THE PENAL CODE OF THE EMPIRE OF ETHIOPIA

by

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PART ONE

INTRODUCTION

(. FROM TRADITIONAL LAW TO MODERN LAW

Since the Portuguese Alvarez, who was here from 1520 to 1526, and the Scotsman Bruce, who came here during his explorations of 1768 to 1773 numerous travelers have described "mysterious Ethiopia," the country of the Fabulous Queen of Sheba, of the axumite kings and of the legendary Prester John, as the African empire of the Negus.[1] All have spoken, more or less accurately, of her ancient customs, judicial practices and laws.[2] They have enjoyed recalling the "thrones of the judges," now deserted, in front of the mother church of "Mariam Zion" at Axum; or again, in Gondar, the antique and prosperous capital of King Fazilides, recollection of "the judgment tree, the huge tree with leafy branches in the shade of which the kings formerly exercised justice." These writers have described the Ethiopian's passion for law, tribunals and all things relating to justice and eloquence. They stressed the prestige that the lawyer enjoyed as "the skillful and fluent pleader" and noted the general custom so deeply enmeshed in their daily life of "passing judgment," whether it be in the improvised courts of the judge-arbitrator *[dagna)* or in the tribunal *{chilot)* wherejudges well versed in the law refer to the venerable *Fetha Negast* the antique "LAW OF THE KINGS," before applying capital or corporal punishment in accordance with ancient traditions."[3]

1. See notably A. M. Jones and E. Monroe, *Histoire de l'Abyssine* (Paris, 1935); A. Zervos, *L'Empire d'Ethiopie* (Addis Ababa, 1935); A. Gingold Duprey, *De i'invasion a la liberation de l'Ethiopie,* vol. 1 (publication for the Imperial Jubilee, Paris, 1955). The official modern name of the country is *Ethiopia* according to the etymological tradition which is found even in the Old Testament; the classic name of Abyssinia has been abandoned.
2. Among the modem works, which are becoming more and more numerous, we cite: H. Norden, *Le dernier empire africain, En Abyssine* (paris, 1935); J. D'Esme, *A travers l'empire de Menelik* (Paris, 1947); Mrs. Chr. Sandford, *Ethiopia under Haile Selassie* (London, 1946); D. Buxton, *Travels ill Ethiopia* (London, 1949, re-edited 1951); S. and R. Pankhurst, *Ethiopia and Erytrea* (Essex, 1953); E. Littmann, *Abessinien* (Hamburg, 1935); M. Kamil, *Das Land des Negus* (Innsbruck, 1953); H. Leuenberger, *Aethiopien, Kaiserreich seit Salomon* (Zurich, 1955); H. Jenny, *Aethiopien, Land im Aufbrucb* (Stuttgart, 1957). We naturally omit the works of a clearly political, pamphlet-like, or romantic nature.
3. Cf. on this subject: Graven, *De l'antique au nouveau droit penal ethiopien, La Vie judiciaire* (Paris, nos. 445/446, 18-30 October 1954), and *Vers un nouveau droit penal ethiopien, Revue internationale de criminologie et police technique* (Geneva, 1954, no. 4, p. 250 for this period in particular, pages 252 to 260).

Until the recent dawn of modem times and the beginning of the new Ethiopian Empire, indeed, up to the promulgation of the Penal Code of 1930, which occurred with the advent of the present Emperor, Ethiopia had no unified, written or codified legal system. The principal origins of law were the *Fetha Negast,* for the Coptic-Christian populations of the ancient provinces; the Moslem law, for the populations of Harrar and the coastal areas of the Red Sea; and the customary law, for the other regions of the country which are considered more "African" in the popular sense,"

I. The "LAW OF THE KINGS" or *Fetha Negast*

The *Fetha Negast* or *(Neguest)* is a juridical and social monument of the first order which embraces the religious and the civil domains at the same time. Its extraordinary influence on Ethiopia is explained by the fact that this country has, from time immemorial, attached itself to the Coptic Church of Alexandria. Its first bishop, Saint Frumentius (for the Ethiopians, Aba Salama, Father of Peace) was consecrated by Athanasius, defender of the Nicaea faith, shortly after his promotion to patriarch of Alexandria in 328. Later, in the 13th century, the patriarch Cyrill III (1235-1243), anxious to introduce a general reform of his church which had been weakened and threatened from all sides, established a code, or more accurately, a compilation of religious and civil precepts which was to serve as a guide. The sources of the Cyrilian Code are the Old and the New Testaments, a certain number of apostolic writings, the canons of the first councils and some writings of various fathers of the Church. The first part is devoted to the religious and liturgical life (chapters I to 22), the second to secular affairs and matters concerning government (chapters 23 to 52). This part of the civil law owes much to a combination of rules and sentences of the Nicaea Council convened by the Emperor Constantine in 325. The *Fetha Negast* expressly refers to Constantine and to the "Three Hundred Sages" or "Wise Men" (Selest Me'eti, the 318 Fathers of the Church), who are reputed by Ethiopian tradition to be the authors themselves. These precepts blended with numerous quotations from the books of Moses (Pentateuque) and often reflecting the principles of the compilation of Justinian, constitute the "LAW OF THE KINGS" or, as they are also sometimes called, the "Imperial Code," which ruled Ethiopia for centuries. One must therefore not be surprised at the Biblical and Christian character of the ancient Ethiopian law and its distant relationship with the Roman-Byzantine tradition, which brings it closer

4. Under the regime of the Italian occupation, many works, as diverse as they were numerous, were devoted to the customs of the different provinces or regions of Ethiopia and Eritrea. Thus, see those by Capo Mazza (Asmara, 1937), Petazzi (Asmara, 1937), Conti Rossini (Florence, 1937), Costanzo (Rome, 1940), Mazucci (Rome, 1941), Mininni (Rome, 1941). The Ministry for Italian Oriental Africa had also published two volumes, entitled: *Religioni usi e consuetudini delle popo/azioni dell A/rica italiana* (Rome, 1941). We can only briefly point out this realm in considering the whole picture.

5. This monument was translated and annotated by Ignazio Guidi, under the title: *11 Fetha Negast, o legislazione dei Re, Codice ecclesiastico e civile d'Abissinia* (Rome, 1889, 551 pages). *Un Compendio delle Leggi dei Re* was given by L. De Castro (Leghorn, 1921) and a synthetic study and resume of the judicial part, based on the magistral opus of Guidi, was published by the lawyer R. Rossi Canevari, under the title: *Fetha Negast (II Libra dei Re) Codice delle leggi abyssine* (Milan, 1936, 318 pages). These are the studies upon which we have based our preparatory works. There also exist some former publications, i.e., Arnould, *Libri Ethiopici Fetha Negast* (1841) and Bachmann, *Corpus juris Abessinorum (1869).*

to Continental law. Translated into Ge'ez, the learned language of the Ethiopian Church.P and adopted, they say, upon the order of Emperor Zara Yacob (1426-1460)- a prince who loved justice so much that he condemned his own son to death for the murder of a slave, and who studied the "LAW OF THE KINGS" assiduously. This law was received as a true Canon and Lay Code of law, with its contents in some way inviolable and sacred, which the priests, scholars and jurists taught, explained and caused to be respected throughout the generations. This imposing and minute summation of precepts and ordinances has been justly labeled a glory of the Coptic-Alexandrine civilization and brings honor to its author, its century and to the African Orient. It has succeeded in elevating the people for whom it was destined and in bringing back the Coptic Church (in spite of some inevitable changes) to the thought and the spitit of its beginnings. The Ge'ez version became for Ethiopia the foundation and the guide of the law and acquired the authority of a true and unique code. It constitutes the great Ethiopian Code which has led the magistral path to the community of the Abyssinian people, and it has laid the foundation of all the laws which succeeded themselves, in this vast Empire, from the 18th century until om time.? One could say that with faith in the Solomonic dynasty, the "LAW OF THE KINGS" has been the base and strength of the Empire, which was so often threatened.

The first part of the civil or secular law deals with Family Law, social institutions (including serfhood, which has no connection with the slave-trade that is so often confused with it), the main types of contracts, corporations, inheritance, etc. It later deals with procedure, namely, confessions, judges and witnesses (chapters 39 and 43), and finally with penal 1aw (chapters 44 to 50). The chapter on the kings (44) includes, among other matters, dispositions in regard to the fate of prisoners, the harbouring of fugitives and traitors. The following chapter (45) gives rules concerning responsibility for damages caused to a third party by animals or by dangerous construction, the return of lost objects and fraud. The law then lays down (46) drastic provisions with respect to apostates, blasphemers, sorcerers and doers of evil, against those who incite others to abjure the Christian faith, against idolaters and various forms of superstition. It rules on homicide (47), fornication (48), theft and brigandage (49). Finally, the chapter on "various other faults" (50) contains a whole list of prescriptions on drunkenness, usury and fraudulent use of the royal seal; it fixes the punishment for a rebellious son, false accusers and false witnesses, involuntary or intentional arson, and punishes violent occupation of another's land, disturbance of public assemblies, the right of sanctuary in temples, etc. We find, therefore, carried over into the secular framework of Ethiopian life, the habitual, pri-

6. According to tradition, which Zervos reports (op.cit., p. 274), it was probably the mother of the Emperor Yassou I, known for her taste in the arts, who had translated into Ge'ez the work of the council of Nicaea toward the end of the 17th century. The original text had disappeared and was found again in an Arab translation written in the 18th century by Abou Ishak Eben EI Assal (according to some, the very author of the Cyrilian compilation). It is this last version of the *Fetha Negast,* preserved almost intact, which furnished the Ethiopian judges the text of the laws applied until 1930, that is until the first Ethiopian Penal Code. There are probably only five authentic copies of the original translation into Ge'ez in existence in the world. An edition in the present official Amharic language has been made in recent years.

7. Such is the opinion of Mgr. Galbiati, prefect of the Ambrosian Library, in his preface to the work of Rossi Canevari. This opinion is not always shared, especially by Jones and Monroe (Histoire, p. 98), and by Poletti in his notes on the Italian edition of the *Codice penale abissino* (1938, p. 271). On the contrary, we are also convinced, after several years of living in Ethiopia and working with the present guardians of the *Fetha Negast* in the legislative commission, that the remembered appreciation is just and that the "Law of the Kings" has indeed been *the* "Book" in some sacred way. It is also the fundamental and unique source of the written law, without overlooking customary law which is so important and alive, especially in the remotest provinces or in those which still escape Imperial administration, and sensitive furthermore, especially in the realm of procedure and of execution.

mitive infractions against religion and morals, the community, public faith, persons and property.

The general conception of Ethiopian Penal Law is both Christian and lofty; the *Fetha Negast* demonstrates this clearly in its chapter on the kings and chiefs and on their duties. As the Apostle Paul pointed out in his letter to the Romans: "All magistrates have been constituted by God and He has given them their power, and he who resists a magistrate or rebels against him, is rebelling against a precept of God, his Creator; therefore, those who resist Him shall be punished. Chiefs and magistrates do not inspire terror in those who do good, but only in those who do evil things. If, therefore, brethren, you do not want to have cause for fearing a magistrate, do good. •.. But if you do evil, fear the magistrate, for it is not in vain that he wears a sword at his side; he is a minister of God and in his righteous anger he punishes those who do evil and he is thereby vindicated. This is why we must be subject to him not only out of fear of his anger, but for our conscience." The king, moreover, must be the first to be just: "The king must judge amongst his people with justice, and he must not be partial either to his own whim or to that of others, whether it be his son or his parents, or his friend, or a stranger. • • • It is writte J, in relation to judges, that an honorable king loves justice, but the unfair king loves evil and injustice to the ruin of his own soul. And Solomon, the Wise One, has proclaimed: 'To foster justice and to help the oppressed is worth more than offerings and sacrifices'." The administration of justice is therefore conceived, as it still is for St. Louis and Bossuet, as a grant from God to see to it that divine law (spiritual and internal law), which is confused with human law (judicial or external law), as emanating from ajust authority, be duly respected."

