translation is only a part of the rich legacy he left behind when, in 2002, he passed away.

Only in his absence would I dare to write an introduction to this printing of the Fetha Nagast. His scholarship shines through the translation itself, and through the original preface to the translation. What appears to have been his last published work was an essay on its history that is attached as an appendix to these paragraphs. Among my colleagues in Addis Ababa at the time, Peter Sand (a young German scholar) was the one who essayed independent scholarship on this remarkable manuscript. Deeply familiar with civil and Roman Law, as I am not, and with easy linguistic access to German and other European scholarship about the Fetha Nagast, he contributed important analyses of its origins that remain among its more important glosses, and that have greatly informed the paragraphs that follow. Finally, the reader interested generally in the history of law in Ethiopia must read Dr. Aberra Jemberra's remarkable book, **An Introduction to the Legal History of Ethiopia, 1434-1974.**<sup>3</sup>

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<sup>1</sup> "Fetha Nagast" is the spelling that will be used in this preface, corresponding to that chosen for this translation. The researcher will also find it referred to in the literature as "Fetha Negest" and "Fetha Negast," and in quotations the spelling used in the material quoted will be repeated.

<sup>2</sup> In addition to Ge'ez, the language of the traditional text, and his native Tigrinya, Abba Paulos was fluent in Amharic (the language of a local translation and much commentary), Arabic (the language from which the work had been translated into Ge'ez), Italian (the language of the existing European translation, by Guidi), Latin (Roman law sources) and, of course, English-thus permitting him ready access to most of the source documents of the Fetha Negast.

<sup>3</sup> Published by the African Study Center of Leiden University. The Netherlands (Lit Verlag, 2000).

As sub-Saharan Africa became a destination for European missionaries, merchants, and the colonizing soldiers who followed in their wake, it was surely wonderful to find a part of the continent that was already Christian in substantial part—that had, indeed, survived its own bloody encounters with Muslim antagonists... and that, through Egypt and its churches, enjoyed regular, if somewhat tenuous, contacts with rest of the Christian world. It may even have been some consolation to the European powers that, even during the Nineteenth Century's "scramble for Africa," remarkably failed to reduce the Ethiopian empire to colonial status that this part of Africa was Christian Africa on its own account. To have found there, in the Fetha Nagast, a document with an apparent European heritage, with roots in the same Roman law traditions as underlay the law of all Europe, suggested that Ethiopia might already be civilized, as Europeans understood what that meant. It produced a fascination with the Fetha Nagast, with translations and scholarly analysis quite stressing the northern connection.

There is general agreement that the Fetha Nagast had its immediate source in a compilation made in Arabic from the original Greek, for use of the Egyptian Coptic Church, by a thirteenth century Christian Egyptian jurist usually referred to as Ibn Al<sup>4</sup>-Assal. (Until recent times, the Ethiopian Coptic Church was a dependency of the Egyptian church and, at least in name, its prelates came from there.) Ethiopian tradition traces the Fetha Nagast's origins back as far as the 318 sages of the Council of Nicea, during the reign of the (Christian) Roman Emperor Constantine. Just when it came to Ethiopia and was translated into Ge'ez (the Ethiopian ecclesiastical language equivalent to Latin) is uncertain, but accounts that seem to have a fair grounding in historic fact have it brought up the Nile at the request of the mid-fifteenth century emperor Zara Yacob, seeking a written basis for law by which to govern. What he received was a document at least as concerned with ecclesiastical as secular matters, and it may well have had more use in church than official circles. Indeed, on some accounts it was treated as a document only the elect were privileged to know of and consult.

Little is known about its actual use in connection with Ethiopian law-administration. There are accounts of consulting it in important criminal contexts from the moment of its arrival. Dr. Aberra Jembere reports:

When exactly the Fetha Negest became an integral part of the Ethiopian legal system is not yet definitely established. Nor is it known when it started to be cited as an authority in the process of adjudication of cases by courts. ...Even though the Fetha Negest cannot be said to have been codified on the basis of the objective realities existing in Ethiopia, it was put into practice as well as interpreted in the context of Ethiopian thinking, and all this has

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<sup>4</sup> The history is well told in Richard Pankhurst, *The Ethiopians* (Blackwell 1998). Battles with English expeditionaries, the product of diplomatic "misunderstandings" in the middle of the century, resulted in the suicide of Emperor Tewodros, and the confiscation of many manuscripts of the Fetha Nagast (*inter alia*) for the British Museum; but the British had no ambitions to remain and leadership of the Ethiopian empire passed first to Yohannes and then to Menelik. When the Italians, who had occupied areas in what is now Eritrea, attempted to push south in 1895 to vindicate a treaty that only in its Italian version appeared to make Ethiopia a protectorate, their forces were routed at Adwa: the resulting peace treaty secured Ethiopia's independence until Italy's avenging invasion of 1935, demonstrating the failure of the League of Nations and preparing the globe for world war II.

given it an Ethiopian flavor. It was, however, formally incorporated into the legal system of Ethiopia only in 1908 by Emperor Menelik II, when he established ministries for the first time in Ethiopia. The law that established ministries and defined their powers and duties laid down the following as one of the functions of the minister of justice. “He shall control whether any decision has been given in accordance with the rules incorporated in the Fetha Negast.”... The criminal provisions of the Fetha Negest were applied in Ethiopia until they were replaced by the 1930 Penal Code of Ethiopia.<sup>5</sup>

That code, like those produced in mid-century at the behest of Emperor Haile Selassie, took the Fetha Nagast as a starting point.

Perhaps, then, the principal importance of the Fetha Nagast, certainly today, is as a symbolic document ... and that, at many levels. It strongly reflects the Christian heritage of the Ethiopian highlands that remains at the core of national character. And when Ethiopia's stature as an independent African monarchy helped to catalyse the emergence of the *ras tafari*<sup>6</sup> religion in Jamaica, the Fetha Nagast acquired new status as a revered book *outside* Ethiopia: in 2002 copies of this translation were printed for distribution within that religious community. For present purposes, the commitment of the Fetha Nagast to law is the more important. For those concerned with rule of law issues in a nation where those values have often enough been challenged, it stands for five and a half centuries of commitment to written law, and to the higher character of that law... reaching ruler and ruled alike. Like Magna Carta, like highest of the Roman law ideas on which it draws, it may be able to serve as a strong tap root, capable of withstanding the momentary winds of despotism and permitting the tree of freedom under law to re-enfoliate once they have subsided.

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<sup>5</sup> Op.cit. P. 194

<sup>6</sup> Ras Tafari is the name by which Emperor Haile Sellassie was known prior to his ascendancy.