These principles can still be naturally applied to a pastoral and warring society which is almost Biblical, and in which are found, next to the king, the priest and the judge, the master and his serf, the soldier and his prisoner, the pious person and the infidel, the adulterous women, the goldsmith taken for a procurer and magician, the astrologer and a soothsayer, the huntsman armed with a lance and the plowman. And yet, one cannot help being struck by the loftiness of those rules and their perfect accord with the time. The narrow and pitiless talion law under which the puishmeot is in proportion to the harm done has long been extinct. Concrete cases are cited, for laws develop only slowly from the specific case to the abstract rule. from the "casuistry" [that part of theology that deals with cases concerning conscience] to the doctrine {rom which there appear the principles that dictate them. especially concerning problems of responsibility and guilt, participation, penalty and .its proportion to the fault. Mistake and coercion, legitimate defense and necessity, instigation, complicity and being an accessory after the fact are all taken into consideration. The extreme cases of «intervening causes and brawls, which still worry jurists nowadays, are resolved in nuances with remarkable common sense and juridical finesse. The "personality of the fault" is clearly defined: "Fathers are not to be

8. Chapter *45* on "things drawn from the Old and the New Testament" from which it is fitting to quote, states, "Since man is made up of a body and a soul, it is necessary to give him two laws: external law, which is judicial law and concerns things corporeal and visible as well as the judgment of crimes; and internal law, which is spiritual law and is a "law of perfection" concerning spiritual matters. They are largely confused, because the second one did not succeed in taking care of the first, since Our Lord said: "I have not come to destroy the law, but to fulfill it." *Justice and spiritual punishment,* as considered by laymen, therefore play a very important role which must not be overlooked. The end of the chapter indicates what these penalties and penances are. Just as in our Christian Middle Ages, they dominate an entire realm of the law. The infidels, the impious, and the persons excommunicated from the Christian community because of a spiritual penalty, as for example, murderers, those guilty of adultery, and women who allow themselves to abort, do not have the right to enter into church, that is, into the circular passage which surrounds the "holy of holies". The *mekdes,* where the tabernacle or the *tabot* is located fo,r Ethiopian churches, round or octagonal, continued to be constructed on the model of the tem~ of Solomon.

put to death instead of their sons; a son is not be punished for his father's crime, nor a father for his son's." So too is the principle of the "individualization" of the punishment. "Do not judge all crimes with the same judgment: the punishment for he who sins by actions is not to be the punishment for he who sins by word or deed. There are certain wrongdoers against whom one must become only irritated and whom one must scold; for others, one must order the giving of alms or fasting, still others must be banished from the church in proportion to the crin,e committed; for the Law of Moses does not impose one punishment for all the guilty. The punishment for one who commits a crime voluntarily is not the same as the punishment for one who does so involuntarily. For some the penalty of death is due, for some a flogging, for some a levy on their goods, and for others the punishment ofthe "talion;" they must suffer what they made another suffer. Know then a different punishment for each guilty one in order that there not be any iniquity on your part, for it is said, as you judge, so shall you be judged."

It is naive to be surprised or shocked, as one so often is, because of the lack of his: torical knowledge or in forgetting the perspective of time, that judicial conceptions and primitive punishments are different from our conceptions and our present day punishments. These quite obviously are better suited to a primitive society, which is concerned mostly with its own protetion, and to minds brought up in the idea that the expiation of a sin is the condition for pardon. They-are in accord with the beliefs, the needs and the customs. It is natural and even necessary that they be of a vengeful and purifying character as well as being exemplary and intimidating. Their aim is normally to punish the wicked, to reassure the innocent and to prevent the repetition of the crime. It is by no means surprising that a man be "punished in the manner in which he has sinned," and that the penalties be the natural, primitive punishments which must strike the imagination in order to better illustrate the relation between the crime and its sanction and to achieve their purpose: death for the murderer, burning for the arsonist, mutilation of the tongue for he who commits perjury and of the hand for he who counterfeits the royal seal or coins, flogging for the low or stubbornly perverse creature, or as the comments on the *Fetha Negast* later prescribe, shooting for he who sells guns to the enemy. Nor is it more surprising that in a judicial system where the idea of private wrongs and remedies still prevails, accidental or unpremeditated homicide can be expiated by the payment of blood money, subject to forgiveness by the victim's family and the church and duly recorded in court. Have we not seen criminals in sack cloth and ashes come forward to make honorable amends and to beg forgiveness? In reality, Ethiopian law, which travelers unfamiliar with its legal history, reputed to be "cruel" or "barbarous" because it retained the spirit and punishments of ancient law, in particular hanging, mutilation at the wrist and flogging, was largely receptive to forgiveness, to the sacred right of sanctury, to spiritual sanctions and rehabilitation; and it has never known the legal subtleties of the ordeals and combined tortures common to all the most civilized European nations up to the period of the so-called "enlightenment" at the end of the 18th century."

One cannot forget, after all, that generally, in this country governed by Christian laws and princes, respect, for the accused was such that the Negus alone could pronounce a sentence of death; and that usually for fear of committing an error which could fall back on him in after-life, or in the realization that God alone, Who gives life, has the right to take it away, he would not pronounce it directly. He would order the *Fetha Negast* (the book of the laws descended from the "fathers of the faith" and representing the law

9. The testimony of Francisco Alvarez, sent to the Portuguese Embassy in Ethiopia in 1520, shows that justice there was certainly "very crude and swift" as was true everywhere in those days, but without the cruelties and exaggerations codified aad justified by our ancient authors. Jones and Monroe summarize these considerations in their *Histoire de l'Abyssinie,* pp. 97-100.

of the Supreme Judge) to be opened and read before his court so that it would be the law *itself* which decreed the sentence of capital punishment.t? Hence the deeply rooted tradition, still in force today, that the Emperor alone has the power of declaring enforceable a death sentence, and all sentences of this nature must be submitted to Him personally.

Therefore, the application of the principles of the penal law found in the "LAW OF THE KINGS," in light of Christian canons and doctrine concerning personal fault and its reparation, is worthy of attention and is very advanced for its time. Bearing in mind the conditions at that time, as well as the fact that harsh punishments did not shock anyone because they were in accordance with the popular sentiments and seemed perfectly adequate to what might be called the "criminal policy" of that epoch, it must be conceded that the said principles often correspond to what is required today of a law subjectively evolved. Ancient corporeal punishment was, incidentally, on the decline at the time of the penetration of western ideas into this high fortress which Ethiepia represented,'! and the Penal Code of 1923-1930 will have no trouble leading almost effortlessly into *a new regime.*

II. THE FIRST ETHIOPIAN PENAL CODE (1923-1930)

The first effort at modern codification in Ethiopia was accomplished in the domain of penal law. This was natural, since this is the law which above all others needed to be separated from ancient customs in order to be adapted not only to the needs of present day "criminal policy," but also to the demands of individual protection and to the principles of legality included in modern written law, <;0 as to create the conditions for a better and more general enforcement of the law at a time when Ethiopia was opening its doors to international relations, trends of modern thought and foreigners.

The Ethiopian Penal Code of 23 Tekemt 1923 (Ethiopian Calendar) or of November 2, 1930. (Gregorian Calendarj'< was proclaimed on the occasion of the crowning of the reigning Emperor, His Imperial Majesty Haile Selassie IY Conceived in the fashion of our codes, it includes an important Preamble of 22 articles, which expresses, according to the Sovereign who gave it to His people, its reason for being, its spirit, its scope and the results which it expects to attain. A General Part covers the general principles concerning offences and liability to punishment (book I); the Special Part contains the definitions

10. In Ethiopian protocol, it is not the king, the *Negus* himself, but the President of the Supreme Court, who is called for this reason *Ala Negus* (the King's Spokesman), and who usually rules over the trial and pronounces the sentence.

11. Cf. the irrefutable testimony in the official report of the chancellor of the French Legation, in June 1918, reprinted by P. Alype in his book: *L'Empire des Negus sous la couronne de Salomon, De la Reine de Saba* li *la Societe des Nations,* preface by H. De Jouvenel (paris, 1925).

12. The date was sometimes given as the end of 1930, sometimes the beginning of 1931, on account of the change in the calendars. We have established, on the basis of publications and official documents, that it is indeed the European date of November 2,1930 which is exact. Cf. our article: *Vers un nouveau droit penal ethiopien, Revue citee,* 1954, no. 4, p. 260, note 1.

13. The son of Ras Makonnen, victor of Adua in 1896, governor of Harrar, and grandson of Sale Selassie of the line of Solomon, Ras Taffari Makonnen, Regent of the Empire, took, according to Ethiopian custom, a "reigning name" at the time of His crowning, namely, Haile Selassie which means "Power of the Trinity."

and the punishment for offences against the State, persons and property, as well as petty offences.[14]

The Preamble, reflecting a feeling for progress and for equity, has demonstrated well (in its articles 5, 15 and 16) how a modern legislator can still be inspired by the spirit of justice and correction of the *Fetha Negast* or of the "LAW OF THE KINGS," and it has pointed out justly (article 3) that the principles of the modern European Codes used as models'! are still often very close to those which are found expressed in this venerable legislation, a fact which is not surprising after what we have said about the Ethiopian judicial tradition being tied in with the great Christian trend. Whether common sources had been transmitted by way of Rome, as in Europe, or by Alexandria, as in.Ethiopia, on many points the Roman-Occidental conception, reflected in the classic Continental Codes, and the Oriental or Alexandrian, reflected in the Ethiopian tradition, joined together and easily allowed the modernization of the work on this ground. The Code of 1923·1930 is a first interesting attempt which is praiseworthy in this sense, as it has opened the paths toward the delicate task of modernizing and codifying Ethiopian law in general.

A primary fundamental advantage of the Code is the defining, in an exact fashion, the crimes and respective punishments. As its Preamble indicates, when the law was being administered solely according to the ancient principles of the "LAW OF THE KINGS" or customary law, the result was that the judges, after having determined the guilt of the accused, did not know what punishment to give him, and they had to limit themselves to a finding of guilt and then send him on to the Governor for sentencing. Henceforward judges would know the exact provision to be applied, and they would be in a position to judge better; and the citizens, for their part, would know which would be the pitfalls and the punishments that they would have to avoid something which would inevitably lead to progress (articles 3 and 4, 10 and 13, Introduction).

A second attribute of the Code is that it not only defined and restricted but also considerably softened and improved the penalties. The fines were set in proportion to

14. The Penal Code of 1923·1930, in the official *Amharic* language, was translated into English (not published) and into Italian. The Italian version, with an introduction, a commentary, notes and additions thanks to the lawyer Edward Poletti, was edited in Milan, in 1938 (Ed. Hoepli), with the title: *Il Codice penale Abissino, Con Ie relative, narme consuetudinarie.* This is a precious source of knowledge for foreigners and although it is not altogether exact, it has been very useful to us in our research. A comprehensive idea of the contemporary Ethiopian judicial system is found in the study of Nathan Marein, Advocate General and adviser of the Ethiopian Government: *The Judicial System and the Laws of Ethiopia,* revised edition, Rotterdam, 1951 (Vustheim Ltd.), which is a collection of texts and not a commentary or a systematic study. In a thesis on *La regime Juridique des etrangers en Ethiopie* (Geneva, 1936), J. J. Auberson, then legal adviser to the Ethiopian Government, also gave certain information, not altogether exact, on Ethiopian penal law.

15. It has been said (Auberson, Marein, op.cit.) that the Ethiopian legislator of 1923·1930 had "copied the Code of Siam" with a few changes, or "incorporated many aspects of the law of Indochina," which saying is not only superficial, but contrary to the official statements of the preamble itself and to a deeper study of the texts. The confusion might have stemmed from the fact that a French lawyer stationed in Djibouti who had spent a long time in Indochina, when consulted for the elaboration of the Ethiopian Code of 1923·1930, might have naturally been inspired by the Code of (French) Indochina. As for the very spirit of the codification, opinions are no less divergent; some contend that it has a modern aspect, not corresponding to indigenous traits (Auherson); others, on the contrary, consider this code to he of a "judicial and practical nature" whereas the *Fetha Negast* was above all ethical and religious. For anyone who has studied the Code carefully, the coordination of the Ethiopian customary law with the p_!inciples of modem codes is quite apparent.

the recent economic and monetary situations in Ethiopia,16 and adapted to the rank and the resources of each one (articles 2, and 6 to 9, Introduction). Mutilations were fundamentally abolished and totally excluded, and the remaining traces of the talion were forbidden. After much hesitation, and in keeping with the example of other countries, such as England, only flogging was kept as a form of corporal punishment. Even then it was strictly limited, in regard to the number of authorized strokes, as well as the manner in which it was to be infticted, and the rare cases of serious offences, such as violent or armed robbery, in which it could be ordered. It was also formally prescribed that judges could substitute fines for flogging whenever circumstances, especially a less serious character of the case, would make this action seem appropriate (articles 2 to 4, C.P.). Deprivation of freedom or other detention could not be aggravated by the manner i!1 which it was enforced (article 5). The confiscation of property was also strictly limited, and humane dispositions were established in regard to goods not liable to confiscation in order to avoid the complete ruin of the condemned and of his family (articles 25 to 34). Exile or forced residence of a specified duration could only be given by the Emperor's Tribunal (article 8), and a penalty of death could never be enforced except after appeal to, and confirmation by the said Tribunal (article I).

It is, therefore, absolutely erroneous, unless done .unintentionally, to publish, as certain superficial travelers looking for sensation have done, romanticized accounts of various mutilations, flogging to death, branding or death by fire, which reveal nothing but fantasy or ancient, wild account and do not correspond whatsoever to the actual penal system. Informed persons have refuted these affirmations, in recognizing the humanity of this Code and the courage that it took to plunge thoroughly into this path of reform."? If Ethiopian Law seemed "cruel" up to its first modern codification, it is simply because, as distinguished from what occurred in our more advanced countries, it had remained in the primitive state of expiatory and intimidating law and continued to apply in the presence of foreign observers who were as unfamiliar with the history of our law as they were lacking a deep understanding of the customary penalties; the usual ancient penalties that Continental law has also known and which were even more rigorous and systematically "atrocious" in the "civilized" countries. The law was still in keeping with tradition and with the need of expiation and protection formerly common to everyone, which need was that of the people to whom this ancient form of law had continued to be familiar.

16. Until 1800, according to the Ethiopian calendar (which is seven years behind the Gregorian calendar, the time that it took for the birth of Christ to reach the mountains of Ethiopia, according to legend) the fine or reparation for damage to the injured party was paid in livestock; from 1800 to 1900 in bars of salt; since then, with the advent of a more modem organization and the development of means for payment, in *thalers.* Thalers of the Empress Maria-Theresa of Austria were once popular and foremost in Ethiopia; later, the Emperor Menelik replaced them by thalers made in his own likeness. Thalers, replaced nowadays by the Ethiopian dollar with the likeness of the Emperor Haile Selassie, can still be found fairly abundantly as objects of collection or ornament.

17. One must categorically sort out fantasies such as those of L. Farago in his book *Abyssinia on the Ece* (Chapter IV, *Justice in Addis Ababa)* London, 1935, p. 33 and of H. De Monfreid (ousted from Ethiopia in May 1933) in the collective *workL'Afrique Noire-Ethiopie-Madagascar* from the collection *Le Mende en couleurs,* Paris. 1952, pp. 350 to 353. Auberson, legal adviser to the Ethiopian Government until the Italian occupation and as such ideally situated to judge from first hand knowledge, after having clearly stated the essential reforms of the Code of 1930 in his thesis at the University of Geneva on *Le regime juridique des etrangers en Ethiopie* (1936, p. 190), concluded justly that one could no longer speak of the "savagery" of Ethiopian law, which "was more apparent than real because of the practice of paying compensation." Mrs. Sandford, an impartial witness who lived in Ethiopia from 1920 to 1935 and then returned in 1942, reveaJed"the sincerity of the humanity and ~()Urage" of this legislative product in her book *Ethiopia under Haile Selassie* (1946) p. 85 and this IS also the opinion of Professor N. Bentwich who analyzed the Code in *Contemporary Review,* May

A third very interesting and very acceptable aspect in the principle, if not in the form in which it had been operated, is the manner in which this first Code, within the just idea that one who is higher placed, more cultured or more favored by good fortune is generally more guilty and must be more seriously punished so that a true equality and a tempered judicial treatment may be assured, has strained to *individualize* a penalty by making it proportionate to the crime, the rank, the duties and the resources of the criminal. The Preamble presents this with a great deal of good sense and clarity in the traditional style which is suited to it. ,, * * * On the other hand, especially during recent times, those who have committed crimes because of ignorance of the law have been more numerous than those who did so knowing what the law was; whence the necessity of distinguishing. one case from another, that is, distinguishing the case of one who commits a crime because of a simple error in negligence from one who does so intentionally. Jesus Christ Himself has said, as one can see in the Gospel according to St. Luke: 'For he who knows much shall be punished much, but he who knows little shall be punished little.' In the same manner, the Three Hundred Sages, recognizing that it is not just to inflict the same penalty on a person who is sound in mind and one who is mentally deficient, established penalties in such a way that older persons with sound minds be punished more than younger persons who were deficient. In personal injury cases, one must take into account the person who is injured, the position he holds and the seriousness of the injury, because it is not just £0 treat all cases equally. Distinguished persons must not be punished in the same way as those who are not so, and among distinguished persons the most important one will pay according to his rank, and the sum which he shall pay will be given to the poor and also used in the support of the schools (articles 14 to 20)."

The General Part treats exhaustively the amount of fine due, in addition to compensation for the wrong done, in the various cases where the offence involved baseness, abuse of power, envy, perfidy, vindictiveness or anger, or where the doer caused more harm than he had intended to or misused his right of self-defence. In these cases, the law prescribes the minima and the maxima for the different persons, going from the highest placed ones, whether they be sons of chiefs or even of the *Negus,* to the notables (from the title of *balambaras* to that of *ras),* to judges (from the title of *wombar* to that of *Afa Negus),* to the officers of the State, both civil and military, and finally for simple citizens both rich and poor (articles 52 to 148).

Moreover, rules are given for the mitigation of the penalty in case of presumed ignorance of the law (articles 12 to 21 or for other motives, such as lack of intelligence, repentance and spontaneous confession (articles 22 to 24), as well as for the increase of the penalty in cases of concurrence of offenses and recidivism (articles 42 ff.).

One can see, therefore, that principles of individualizing and fixing penalties according to the seriousness of the crime, the motives, the circumstances and the personality of the culprit have already been inaugurated. All that remains to be done is to develop them systematically and formulate them into general rules which conform to the present day legislative technique in order to elaborate the base of the modern Code.

Finally, the Code of 1923-1930has also created a well expressed Special Part, setting its sights on the three great classic categories of protected interests; the State and collectivity (Book II, articles 160 to 272), persons (Book III, articles 273 to 415), and property (Book IV, articles 416 to 418). One can find therein most of the usual crimes with their penalty. The book on petty offences against circulation and public order (Book V, articles 469 to 489 completes the system which furnishes, once again, the basis for its future development. A certain number of these provisions have been able to serve as points of departure, inspiration, or comparis<jl for the provisions of the new Code, after naturaally having been methodically reviewed, completed and adapted to the present practical

and juridical requirements. For it is obvious that this first transitory legislation did not suit modem requirements. It presented still too many vestiges of the ancient system which were both formalistic and rigid according to the ancient universal tradition (articles 404 to 419), such as the application of various fines and their rates, similar to those of the customary feudal law (articles 52 to 142), the general conception of extenuating and aggravating circumstances, excuses and justification, no longer corresponding to an elaborate methodic system for keeping an account of the extent of a crime and its punishment (articles 46 to 51, 145 and 151), or the regulation of homicide and its penalty, still partly based on the old rule of agreement with the family of the victim and payment of blood money in case of excusable homicide. In this sort of compromise between -traditional principles which still had a marked private character and the necessity of regulations and modem public order, there was an element of perplexity and of difficulties which had to disappear.

III. THE CORRECTION OF GAPS AND T'HE COMPLEMENTARY LEGISLATION OF "PROCLAMATIONS"

The first codification, surmounting such a significant, historical step as that from traditional and customary law to written law, was not yet able to foresee and regulate everything, and that is why it had to establish an elastic principle in its preliminary provisions. Emphasizing the fact that in passing over to the new judicial system there would be no lack of occasion for stumbling into cases unforeseen by the law, the Preamble specified that it would be suitable, in dealing with these cases, to apply on the one hand those rules which by their wording covered the case under consideration (article 11) and on the other hand, to have entirely new cases which were not covered by the wording of existing provisions decided by the Supreme Court (article 12). This solution, wise enough at that stage of the law and in accord with the teachings of history and the requirements of reason, was, needless to say, to be reviewed at the time of the definitive codification, since it was not compatible with the strict principle of the "legality" of incriminations and penalties which is commonly embodied in exhaustive codifications, nor with that of "separation of powers" which, in countries that have written laws, tends to reserve for the legislator alone the formation of the law and avoids its formal "pretorian" creation by the judge. But this was only one step, and the Preamble also brought out very clearly that one must not lose sight of the necessity of making the penal law harmonize with the conditions of his time, recalled by the precept of the Three Hundred Sages (articles 2 and 5), and of the fact that "time marches on' , (article 7). It proposed that steps be taken very cautiously, as emphasized by its dispositions regarding the retention of corporal punishment (article 3, C.P.), the effects of ignorance of the new law and its innovations (articles 14 ff.), the meticulous measure of fines (articles 53 if., 158 and 159), and the punishment of insult, bodily harm and homicide (articles 273, 339 and 404 if.).

After the period of the Italian occupation, and with the reestablishment of the national regime on May 5, 1941, the Code was completed, and the penal, the legislative and judiciary system was put to the test by a series of "proclamations" or special laws published in the official Journal or the *Neg9/it Gazeta* from 1942 to 1952. We shall limit ourselves

to citing the proclamations on the offences contrary to the provisions abolishing slavery,iS the organization of the army and military offences.t" the attacks on public security,to counterfeit money and forgery," the control of explosives, drugs, narcotics, gambling and lotteries.s" the endangering of public communications.P vagrancy." also the organization of prisons and the enforcement of imprisonment.t" without mentioning proclamations on the organization of justice-" and the establishment of public prosecutorsf? in the procedural domain, In this way one has strained to meet, in the best possible way, the most urgent modern needs; this, however, was inevitably detrimental to the simplicity of the system as a whole and the consistency of the applicable principles, and complicated considerably the knowledge and application of the pertinent penal provisions without even fully improving certain important gaps. Thus, the General Part did not deal with the scope of the application of national legislation and conflicts with foreign penal law, penal responsibility and the conditions and forms of guilt, the special penal treatment of minors and recidivists, limitation of the prosecution and sentence, nor with the problems important in modern law, of probation, conditional release and rehabilitation conceived as methods of penal treatment. In addition, the Special Part of the Code did not regulate sufficiently certain fields, such as those 'of offences against +he law of nations, public interests (health, communications, administration of justice, etc.), rights in property or economic interests.

IV. THE DIRECTIVES FOR THE NEW PENAL CODE

Such was the foundation upon which was to be built a new, complete and clear penal law in accord with "directives" revealed by His Imperial Majesty, the Emperor, at the opening session of the consultative Commission for the new legislation on March 26, 1954. The presence of the Crown Prince, of His Beatitude, *Abouna Basilios,* head of the

18. Proclamation no, 22, of Aug, 26, 1942, On this question, the confusion (voluntary or involuntary) that occurred, and the steps taken by Ethiopia in this connection, see Graven: *A propos du probleme de l'esclavage et de sa repression en Ethiopie,* addendum to our writing in the *Revue internationale de criminologie et police technique,* 1954, no. 4, pp, 279 and 280,
19, Proclamation no. 68, of July 28, 1944.
20, Proclamation no. 4, of January 31, 1942,
21. Proclamation nos, 76 of Apil 29, 1945, and 41 of July 31, 1943,
22, Proclamation nos. 19 of July 28, 1942; 24 of September 13, 1942; 77 of October 31, 1945.
23, Proclamation nos, 16 of June 19, 1942, and 35 of March 1, 1943.
24. Proclamation no. 89 of May 29, 1947.
25. Proclamation no. 45 of January 30, 1944.
26. Proclamation nos. 2 of January 31, 1942; 62 of May 29, 1944; 90 of June 28, 1947; 102 of December 30, 1948; and 149 of November 4, 1955.
27. Proclamation no. 29 of October 31, 1942 and complementary Proclamation nos. 118 and 123 of July 28, 1951 and 1952. On the federal plan, the administration of justice in civil and penal matters was set up by Proclamation nos. 130 (a) of September 25, 1953 and 141 of September 30, 1954. For all the legislation which completes or amend~,the penal system, cf, Marein, op.cit. Chap. V, *Criminal Laws* p. 130. Naturally one must add ~numerous regulations and instructions as for example the instructions for the Police Forces of the Imperial Ethiopian Government of 1950.

Church of Ethiopia, some members of the Crown Council, ministers and high dignitaries emphasized the importance of the legislative task to be carried out.[28]

After having revised the Constitution of the Bmpire." "considering the acquisitions of the past, the needs of the present and the ideals of the future", it was fitting to form "the broad and advanced legislative program" leaning towards the reform and new codification of civil, commercial, penal and procedural laws in order to adapt the conditions of Ethiopia to modern requirements in the conviction, according to the Imperial message, "that progress must be the key to ou rlife and our development". The profound constitutional innovations.P? the "need of pursuing resolutely the program of social advancement and of integration in an enlarged social community" and the "need for commercial and maritime communications" inevitably led to "the closer adaptation of the legal system of Ethiopia with that of other countries with which there exist cultural and commercial relations" in order "to establish and strengthen these relations on solid foundations" and insure the clarity and security of the law.

As for the method to be followed, two essential principles were to serve as a guide and were reaffirmed in the Imperial Preface of the new Code. In a way, although Ethiopia might justly claim "what is, perhaps, the longest-Standing system of law in the world today," the Emperor observed, "We have never hesitated to adopt the best that other systems of law can offer, to the extent that they respond and can be adapted to the genius of our particular institutions". That which had been true in the preparatory work of the

28. Accounts of the opening session of the Codification Commission, as well as the speeches given on that occasion, were published in the newspapers of Addis Ababa: *The Ethiopian Herald,* March 27, and *L'Ethiopie d'oujourd'hui,* April 2, 1954. We have digested the general trend of these instructions in our articles: *Ver un nouveau droit penal ethtopien, Revue internationale de criminologie et police technique,* 1954, p. 250, and *L'Ethiopie moderne et La codification du noveau droit, Revue penale suisse,* 1957, no. 4, p.. 398.

29. The "first constitution of the history of this three thousand year old empire was presented to Ethiopia by His Imperial Majesty Emperor Haile Selassie I, in the second year of his reign, on July 16, 1931 (9 Hamle 1923, Ethiopian calendar). The decree that proclaims it demonstrates the spirit and aims of the Sovereign: "Having been called to the Imperial Throne by the grace of God and by the unanimous voice of the people, and having the crown and the throne legitimately according to law, We are convinced that there is no better way of expressing the gratitude due Our Creator, Who has bestowed on Us His trust, than by proving Ourselves worthy of this by means of making every effort to provide whomever follows Us with this confidence and with the power to work in conformity with the laws expressed in the principles set forth. Bearing in mind the prosperity of the country, We have decided to work out a constitution which guarantees a prosperity based on laws•... Having received from the hands of God a lofty mission for the fulfillment of His plans, We consider it Our duty to make decrees and to back up all necessary measures ... to accrue to the well-being of Our people and to its progress along the road to happiness and to the civilization reached by independent and cultured nations." Cf. Gingold Duprey, op.cit. p. 79.

30. On the 25th anniversary of his crowning, Nov. 4, 1955, before both Houses of Parliament, His Imperial Majesty Haile Selassie, recalling the Constitution presented 24 years earlier which had "laid the foundation of the Government of Ethiopia" and had "proven its value and its durability," declared himself "happy to present a revised constitution, which strengthens the points that bave been reached and prepares the way to future progress." The extraordinary transformation (as pointed out by the speech of the Monarch) which had been realized within this interval of time indeed required an adaptation of the first constitution, in order to allow the Empire "to go forward in its development." The revised constitution, containing 131 articles (Proclamation no. 149 of 1955), was published in Amharic and in English in the Negarit Gazeta of Nov. 4, 1955 (15th year, no. 2). A French translation was published under the auspices of the Interparliamentary Union, in Geneva in 1956. The French translation of the speech from the Throne of Nov. 4,1955, appeared in the *Bulletin du Jubile ETperial,* edited by the Franco-Ethiopian Chamber of Commerce in Paris, 1955, no. 34, pp. 11-21. We have presented a glimpse of it in: Graven, *Le jubile du couronnement imperial et la nouvelle legislation ethiopienne,* in *La Vie Judiciaire,* Paris Oct. 1955, nos. 445 and 446, pp. 18-23 and 25-30. A Spanish language version appeared in the Barreau Review of Madrid, *Astrea* 1956, nos. 47-48.

constitution, was also to be true for the plans of the general codification." The appeal made to European jurists for the elaboration of the various code projects'f demonstrated that Ethiopia wanted a modern work, in keeping with the requirements of modern science. But, on the other hand, and this is indeed what must be understood when speaking of adaptation, the past and experience must also keep their laws. "The point of departure must remain the genius of Ethiopian- legal traditions and the institutions which have origins of unparalleled antiquity and continuity." It would not be fitting simply to copy foreign codes, however good and famous they might be, without considering the historical and political development of which they are the product or the conditions and customs for which they were made, nor those often so totally different from the country for which they are intended.

A code must be both the reflection and the regulation of customs. A country is an individuality with its own characteristics and needs; it is impossible to overlook this fact if one wants to assure its sound development and its. harmonious growth.

This was always the vision and the aim of the Emperor, Haile Selassie I, Who, ever since the proclamation of the first Constitution in 1931, had expressed the rule in these terms: "The present Constitution has not been prepared' at random and is not contrary to the customs of the country. It is inspired by and closely approaches the principles of other civilized peoples. It has been planned with the assistance of Our Princes and Dignitaries and with the collaboration of Our most enlightened subjects. That is why, even if man has the power of commencing his undertakings, it is for God alone to bring them to a successful conclusion. There was reason to hope that these efforts would evolve a product which will facilitate Government action whilst assuring the happiness of the people who will, in addition, derive from it an honour which will not fail to be reflected on future generations and will permit the Empire to enjoy the inestimable benefits of peace and security."

Therefore, to summarize, it was a question of elaborating a system of penal legislation which would be totally original and truly national, corresponding to the tradition of justice, the vital needs and the possibilities of enforcement in this country. This difficult work of complete renovation in keeping with the Ethiopian spirit, animated by the best contributions possible from foreign legislative experience, the method of wokr

31. The speech, made at the time of the solemn signing of the first constitution by the Emperor, to all the official groups of the State, set forth very clearly the essential principles. After having recalled that "no one doubts that laws bring the greatest advantages to human beings and that each person's honor and interests depend on the wisdom of the laws, just as humiliation, shame, iniquity and the denial of human rights stern from the absence of or the imperfection of laws", His Imperial Majesty Haile Selassie emphasized the following principles: "... 2nd Law, whether it brings rewards or punishment, must be applied equaily to everyone without exception .... 6th - - Since the practical aim of laws is to develop human progress in accord with the highest principles. these laws must be founded on scientific methods which have as their aim a harmonious improvement of the general plan of things." The 7th principle is the one we recall at the conclusion of this paragraph. Cf. Gingold Duprey, op.cit. p. 83.

32. The authors of the new Ethiopian legislation were the following professors: Jean Escarra (Paris), for the Commercial and Maritime projects of the Code; Rene David (Paris), for the projects of the Civil Code and the Code of Obligations; Jean Graven (Geneva) for the projects of the Penal Code, the Judiciary Code (organization and jurisdiction of the courts), the Civil Procedure Code and the Penal Procedure Code. Professor Alfrel.· Jauffret (Aix-Marseilles) was called upon to complete the Commercial Code which was interrupted by the death of its author.

adopted, and the cooperation of the legislative Commission" were to make possible its realization in spite of foreseeable obstacles. These were surmounted in a relatively rapid and, we trust, satisfactory manner, since the Commission, as well as the Parliament, considered that this adaptation to Ethiopian realities and needs had met the demands of tradition and recent progress, of the past and of the future.

PART TWO
THE NEW LAW; ITS STRUCTURE, PRINCIPLES AND SPIRIT

The new "Penal Code of the Empire of Ethiopia" was promulgated on July 23, 1957, the Emperor's 65th birthday. It was the first of the new codes, and went into force on May 5, 1958, the anniversary of the liberation of the country and the restoration of its ancient monarchy.P' The importance and the spirit of the work have been made clear by His Majesty Haile Selassie Himself, in the Preface to the Code, a part of which is here included as an appendix because of its historical interest.

> "The codification of the principal branches of law of any country is always a difficult task, since it must be profoundly grounded in the life and traditions of the nation, and it must, at the same time,' be in keeping with and responsive to the influences, not only juridical, but also social, economic and scientific which are in the process of transforming the nation and our lives and which will inevitably shape the lives of those who come after us.

33. We set forth this mechanism in our summary in *Revue penale suisse* 1957, p. 402. The Great Legislative Commission appointed by His Imperial Majesty the Emperor, was composed of approximately twenty-five members, Ethiopians and foreigners, representing a cross section of law, government and business. In the beginning the Commission was called upon to learn the general scheme of the project, and it readily approved the leading principles suggested unanimously by the three experts charged with elaborating the various Code projects, with the idea of insuring unity of mind and method as well as of a mutual effort. Made up of judges, magistrates, governors and senior Ethiopian officials, immersed in the knowledge of their own customs and law; higher judges, lawyers and foreign legal counsellors established in Ethiopia for a long time; and bank directors, business executives and chambers of commerce, the Commission was qualified to give general opinions and bring to a head the instrument of the so-called legislative preparation. After the elaboration of the texts was completed, it was up to the Commission to examine the result as a whole and to give its ideas on the codes before they were submitted to Parliament, as was done for the project of the Penal Code. For the project to be effective, the discussion, and the sorting out of the problems, a less complex and a more expedient machinery was needed to function on a standby basis: this was the Small Commission, drawn from the General Commission and representing it. It was composed of a certain number of Ethiopians, the most competent and the most experienced according to their high positions and foreign presidents and vice-presidents of the High Court of Addis Ababa,who were distinguished jurists, of varying backgrounds, connected with the two great systems of law (the Anglo-Saxon, and the French and Continental), thus assuring a balanced recognition of the elements of both tradition and comparative law. The Small Commission met with the drafter, under the chairmanship of His Excellency the Minister of Justice or, in the event of his not being able to attend, His Excellency the Vice Minister of Legislation, who gave the project complete support and worthwhile impetus. It is this same Commission that did all the work of examining and compiling (including the translations) the multiple work of the experts. It put a stamp of definitive Ethiopian character on the project while awaiting parliamentary approval, and also assured its indispensable unity. Its comprehension and sense of fairness of "law" in the Roman concept of the *art of equity and justice,* which has remained its tradition, has never erred in the search for the "best" of the "possible" which the Imperial direction had assigned as an ideal goal.

34. *Conquering Lion of the Tribe of Judah, Haile Selassie I, Elect 0/ God, Emperor of Ethiopia ... Given in the 27th year of Our Reign, this 23rd day of July,* 1957. *Proclamation No.* 158 *of* 1957, *Negarit Gazeta, Gazette Extraordinary, 16th year No.1, p.v.* On the new Ethiopian Penal Code and its general organization, cf. our notice in *Revue internationale de politique criminelle,* United Nations, New York, July 1957, No. 12, Legislation, pp. 210, 214 and 218.

"These considerations apply with particular validity to penal legislation at a time when, throughout the world, the expanding frontiers of society brought about through the contributions of science, the complexities of modern life and consequent increase in the volume of laws require that effective, yet highly humane and liberal procedures be adopted to ensure that legislative prescriptions' may have the efficacy intended for them as regulators of conduct. New concepts, not only juridical, but also those contributed by the sciences of sociology, psychology and, indeed penology, have been developed and must be taken into consideration in the elaboration of any criminal code which would be inspired by the principles of justice and liberty and by concern for the prevention and suppression of crime, for the welfare and, indeed, the rehabilitation of the individual accused of crime. Punishment cannot be avoided since it acts as a deterrent to crimes: as. indeed, it has been said, "one who witnesses the punishment of a wrong-doer will become prudent." It will serve as a lesson to prospective wrong-doers.

"We have, therefore, taken upon Ourselves the responsibility of ensuring to Our beloved subjects, both of the present and of the future, that the codification *which* We are today promulgating is, in all respects, consonant with these high principles and preoccupations."

Let us therefore examine, in this introduction to the 'Code, the broad outline of how this work has been carried out, how these instructions have been applied, and how these preoccupations of a new penal policy have been put into effect in the law.

I. THE STRUCTURE AND GENERAL ORGANIZATION OF THE CODE

The project was based on the principle that a law so new and so important, both for the order and future of the country and for the lives of its inhabitants should be as clear, complete and precise as possible. Since the Code formally establishes principles of the legality of offences and punishment, and since the written Code should be the only source of penal law, excluding both custom and judicial additions, it is to be expected that this written Code should really be able to serve as "the guide of the judge and the citizen".

Now a number of present day codes, even some of the greatest of them, contain grave omissions on essential matters. These include the exact application of the law of the country vis-a-vis foreign legislation; the principle of the non-retroactivity of the penal law and its derogations ;" the definition of the infraction of the law, and the time and place of its commission ;[36] the regulation of the different forms of intellectual and material participation in an offence.s? the field of justifications, excuses, and legally admissible extenuating or aggravating circumstances ;" and the explanation of the reasons for the suspension or cancellation of penalties." This annoying state of affairs had to be and

35. The new Ethiopian Code deals methodically with the temporal and spatial field of application of penal law, Articles 5 to 22.

36. This is the purpose of Articles 23 to 25.

37. The Ethiopian Code sets this out with precision, both for ordinary offences, Articles 32 to 40, and for offences relative to publications, Articles 41 to 47.

38. A Section will be found devoted to these problems, Articles 64 to 84, in relation to the system of responsibility and guilt, Articles 48 to 61; effects, Articles 183 to 193.

39. Two subdivisions are devoted to thi/, Articles 194 to 215, 216 to 247.

of course was corrected. It can to some extent be explained and excused in the European countries which have a long tradition of doctrine and jurisprudence, available to everyone and assumed to be known to everyone, due to the existence of many treatises, compilations and other works, where certain principles are taken as self-evident, textbooks and commentaries are present to recall and elucidate them, and the Supreme Court is on hand to correct and confirm them as need arises, giving them a general authority which is scarcely challenged. Juridical science and jurisprudence are also carried to the highest pitch, under such a Penal Code, and almost form an integral part of it. But without these, and under conditions aSIdifferent as those of ancient Ethiopia, all the essential rules of the new legal system had to be set down, being so foreign to traditional customs and so complicated when compared with them. The Ethiopian law has therefore been codified in its entirety; judges, lawyers and litigants can refer to the Code on every point, and should find there the answer which they are seeking.

The whole of the organization of the Code has the same purpose, with its subdivisions which are always precise and clearly related, and its articles each of which has a number and a title. Every effort has been made to formulate each precept methodically, in a way which is easy to grasp and, so to speak, popular, without including technical or complicated terms. Inspiration has been drawn from the methods of Bellot, in the Genevan codification of the last century, and of Eugene Huber and Carl Stooss in the more recent Swiss Civil and Penal Codes. Brevity was-sought by taking as much as possible the form of maxims, which the Ethiopians take to and remember so easily; they have always cultivated and used them through the centuries, in their "Law of the Kings" and the legal and canonical language (Ge'ez) which they still retain. The new Penal Code, like the other Ethiopian Codes, is a detailed and extensive work, being based on the latest contributions of comparative law and criminology; but at the same time, it had to be simple and available to everyone, and its structure and definitions easily understood.

This is also why each offence in the Special Part has been concisely set out, with its essential elements and the punishment attached to it, separated and set forth in the same consistent manner.t? The concern for method and clarity has led, also in a systematic way, to the frequent setting out of the basic "principle" at the head of the chapter which it illuminates," and to the clear distinction between ordinary offences, which one might call normal, and offences which are qualified or aggravated on the one hand, or privileged, on the other; thus the degrees of a single category of offences are immediately apparent. This is shown at a glance in the chapters on homicide (Articles 522 to 524), abortion (Articles 529 to 533), offences against person and health (Articles 537 to 544), offences against property (Articles 634 to 637), or offences relating to proceedings for debt and bankruptcy (Articles 680 et.seq.). The legal disposition itself very frequently separates aggravated or attenuated cases by its title so that the judge can immediately pick them out.42

The same concern for clarity also explains why concrete examples, allowing the extent of the disposition and the intentions of the legislator to be easily understood, have very often been inserted in the general articles; at the same time, the principle of ab-

40. This typographical separation has unfortunately not always been observed in the printing; it baa only been done for the complicated articles including subdivisions. This is regrettable from the point of view of lightening and providing the best general picture of the text.

41. See, for instance for the General Part, Articles 41, 57, 85, 88, 120, 133, 138, 161, 170, *194,206,213,* 225 233 and 242; for the Special Part, Articles 410,521,528,537, 574 and 627; for the Code of Petty Offences, Articles 733 and 793.

42. Thus, for aggravated instances, Articles, 270 330 and 334, *350,* 381, 396,466,513 and 517, 572, 586, 598, 601, 606, and 620, 642, 654 and 655, 670 aDd 678; for attenuatin, instances, Articles 87, 380, 533, 584 and 662.

stract, general and flexible definitions, suitable to modern codes, has been chosen in pteference to the outdated system of constrictive lists, which is always too heavy, though nevertheless inadequate and leading to omissions.P This procedure was especially advisable in those articles which created new offences, unknown or still ill-defined in Ethiopia, so as to better show how they are committed and their implications, and in some way to make even the least informed people aware of this new law which must affect the life of the nation so profoundly, and which everyone is presumed to know.

Then came the desire to indicate the various ways liable to punishment in which one could commit a number of offences whose nature is, in general, fairly uncertain. These include the breach of guard duty and military instructions, and the duties of military honesty and honour (Articles 316, 317, 320, 323 to 327, 335 and 337), injury to the State through unlawful refusal to pay taxes, offences concerned with monopolies, or the falsification of official marks (Articles 360, 364 and 373), suborning of witnesses (Article 449), helping a prisoner to escape (Article 456), interference with the right of voting or election, corrupt electoral practices, or falsification of the expression of the will of the people through unfair manoeuvres (Articles 461 to 463), commission of aggravated theft or breach of trust (Articles 635 and 642), or again, what constitutes dangerous vagrancy liable to punishment under the law (Article 471), harbouring and comforting of evil-doers (Article 473), prohibited traffic in arms (Article 475), and unlawful exercise of the medical or public health professions (Article 518). It has been found convenient to define in the same way, by concrete instances, the ideas of arson and explosions (Articles 488 and 491), the generaloutline of the crimes of damage to services and installations of public interest, and grave endangering or sabotage of communications or transport (Articles 499 and 5(0), as well as the ideas of offences against person and health (Article 537), enslavement (Article 565), receiving and extortion (Articles 647 and 668), and taking advantage of the distress or dependence of a woman or young person (Articles 593 and 594).

It was also found useful to delimit the various ways in which certain offences concerned with endangering people can be committed, whether by manufacture, carriage, storage, offering for sale, distribution or procurement. This applies notably in the field of public confidence with counterfeit or debased currency, in that of public health with injurious or damaged products, whether they be toxicants, foodstuffs or fodder (Articles 510 to 512), and in that ofthe protection of morals with obscene publications or performances (Articles 609 to 611). Finally, in a vast country whose institutions are ancient and some of whose regions are almost desert, it was necessary to make clear what was to be meant by things without an owner (Article 646) and damage to the property of another (Article 649), by fraudulent exploitation of public credulity (Article 661), and, with the rapid economic and social developments of the present time, what exactly is to constitute unfair competition with its many very different facets (Article 673), bankruptcy (Articles 681 and 682), or punishable damage to property, subject to pledge or lien (Article 684). In the field of petty offences, it was no less necessary to define in a concrete manner with examples, what juridically constituted the careless handing over of official papers (Article 755), disturbance of work or rest of others (Article 770), contror of streets (Article 782), and pilfering and the depreciation of another person's property (Articles 807 and 810).

43. To be convinced of this, it is enough to read, for instance, Articles 405 and 408 of the French Penal Code on false pretences and breach of trust. or the famous Articles 381 to 399 on theft and its ditrerent qualifying circumstances. The Swiss Penal Code. by contrast, deals with theft by the single Article 137, and with robbery by the single Article 139. For the Ethiopian Code, which attempts to produce a synthesis (with an abstract rule clarified by illustrations), cf. Articles 630, 635, 636, 637, 641, 642, and 656 to 659.

The method of laying down precise examples is in accordance with the spirit of Ethiopia and her former legislation; in addition, it has the double advantage of making it more certain that the judge and the accused will understand the law while furnishing a guarantee to the latter. It favours the interpretation of the law "according to its spirit, in accordance with the meaning intended by the legislature so as to achieve the purpose it has in view", as is formally laid down by Article 2(2) of the new Code.

Finally, *terminological* difficulties also necessitated this way of drawing up the law, since these were great and at times could even seem insoluble. This springs from the fact that the Amharic language, the old language of the province or kingdom of Amhara which has become the official, administrative and judicial language of the Empire, is frequently without words for the terms, objects and institutions which are enthroned in the new legislation. Like all old oriental languages, it is simple and concrete, given to imagery, and little suited to the abstractions and formulas of modern law. It was therefore necessary to bear this in mind when formulating the new legislation so as to suit it to the spirit of the language of Ethiopia. The precise working out of the Amharic text (like that of the English text which is equally official) was a delicate task even when compared with that of the codification itself. In addition, from this point of view it will have led to a considerable enrichment of the Ethiopian cultural and legal heritage.

It goes without saying that the technique adopted, for the reasons just made clear, was bound to lead to a fairly long and detailed Code, and in fact this was one of the first comments made abroad on it.[44] The important thing in such a case is clearly not the number of articles, which does not exceed that of many codes (comprising as it does 820 articles, including the code of petty offences) and which can in addition be artificially increased or diminished by changing their scope and numbering system; what is important above all is the actual clarity, brevity and handiness of the whole. Now it is not difficult to state that the general organization of the Code, by unifying and systematizing the whole field of penal law, must gain in impact, cohesion and clarity.

This end is attained in a still more important manner by substantial structural reforms, which realize certain basic principles long since insisted on by the criminological science of our time;" The "subjective" tradition of the "Law of the Kings" with its doctrine of individualization, and the absence, fortunate in this sense, of the scholastic routines and doctrinal cadres which have paralyzed attempts at renovation in so many countries of Europe, have made it possible to build the Code firmly and rationally. The Ethiopian genius, unhampered by Continental prejudices, had the necessary freedom to create whatever seemed to conform to its sense of justice, which is very acute and extensive; and what seemed to it to be useful and practicable, also seemed to it to be just and worthy of being put into effect. Its desire for improvement and progress does not recoil before a comprehensive "advanced" solution if it can be given the guarantee of a valid example that can profitably be applied in its internal conditions.

At the center of the penal law has resolutely been placed its proper object, namely, the man to be judged or the youthful offender, and no longer the abstract crime and the so tenacious "entities" of classical legislation and juridical method. The Ethiopian Penal Code has thus been relieved of the distinctions and classifications which are today so arbitrary and so vexing for the progress of penal and social institutions.

44. Report of A. Quintano Ripolles, in *Anuario de derecho penal y ciencias penales,* Madrid, 1958, p. 348.

45. On this subject, see especially the basic work of M. Ancel, *La defense sociale nouvelle,* Paris, 1954. Cf. Graven, *Introduction juridique au probleme de Z'examen medico-psychologique et social des delinquants,* Acts of the 1st International Course in Criminology, Paris, 1952; and *Droit penal et defense sociale, Revue penale suisse,* 1955, No. I, p. 1.

On the one hand, abandoning the famous historical "tripartite division" of offences according to their supposedly different natures, into felonies, misdemeanors and petty offences, the new Ethiopian law has deliberately enthroned the identity of the nature of the offences retained in the Penal Code, all of them simply called "offences," and the unity of all the general principles which are applicable to them. On the other hand, it has detached from them the minor, formal and petty offences.w which form the subject matter of the Code of Petty Offences. Here the natural distinction between evidently different fields is instantly perceptible, since petty offenders do not in general indicate a really dangerous character, they are not dishonourable and are sent before distinct tribunals whose procedure is simpler and swifter. But the unity of method and inspiration, as well as the connections between the two parts in their structure, principles and disposition, are assured by the fact that all offences are brought together in the same law and dealt with as parts of a single overall picture. A study of the Code will reveal this general agreement, with some justifiable exceptions both in the General Part (Book VII, Article 690 et seq.) and in the Special Part on Petty Offences (Book VIII, Article 733 et seq.). These two Books complete the earlier ones, and the different parts should complement one another and form a balanced whole. The law itself makes sure of a natural transition from one field to the other in the borderline cases (Articles 81, 331, 748, 662, 812 and 813). The Ethiopian legislator thought, like us, that both theory and practice would benefit from it and the resulting simplification is striking. .

The Ethiopian Code has in addition abandoned the no less famous "bipartite division" of penalties, and the absolute distinction, rather artificially established, between "punishments" and "measures." The two, furthermore, are often very difficult to distinguish, and are mixed up in a highly contradictory manner as is shown by the organization of the Swiss Penal Code, which has provided the law with the model and first positive effectuating of the distinction.f? The Ethiopian law-maker, taking his inspiration from a broad view of penalties and their different ends, was preoccupied neither with "monism" nor with "dualism", but with a rational and effective criminal policy. In seeking a practical solution to his problems, he went beyond these controversies whose sterility and lack of genuine usefulness were notably displayed by the bitter and fruitless discussion on the subject at the International Conference on Penal Law at Rome in 1953.[48] For him the result was more important than the theory. He cared less about the "juridical nature"

46. "Offences" consist of "acts or ommisions which are prohibited by law" properly so-called, Article 23, whether it is a matter of the Penal Code itself or of a special complementing law, Article 2 (1); a petty offender, on the contrary, is one who "by an act or an omission, infringes the mandatory or prohibitive provisions of a regulation, order or decree lawfully issued by a competent authority" (Article 691). The criterion is simply one of external and positive law (the nature of the text making the act a crime, and the nature of the social reaction which supports this). This positive base can serve as an adequate starting point since it is always the legislator, after all, who makes the choice, and also 'since this choice is not only a matter of external criteria, but is usually determined by the "quality" of ehe offence committed (i.e., the more or less dangerous, antisocial or dishonourable character which it indicates in the offender; the need for a more or less repressive, punitive or reparative punishment to remedy or to prevent it; and the greater or lesser degree of simple reprobation, or on the contrary of social condemnation, which is attached to this punishment).
We have discussed this problem in relation to the draft Swiss Penal Code of Stooss who originally introduced a similar system, which was at the time, however, reckoned to be too daring; and we have compared it with and explained the Ethiopian system: Graven, *La classification des infractions du Code penal et ses effets,* in *Revue penale suisse,* special number in homage to Professor Logoz, 1958, especially at IV, pp. 33-43.

47. Graven, *Les peines et les mesures du droit penal suisse, Scrlttl giuridici* in *onore della, Cedam,* Padua, 1952, Vol. ñ, with references; off print, notably conclusions, p. 53.

48. See the general report of Professor Grispigni, in the *Revue intemationale de droit penal,* 1951, No.4, p. 481, *Le probleme de l'unification de la;line et des mesures de surete,* and the *Acres officiels* of the Conference, Rome, 1957, Question IV. ,

of penalties and the ideal distinctions between the two forms of them"? than about applying them in the most appropriate practical manner. This is a matter of providing the penal treatment which seems best, in each case taking account of the individual, anthropobiological, psychological and social conditions which llpply to each youthful offender or type of youthful offender. This is why, in addition, he has made social enquiry and medico-legal expertise into the ordinary and often necessary instruments of the renal judge, as much for the judgment of adults in doubtful cases requiring illumination (Article 51) as for that of minors (Articles 55 and 161). The title of "punishment" or "measure" is not, after all, very important provided that an adequate sanction can be applied, and the incidental protective guarantees, each appropriate to its particular purpose of repression, correction; protection or treatment, can be assured, with the flexibility and the effectiveness which are desired.

The Code also abandons the differences and useless complications between the various types of punishment depriving the offender of his liberty. It is futile to try to multiply the number of these in the law, multiplying at the same time difficulties concerning penitentiary institutions, qualified staff, and the enforcement of sentences. Experience has tended to favour a return to the "single punishment", intelligently adapted to individual cases; it has come down against the "scale of punishments", which is already traditional in many countries, as for instance in Switzerland. Here, the revision presently in progress is doing all it can, not without difficulty, to reform a system of differentiated punishments which tried to be exemplary and all-em:bracing, even though. relatively simple and far from the complication of the French punishments whose mistakes were evident even before they could entirely be put into force. 50

Here again the Ethiopian system, which was to benefit from foreign experience and could not plunge into diverse and over-expensive institutions, is based on a realistic and practical viewpoint. It tries to make it possible to meet every need through a system of imprisonment for which either more or less rigorous amounts of labour, discipline and liberty are prescribed ("simple imprisonment" and "rigorous imprisonment", Articles 105 and 107). By this is meant more or less "open" (with open-air work after the example of the Swiss penal establishments for agricultural and artisans' work), or "closed" (with some form of protective confinement), according to the more or less dangerous nature of the offender and his crime, and the degree of protection needed for the community. This system of punishment by deprivation of liberty is at once both adequate and very simple; it also rules out the absurd and harmful short prison sentences, which are replaced to advantage, except in cases where it is more reasonable to exact a fine or where a suspension is justified, by provision for compulsory labour, either at liberty or with certain restrictions on liberty (Articles 102 and 103).51 This is a penalty both healthy

49. The original French text of the draft showed this more clearly; the term *sanction,* rather than *peine,* was used very extensively. The two words cannot be distinguished in Amharic, and the English text, following generally accepted tradition, has always translated them by *punishment, penalties,* and *punishable* (for the French *encourt,* or *est possible de).* The definitive French text of the Code, which follows the Official Amharic and English translations, has not retained this shade of meaning, and in its terminology makes the clearer distinction between *peines* and *mesures* without meaning to modify, by this alteration, the very spirit of the work and the greater flexibility that is found in avowedly "dualist" systems.

50. See the many studies devoted to this problem by *Informations penitentiaires suisses,* and especially the special numbers on the single punishment, 1953, No.1; the discussions at the General Assembly of the *Societe suisse pour la reforme penitemiaire* at AJtdorf, 1953, No.2; the problem of penal establishments, 1954, No.4; the revision of the Swiss Penal Code in this respect, 1954, No.8; etc.

51. The idea of compulsory penal labour, already found for instance in the Yugoslav Penal Code of 1951, is gaining ground. See the discussion of it in France of M. Ribettes, *Revue penale et penitenttaire,* 1959, No.1, p. 7.

and useful, in a vast country needing to be opened up to progress and production. In addition it results in an administrative economy whose extent can easily be measured.

Another essential simplification has finally been obtained by the recasting and introduction into the Penal Code of everything which justifies judicial correction. Ordinary law and military law;„2 the penal law applicable to the police force[53] and to civil servants of all ranks ;[54] the law on abnormal adult offenders= and on minors ;[56] the principles of special legislation in varying fields of law and administration, such as those on fiscal and economic matters"? and commercial and maritime ones;58 all these have been included in their proper place. Thus, all the essentials of punitive law are henceforth to be found in the Code. Each field has the dispositions proper to it, but is at the same time attached to the general dispositions on application which give to the whole its character and its unity. It has, consequently, been possible to abolish the multiplicity of differing laws whose principles are often disconnected or contradictory. These turn the penal law of a number of countries into an unknown and unknowable territory, full of traps for the uninitiated, thus making the classic principle of "Error juris nocet" ridiculous and even inequitable.

It has thus been possible to bring the law of many "Proclamations" under a single and coordinated whole. The applicable principles and penalties have been made clear (Articles 354 and 355, 733), thus permitting the Proclamations merely to refer to them in a way both certain and uniform despite the variety of the contents of legislation having to regulate the most diverse and sometimes the most rapidly changing things found in the evolution of the needs and conditions of a country in the full flood of progress and growth. There is not the slightest reason for diversifying and separating what can be unified when one has the good fortune to be able to establish modern codes at a single bound without being tied to a more or less ossified system that can scarcely be touched without shaking the whole structure.

In particular, there was no good reason for maintaining the distinction between general or ordinary law and military or special law, the nature of one in no way differing from the other. The increasingly pronounced tendency to bring them together, and, for instance, the absolute identity of so many of the provisions of the Swiss Military Code of 1927 and the ordinary Penal Code of 1937, strikingly demonstrated this and seemed to us to be decisive. What is natural, just and necessary is, on the one hand, to take account in the Code of purely military offences; this can be done in the same way as with economic offences, offences against the State, or offences committed by or against civil servants. A special title, as has been seen, can do the job easily and exhaustively, and the Ethiopian Code has therefore followed, in this respect, the example of the Yugoslav Code of 1951. On the other hand, it is enough to take account, in the ordinary dispositions of the Code,

52. Book m, Title m, Articles 296 to 348, and Articles 706, 710 and 747 to 749 (petty Offences).
53. Articles 349 to 353, and 750 (Petty Offences).
54. Book IV, Title m, Articles *410* to 437, and Articles 751 to 762 (Petty Offences).
55. Book n, Title I, Article 48 et seq., and Articles 133 to 137; Articles 696, 706 and 709.
56. Articles 52 to 56, Principles; and Articles 161 to 182, Application.
57. Book m, Title IV, Articles 354 to 365, a,pd Articles 741 to 746 (petty Offences).
58. Book VI, Title IT, Article 671 et seq., an$Articles 817 to 820 (petty Offences).

of the particular necessities of the army and military life; this also can be easily accomplished by a few dispositions, both in the General Part[59] and in the Special Part.[llo]

II. THE RECONCILIATION OF TRADITION AND PROGRESS

The preceding commentary is enough to indicate the novelty of the Ethiopian Penal Code; 'it is no less true that this Code rests on the age-long tradition which we have recalled, and could not entirely break with it without running the risk of imbalance or some greater upset. These could have unfortunate results quite opposed to the beneficial ends which the Code was designed to serve. The first essential of a piece of legislation, however great its innovations, is .to be applicable and not to run contrary to the convictions of those for whom it is made. As long ago as the *Esprit des lois,* Montesquieu made this observation; and the members of the Legislative Commission, who well knew the nature and requirements of the. country, were constantly guided by this just concern as well as by the standard of what their profound conception of justice and national utility could accept.

Although the Code set itself firmly in the path of the "new concepts," noted in the Imperial Preface, in order·to attain the ends, of the new criminal policy, it did not and could not sacrifice the idea deeply ingrained in the Ethiopian mind and tradition of criminal fault and deterrent and expiatory punishment, simply because of the principles of social readaptation and the tendency. to .make the law systematically milder. A firm and admonitory penal law is essential in a vast Empire, all at once very old and very new, which until now has been governed by penal institutions whose basic concepts have, to a large extent, been those of its ancient pastoral and martial society and where the prerequisites of public order and general protection are still far ahead of the need for psychological examination and individual reformation. Within this .law, in addition, exemplary punishment can become a means to "resocialization," an instrument for the maintenance of, or reintegration into the framework of normal social life. The new Code could not ignore these considerations and abandon, almost without any transition, the spirit and principles which, equally, still form, in a more or less latent manner, the very bases of all of our classical codes of expiation and utility. This is why its foundation remains the penal punishment of offences in cases where a general warning of the dangers of breaking the law has not been enough to deter the offender. At the same time, of course, it does not exclude the ends, set forth by the policy of order and progress for which the penal law is surety, of correction, improvement, treatment, and where necessary, physical elimination. The Code clearly sets forth the principle, and dogmatically defines its position in its very first line (Article 1).

59. This will be the case especially in dealing with the scope of application of the law of the country to members of the Armed Forces abroad (Article 15); the legality of actions forming a normal part of military functions (Article 64 (a); the division of responsibility in the event of the giving of a criminal order by a superior, and its execution (Articles 69 and 70); the state of necessity regarding the maintenance of military discipline and obedience in certain serious cases (Article 73); military regulations regarding punishments with deprivation of liberty (Article 113 for imprisonment, and Article 706 (I), for arrest); the punishment of execution by shooting (Article 116 (I), para.2); and the secondary penalties of reduction in rank and dismissal from the armed forces (Article 126).

60. In cases of forgery and suppression of military documents (Articles 387 and 389); breaches of military secrecy (Article 404); escape of prisoners. of war and military internees (Article 457); theft committed by a member of the armed forces against the person with whom he is lodged or billeted, against his fellows or superiors, or against the army. Article 635 (2) (a); or breach of trust or misappropriation committed against the military organization or the armed forces, Article 642 (d).

In the Ethiopian context it would in particular havebeen an inconceivable mistake, and even an impossibility, to abolish the death penalty at the present time. It is not only necessary for social protection, but is based on the very deepest feelings.of the Ethiopian people for justice and for atonement: the destruction of life, the highest achievement of the Creator, can only be paid for by the sacrifice of the life of the guilty person. As in the Christian European system of the Middle Ages, death is always a necessary condition for the pardon and salvation of the sinner, and also for expiation for the evil which he has committed; it is accepted and approved by all, and in the first place by the criminal who has deserved it, and is carried out in a dignified atmosphere quite different from that of our former executions with the axe or the guillotine." Corporeal punishment (flogging), whose abolition was already envisaged by the Code. of 1930, is another example of the conflict between. tradition and ideas concerning punishments. It can be regarded as a "barbarous" institution, contrary to presently accepted ideas about legal progress and respect for human dignity whose demoralizing nature must make us react from it; but it is no less possible to. regard it as a useful institution among a proud and courageous people who are afraid not of suffering but- of loss of respect, and who would approve of it, precisely. because of its ethical implications in cases involving villainy, baseness or cynical brutality by the offender. After a great deal of hesitation and discussion, it was this traditional consideration that eventually carried the. day before Parliament when a majority of the Commission had previously been in. favour of abolition. But while the Code of 1957 retains capital punishment always subjectto Imperial confirmation- with flogging as a secondary punishment, it has naturally taken great care in regulating the conditions which provide both for the limitation of the cases in which the court can impose them and for their execution under decent arid humane conditions (Articles 116 to 119 for the death penalty and the possibility of its commutation, Article 120(A) for flogging);62

Ethiopian tradition is also evident in the· field of pecuniary punishment especially in the confiscation of property, to a limited extent, in the case of serious crimes against the Sovereign and the State (Article 97), and.in the provisions for the payment of compensation for damage caused. to the injured party. Here, it was necessary· to take -a~nt of the ancient private payment of "blood money," or pecuniary reparation, the priliCi£leof which has continued down to the present day. These. passages show, how the transition-from customary law to modern law has been carried out, and how a fundamental conceptM'j!lstice can be reformulated while retaining general acceptance .. The limits set on confiscation, in order to safeguard the means of subsistence of the offender and his family, and to prevent the least encroachment on the personal goods of aninnocent person, have been taken directly from custom as confirmed by. the written law (for these were already present in Articles.25 to 39 of the Code of 1930).They are.characteristic of the sense of equity which dominates traditional justice, and of the advantages, even for the progress of modern law, which may sometimes be gained from the inspiration of ancient solutions.

61. We have had the opportunity to make our views on this subject very clear in our study: *Vers un nouveau droit penal ethiopien, Revue internationale de criminologie et de police technique,* 1954, .Pi 270 et seq., and. to return to it in a communication addressed on 9 April 1955. from Addis Ababa to the Tribune de Geneve, with the title: *Le veritable esprit de la codification penale ethiopienne,* following an article in this newspaper reporting the. codification project beneath the grossly misleading headline: *Au .pied des gibels ethlopiens.*

62. This exceptional form of numbering is the result of the fact that the provision, at first abolished, was restored to the Code by Parliament .when there was no longer time to change the whole enumeration system.

The same can be said of several provisions regulating the principle, the extent and the punishment of individual guilt. Taking into consideration involuntary mistakes or excusable ignorance of the law (Article 7S); lack of intelligence or understanding, previous good conduct, lofty motive or sincere conviction, or repentance immediately shown by the offender as extenuating circumstances (Article 79); and perfidy and base motive, or the abuse of a position of power or privilege as aggravating circumstances (Article SI), are taken directly from Ethiopianpractice already sanctioned by law in the Code of 1930 (Article 44 et seq.), but have been given the more abstract and general form suited to a modern system of law.

It was in the same spirit of adaptation to Ethiopian needs and customs that the draft retained the old and still active principle of collective responsibility for certain crimes of a tribal or anonymous nature (such as raids or homicide committed by nomads-or in outlying and still primitive areas). It goes without saying that this formed part of a juridical system in which shades of responsibility were taken into account, and which was inspired by the most modem principles, notably those of international penal law (Articles 52 to 55 of the draft), with a corresponding series of appropriate penalties (Articles 174 to lSI). We saw in this one of the most original contributions of the new law, resting on a custom whose practical and juridical justification was incontestable, which it was particularly valuable to confirm in a reformulated form. These provisions, however, had to be removed from the final text since they were inconsistent with the principle of exclusively personal responsibility guaranteed by Article 54 of the Revised Constitution of 1955.

Finally, in a number of other respects it was not possible to go "too fast" or introduce innovations that were too daring and perhaps too risky, which prudence advised against attempting in a country that is opening up in the fields of criminological and social sciences, and particularly in criminal psychopathy, psychology and pedagogy.

The Code showed itself to be extremely progressive in going so far as to accept the principles and the different measures which, after the examples of the Swiss Code (Article II et seq.) and a number of other modern codes, regulate the problem of limited responsibility (Article 49), and its legal and judicial treatment in a manner that is half restrictive and half therapeutic and protective (Articles 134 to 137). In Western countries where the system is applied and is the subject of constant observation and study, one can naturally argue the question whether it is really suitable, in such cases, to combine the "punishment" for the proved partial guilt (which punishment is mitigated because of the reduced responsibility) with the curative "measure" or internment for the deficiency or the bio-psychological trouble which has reduced the responsibility. The International Conference on Penal Law at Rome in 1953 (before the drawing up of the Ethiopian draft) decided, after sharp controversy and by a simple majority, that this combination should be avoided and thus that the judge should preferably conclude in favour of the "measure" alone without any punishment. But no recent legislation or reform has gone this far, and although we consider the system to be now outdated, being based on a fiction and not on criminological reality,63 it is clear that one could not introduce, in a country still seeking its modern form and institutions, a revolution whose consequences were so great and which presupposed a highly developed system of psychiatrists, penologists, specialized judges and special establishments that only a few rare countries can gather together.

In the same way, we do not feel that the system (Articie lSI) governing the "young adult" in the "intermediary period" is very rational and think it capable of improvement.

63. Graven, *Le role et les pouvotrs du juge penaJ par rapport* d *J'expert mJdical en matiere de responsabilite, Revue penale suisse,* speci-I number in honour of Professor Germann, 1959, p. 265.

It is the same as in the Swiss Code (Article 100), and the period is abstractly defined as that between his "criminal majority" and his absolute or "legal majority". The system provides for the application of the principles and penalties applicable to an adult, with the possibility of mitigating the latter, instead of providing for him a strengthening system of education and treatment. Nevertheless, here again it is not for the Ethiopian legislator to provide the world with an example of reforms that are still in controversy everywhere. With the present state of the law, he has already made satisfactory progress in at least giving to the judge the ability to choose between this system and the measures applicable to minors when the offender "is undeveloped physically or mentally for his age or did not commit a serious offence and, according to expert opinion, still seems amenable to curative, educational or corrective measures provided in respect to young offenders" (Article 182).[64]

The heritage of the past and the taking into account of Ethiopian traditions and necessities naturally also affects quite a number of the provisions of the Special Part. There are the provisions on the protection of the Sovereign, "Elect of God," and of the Solomonic Dynasty, which is woven into the history of the country, and has been one with it through the centuries (Article 248 et seq.). Again, one finds, in fields of differing importance, significant provisions on the repression of illicit traffic in precious metals and minerals (Articles 358 and 741), the protection of historical and natural riches, and the flora and fauna (Articles 803 and 804). The legislator has also taken account of customs and circumstances in proclaiming the severe provisions on abduction, enslavement and maintenance in slavery (Articles 558 et seq., and 565), and the more flexible provisions on adultery, concubinage and bigamy (Articles 616 to 618). Similar reflections of the life of the country are found in the many articles on the spreading of epidemics and epizootic diseases, contamination of water and pasture land, sources of the country's wealth, and creation of states of famine or distress (Articles 503 et seq., and 509), as well as damage to property illicitly caused by herds or flocks allowed to stray in forests or pasture land (Article 649). They are found again in the punishment of injuries to health caused by philtres, spells or similar means (Article 516), the activities of magicians or "sorcerers," with the exception of healers worthy of confidence, whose experience is recognized by the community to which they belong, Article 518(4), or the exploitation of public credulity by soothsayers and those who call upon spirits or indicate means for finding a treasure (Article 815). The regulation of home arrest (Article 705), and the provisions for policing at night in times of curfew or restrictions on traffic (Article 780) are also directly inspired by local conditions.

In retaining such crimes, the Code has naturally always given itself the task of also "rethinking" or "rejuvenating" them in their adaptation to modern conditions, and in integrating them logically and inconspicuously into the whole work, laying down a penalty in accordance with their importance to the life and interests of the nation.

64. Cf. our views in *Revue internationale de criminologie et de police technique*, editorial note regarding an article on the juvenile judge, Bibot, 1959, p. 113. It is known that the International Conference on Social Defence in August 1958 at Stockholm discussed just this same problem of young adults; cf. on this subject the explanation of M. Lopez Rey, head of the U.N.O. Section of Social Defence, ibid., 1959, p. 3. The Swiss report on this point, by Dr. Chesni of Geneva, proposed an increased flexibility in age classes, and the solution adopted in the Ethiopian Penal Code. This is in effect the solution which the Commission on Revision of the Swiss Penal Code is also at present proposing, cf. Germann, *La révision actuelle du Code pénal suisse, Revue de Science criminelle et de droit pénal comparé*, 1958, p. 799 et seq. It is still insufficient.

III. THE NEW SPIRIT AND CHARACTERISTICS

A number of legal provisions referred to above have already shown what the new spirit is that animates the new Code. It is now necessary to examine it rather more closely with the help of some provisions taken both from the General Part and from the Special Part.

The fundamental maintenance of deterrent and exemplary punishment has not prevented the affirmation of the modem methods, perhaps to a greater degree than in any other Code now in force, which have seemed most useful for the prevention of offences, the rehabilitation of those criminals who are able to mend their ways, and jhe protection of society. The Code has not done this at random, in an indecisive or fragmentary way; it has done so systematically, in the awareness that the profoundest indication of the character of modern penal law is, perhaps, not the part which is purely "penal;" or repressive in the. narrow sense of the word, as much as its whole "social" outlook, and the preventive or corrective measures which it is able to offer to the judge who is better informed than others about the real causes and rational treatment of crime. A complete system of "measures" and penalties and a clearly defined general tendency. will. best accomplish this goal.[65]

Contrary. to the majority of Codes, which define neither their ends nor the general spirit that inspires them and must govern their application; the Ethiopian legislator has believed in giving the judge the precise directions which illuminate the Code, and should guide him in a task which is so new for him and to which fie is so unaccustomed. The penalties and other "measures" provided "must- be applied 'in accordance With the spirit of this Code so as to achieve the purpose it has in view' (Article 85, para. 1), that is to say, the general: prevention of offences, the punishment and reform of offenders, and protection against the commission of further offences (Article 1); their application "shall always be in' keeping with the. respect due to human dignity" (Article 85, para.2). Its punishments must not be' exclusively "afHictive" nor systematically "dishonouring," for that would, be to nullify its end from the very beginning.

The penalty which is imposed in each case must take into account the degree of individual guilt, bearing in mind the more or less dangerous character of the offender, his background, motives and purpose, his personal situation and degree of education, as well as the gravity of his action and the circumstances under which it was carried out (Article 86): this is to say that individualization is an obligation and the very foundation of every judicial decision."

The secondary penalties and the various measures for prevention and protection have been systematically developed to meet the ends of the new criminal policy. They can be applied by the court, in conjunction with the principal punishment, whenever the general legal conditions for them are realized and they seem appropriate in the individual case to attain the particular result repression, protectionprevention, education or treatment for which each of them is intended; iris notnecessary for an article of the Special Part to make specific provision therefor (Articles 120 and 138). 'The application of the system is certainly fairly delicate, since it presupposes that judges will show awareness of its effects, knowledge of the meaning of the law, ability in its use, and iri-

65. For the overall-picture, see Graven, *De fa mise en oeuvre des idees de fa criminologie moderne dans la llgislat!on positive,* a paper at the VIth International Congress on Criminology at Lausanne, based on a comparative study of Swiss and Ethiopian law. Spanish translation published in *Anuario de derecho penal,* Madrid, 1958, No.3, pp. 473-506.

66 On this subject, cf; our paper on *La personnalite. du delinquan: dans le Code'penal suisse et Ie Code pinal ethiopien,* Lecture at the International Faculty of Comparative- Law"Luxemburg, March 1959.

sight in its pronouncement: but are these not the conditions of all individualization, to the exigencies of which all judicial action must in fact respond ?

Within this general framework, the various penalties have all been regulated in a spirit of innovation.

Fines are always related to the position and resources of the guilty person, bearing in mind his income, the necessary expenses due to his family and his age and, of course, the seriousness of his offence (Article 88). They are organized into a whole system of recovery and suspended execution, graded and extended as need arises by means of suitable guarantees (Articles 90 to 96). The intention is to make them at once profitable, effective and just, while taking account of the economic conditions of the country. We have already mentioned the punishment of compulsory labour with deduction of wages to the benefit of the State, which may be either at liberty or with restrictions (Articles 102 and 103). This punishment, which is both original and in the.spirit of the times, will allow at the same time, the achievement of works in the general interest, the discontinuance of short terms of imprisonment, and the conversion of fines, when they cannot be paid despite the facilities allowed, into' compulsory labour rather than ordinary imprisonment (Article 92). Penalties entailing loss of liberty (Article 105 et seq.) are organized in accordance with a progressive and corrective system-in which compulsory labour, education and spiritual assistance are to be assured :(Articles 110 to 112). These two aspects of the system should, at the same' time, meet the ends of protection and reform, taking account, not of the more or less general theoretical characteristics, but of the degree of actual gravity of the offence for which the punishment is given, and the potential danger in the character of the offender which must be guarded against. Articles 105(1) and 107(1). Inveterate offenders are removed from the scene for an indefinite period of time by internment (Article 128 et seq.), while irresponsible, abnormal and mentally deficient ones are accorded the curative or protective measures best suited to them (Article 133 et seq.).

Arrangements are made for suspension, whether it be for suspension of pronouncement or the penalty, suspended sentence (Article 195), or suspension of enforcement of the penalty (Article 196),67 whenever the gravity of the particular offence does not prevent it, when it seems to be called for. or when the judge has "a reasoned conviction" that it will dissuade the offender from further offences. This is its very purpose, and involves both an enquiry when necessary (Article 199), and appropriate "conditions of control" laid down by law (Articles 201 to 203). In order to prevent uncertainty and abuse, it is made clear that the grant of a suspension implies "an appeal to the cooperation of the offender for his own reform", and that it can be revoked whenever the circumstances show this confidence has been. misplaced (Article 194); In the same way conditional release from a penal institution after a certain time, in cases ofgood conduct and when the outlook is favourable (Articles 207 and 210), is applicable throughout the Code. It too must be expressly "regarded as a means of reform and social reinstatement, forming part of the progressive regime of enforcement" (Article 206). Like suspension and reinstatement, which also must always be deserved (Article 242' et seq.),.it is' thus an integral part of the general' system, and involves the reparation; as far as possible, of the damage caused by the offence; this is the first indication of wellmeaning and 'the spirit of reform.

Minors are under the responsibility of their family, guardian or scholastic authorities until the age of nine. Thereafter; a system of educational, curative or disciplinary

67. This is the system extolled by the thesis of R. Berger, *Le systeme de probation anglais et le sursis continental,* Geneva. 1953, as well as. by *ourselves:* Graven, *Le systeme suisse du sursis conditionnel, Recueil de travaux* of the Geneva Faculty of Law, 1952, Conclusion, p. 105; and *Le sens du sursis conditionnel et son developpement, Revue pinole suisse,* Special Number in honour of Professor Thorma.nn, 1954. No.3, sketch of a fully evolved system, p.·291 et seq.

measures suited to their age and condition is applied to them; these include reprimand, school arrest, supervised education and, where necessary, corporeal punishment (Article 172); these "measures," properly so-called, being modifiable by the judge according to the circumstances (Articles 161 et seq., 170 et seq.). These measures are applied until the age of penal majority, which has been fixed, taking account of the conditions of development of the country, at fifteen, or, when the underdeveloped physical or mental condition of the young offender warrants it, until the full adult age of eighteen. The suspension of sentence and placing on probation can be applied to them at any time (except in very serious cases specially dealt with by Article 173), whenever such a course of action provides a reasonable chance of success. There may even be a deliberate abstention from judicial action when it is justified in cases of minor offences (Article 174). Finally, the measures and penalties imposed upon young offenders shall not, except in very serious cases, affect their civil rights, so as not to obstruct their reform and future integration into society (Article 177).

The broad system of secondary penalties, preventive and protective measures which is combined with the system of principal punishments has the same clearly reforming and social inspiration. It includes:

1) firstly, secondary penalties, such as warning, reprimand, and even the traditional apology, which is still useful and should be used more extensively in a modernized form (Article 121); and the loss of certain civil, honorary, professional or family rights, according to the circumstances (Article 122);
2) preventive measures of a material kind, such as the recognizance to be of good behaviour and the confiscation of dangerous articles, even, if need be, before the commission of an offence (Article 139 et seq., and 144);
3) measures which restrict or suspend certain activities that have been or could be abused by their author in committing or repeating an offence; these apply in cases similar to those involving the loss of rights, and include the withdrawal of patents, concessions or licences and the prohibition or closing of establishments or undertakings of any kind (Articles 146 and 147);
4) measures restricting personal liberty which limit the temptation and the danger of committing crimes, such as prohibition from going to certain places, residing in or the obligation to reside in specified areas, expulsion, or the withdrawal of official papers for a specified period (Articles 149 to 154);
5) finally, informative measures designed to provide a warning or protection against further offences, such as the notification of the sentence to the competent civil, administrative or military authorities, the publication of the judgment when the public interest or legitimate private interests so require, and entry in the police records, the necessary guarantees being provided that this should be a reliable and necessary source of information on criminal antecedents for all the authorities justified in knowing them, without becoming a possibly insurmountable obstacle to the desirable reinstatement of the convicted person by their communication, as the law expressly provides, to third parties not having a justifiable interest in seeing them (Article 160).

The simple enumeration of these different steps, ordered and systematized in accordance with their overall purpose, seems to be enough to indicate their progressive character.

A brief look at the Special Part of the Code, such as we have already carried out. will provide still further conviction on this score. A very large number of provisions, and often entire chapters, bear witness to this character.

Following the logical order of the Code, it is appropriate to draw attention first to the innovation, beside the development of the law dealing with national defence (Articles 260 et seq.) which is perfectly natural in a country of military traditions and honour such as Ethiopia, of incorporating the whole new field of offences against the law of nations boldly into the national law, in order to guarantee the effectiveness of its provisions (Book III, Title II, Articles 281 to 295). These are infractions of the humanitarian conventions of The Hague and Geneva, laid down more systematically and completely than did the Swiss Military Penal Code revised by the law of 21 December, 1950, and the Yugoslav Military Penal Code revised on 27 February 1951, or again certain special laws like those of the Netherlands of July 1952 and May 1954, after the Diplomatic Conference at Geneva on the Red Cross Conventions in 1949.[68] In this realm, the Ethiopian Code has really given an example which places it at the head of the laws of the World: these offences against international law are all regulated and punished in accordance with the ordinary principles of the law of the country.

Innovations just as great appear in the whole system of offences committed in or against the administration of justice (Articles ~38 to 459), of which only a few are provided for in the classic Codes; and against the exercise of the rights of the people (Articles 460 to 470), which are usually covered by special laws: extensive protection of these was desired by the Revised Constitution. A whole Title also brings together systematically, from the point of view of the public interest, breaches of military, official, professional, scientific and industrial secrecy (Articles 404 to 409); further titles bring together offences against law and order and breaches of the peace (Articles 471 to 487), and against public safety and communications (Articles 488 to 502), going far beyond traditional offences alone, and to some extent adding. a whole new social section to the old bipartite division between offences against the state on the one hand, and offences against individuals and property on the other. This concern for protection of the general interest on the part of a country which is as yet little developed technically and industrially, and that is anxious to create the conditions most suitable for progress, is found in provisions like those regulating and punishing the culpable infringement of building rules, the removal or culpable omission of protective apparatus or devices in public or private undertakings (Articles 495 and 496), the endangering of installations, communications and means of transport by land, sea and air (Articles 499 and 500), the guarantee of the freedom of movement and freedom to work (Articles 569 and 570), and the punishment of damage deliberately caused to machinery, installations, plantations, or public utilities essential to the national interest. Article 654(b).

The same can be said of the fields of hygiene and public health, the protection of the family and young people, where lies the vital strength of the nation, and protection against economic and commercial offences which are bound to proliferate with new developments. If to govern is to anticipate, it follows that it is also to legislate in good time. Consequently, the exercise of the medical and public health professions, where almost all modem conditions are still to be created, has been regulated with care (Articles 518 to 520). Provisions have been made in advance against the danger of obscene or indecent publications and performances, the risk of corrupting youth by appeals to brutal, bloodthirsty, eroti- and antisocial instincts, and those actions which disrupt the family, since this is unfortunae tely one of the greatest manifestations of the conquest by western "civilization" of those

68. On this subject, see Graven, *La repression penale des infractions aux convenions de* Geneve, in Revue *intemationale de criminologie et police technique,* 1956, No.4, p. 251 et seq. Belgium has prepared a "draft law" (ideal law), published in February 1956, regarding the punishment of standard offences against the Geneva Conventions. In Germany, a revision similar to those in Switzerland and Belgium is under study.

countries which it regards as underdeveloped, and the violation of the duty of parents and guardians to bring up children has likewise been made punishable (Article 626). It has also been necessary to foresee the need for definite punishment of the drawing of cheques without cover' and misrepresentation in insurance (Articl es 657 and 659); mismanagement of private interests, incitement for another's advantage to speculation or to the carrying out of prejudicial assignments by taking advantage of a minor or of a person's carelessness, confidence' or manifest business inexperience (Articles 663 to 666); unfair competition, infringement of industrial and commercial marks, and literary or artistic copyright (Articles 673 to 676);69 and the illicit obtaining of votes or fraudulent obtaining of a composition in matters of bankruptcy (Articles 687 and 688). Finally, the provisions dealing with offences committed by or against corporate bodies should not be neglected, considering the great uncertainty prevailing'in this field '(Article' 574. offences against' honour, and Article 689, offences in the management of a body corporate).

Such provisions are also continued in the Code of' Petty Offences, with adequate penalties attached to them. A whole series of provisions, adapted to modern life has been provided in addition to the classic petty offences. There is, for instance, the use of expired or, falsified .transport titles (Article.737); the commission of fraud in official competitions for the purpose of obtaining a certificate of professional capacity, a diploma or a degree, and the illicit use of documents of this, kind (Article 738); or the many provisions on the supervision of theatrical performances.. entertainment and' public places (Articles 776 and 782), of buildings, communications; explosives and dangerous substances (Articles 781, 783 and 784), of public health.and hygiene, drinks, toxic substances, other commodities, and so on (Article, 785 et seq.).

PART THREE
CONCLUSION

One sees, then" that these are all the features of evolved contemporary life which. the Code, of 1957 incorporates and protects, along-side the traditional features which are common to every Code. In the overall method, as in the detail of the provisions, the Ethiopian legislator has made every effort to construct a complete edifice, "une maison nouvelle" as the authors of the Swiss Penal 'Code of 1937 put it for their part, where one can find order and peace, security and progress, united in a single whole.

May the application of the Code attain this end and confirm the hopes placed in this instrument which is very new and doubtless very bold for the country and the conditions under which' its effects may be felt! No' one blinds himself to the' difficulties, and as we have noted; His Majesty Emperor Haile Selassie, the Legislator and Renewer of Ethiopia, has, with the lofty sense of His' duty and His mission and the faith in God and the love of His people which are theessential 'elements of His character,"? assumed the responsibility for this work which really-constitutes-a-peaceful revolution. We have dealtelsewhere

69. This again is an expression of. the Ethiopian legislator's desire not to scatter penal provisions through innumerable special laws, but to make sure of the overall picture and the unity of principles and penalties in the Code which is known and used by everyone.

70. Every act andspeech of the Emperor reveals this, and the observations of Himself and His reign, for those who have the privilege of undertaking it, are convincing. It is enough to re-read the Prefaoe to, the Penal :Code of'1930, the Decree promulgating the Constitutionof ;1931 and the speech on its signature before the-diplomatic corps and assembled bodies (cf. Gingold Duprey; op.cit., ,pp. 79 to 84), as well as the' speech from the Throne, of which a few extracts 'are given in footnotes below, on the occasion of the solemn proclamation of the Revised Constitution and the new legislative' session in November 1955, *Bulletin du Jubile imperial,* Paris, No. 34, p. 11 et seo.

with the parallel measures taken to ensure the development of education, the formation of 'elites, the recruitment of'qualified.judges and magistrates, and the reorganization of the various courts; and it is therefore unnecessary to return to these subjects in this conclusion. AS'we said in examining, as indeed we should, the prospects for the future, "when the legislators have finished their task, it will be: for those who put it into effect to take up theirs in order to ensure the real success of this historic enterprise of the modernization of the legal, judicial and' penological system of a country which, through the centuries, has retained the most ancient law and institutions in the world". This task of putting it into-effect will not be the less difficult of the two. One can imagine the problems, personal. and institutional, which, as one might put it in a striking summing up of this enterprise, bestride the transition from the Code of Justinian or-Constantine or from the Code of the Emperor Zara Yakob to. the Code of the modern Empire of Haile Selassie." This enterprise of patience, delicacy.and courageous perseverance-is under way.72, We have faith in its success. His Majesty Haile Selassie Lgaugedits importance in saying to 'the Codification Commission, at its inauguration in March 1954: "We pray the Almighty to see fit to spare Us long enough to carry into effect this supreme accomplishment of Our life, as a monument for the generations waiting impatiently *on,* the threshold of existence." And He gauged its decisive advantages for the future of His country, of which we never lost sight throughout the long and difficult but exciting work of drafting,73 in concluding the Preface to the new Penal Code of 1957 with these words of serene confidence: "We are certain that with the aid of the Almighty, Fountain. of Justicet! and Sourcc of all wisdom and benefits, this Code will contribute to the welfare and progress of Our beloved subjects of today and, of the future."

71. a. our article, *Vers un nouveau droit penal ethiopien,* op.cit., 1954, p. 276 et seq. We have, in particular, taken note of the results achieved in the creation of educated elites, especially of qualified lawyers, by the creation of the University College (with a School of Law), inaugurated on 27 February 1951, and by the giving of many scholarships to undergraduates to carry out and complete their university studies abroad.

72. The speech before Parliament of 4 November 1955, on the Silver Jubilee of the Coronation, gives most interesting details on the extent and results of this balance sheet on twenty-five years *(Bulletin,* op.cit., p.ll et seq.), The number of hospitals and clinics in the whole of Ethiopia was only 48 in the year of the Coronation, and had risen to 240 by the Jubilee in 1955; efforts in the fields of public health and hygiene have brought about a noticeable increase in the standard of living, a reduction in infant mortality, and a general increase in the population. There were thirty-six times more schools in 1955 than in 1930. Exports and imports had quadrupled since 1946; with coffee alone (the principal object of export with oilseeds and skins), the value of the crop exported had increased more than tenfold during the twentyfive years of the reign. The annual national budget, less than five million Ethiopian dollars before the war, was more than a hundred million in 1954; money in circulation had risen from eighty million dollars in 1946 to over two hundred and twenty million in 1954, and the gold reserves had increased by twenty times in the same period. The general development naturally had repercussions on that of judicial affairs and the courts: in the previous twelve years, the number of courts, including the moslem courts or *Sharias,* had increased from 182 to 593, without counting the numerous minor local courts (known as Mektl Woredas). The rest of the speech deals with the new duties and the new national responsibilities which this favourable state of affairs involves.

73. His Majesty Haile Selassie paid a fine tribute to the European jurists, called upon to "codify, under His direct and constant supervision and in the light of the ancient traditions of Ethiopia and her present and future needs, the civil, penal, commercial and maritime laws of the Empire," in referring to the work undertaken and already realized under His direction and with His constant encouragement had been "gigantic." His Majesty concluded: "We are confident of reaping in the future the positive results of all of this work which has been carried out for the well-being of Our people," which is, as He said elsewhere, "the sole ideal of Our life," since "there can be no other justification for a government, no matter what its form"

74. The imperial speech also dwelt on the field which is of special interest to us, that being the capital importance attached by the Revised Consttution of 1955 to "respect for human rights and fundamental liberties". The chapter devoted to.fTlem has no fewer than twenty-nine articles, "each of which

has a precedent, either in Ethiopian tradition, or in constitutions firmly established elsewhere;" they amount to the principles "adopted for the protection of individual rights in the most advanced countries of the world." Thus, no one shall be denied the equal protection of the laws, there shall be no discrimination among Ethiopian subjects with respect to the enjoyment of all civil rights, and so on. In the field of penal law, the Constitution has confirmed that every person accused of a crime shall be presumed to be innocent until proved guilty, and that no one shall be imprisoned for debt, except in case of legally proved fraud. The Constitution also establishes, "in contrast to many countries of the world, the right of any inhabitant of the Empire to bring suit against the government, any ministry, department or other instrumentality thereof, for wrongful acts resulting in substantial damage;" it recognises that "everyone in the Empire shall have the right to present petitions to the Emperor", and it stipulates that not only the courts but the Sovereign himself are at all times obliged to ensure and protect these human rights. The Emperor concluded:

"We shall always be ready to take positive action to ensure respect for these rights by every organ and every official of the government. Thus, the humblest subject of the Empire, the poorest-as well as the richest, and even the guilty person in prison, possess at all times the assurance that the Sovereign is keeping incessant watch for the protection of his rights and fundamental liberties. " This, in a nut-shell, is the spirit of the great renovation and codification of the laws of Ethiopia