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SHARING THOUGHTS

Three Eye-opening Events

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Mizan Law Review has invited me to discuss the *eye-opening events* that I mentioned during a speech I made to law teachers at AAU Akaki Campus on 15th July 2008. The written medium of communication of course enables a person to convey thoughts, memories and reflections to a wider public including future readers. However, writing does not have the flexibility, flavor and the wider landscape which constitute the positive features of speech. It is with such modesty that I started writing the following thoughts and reflections.

The events which I am now sharing with Mizan's readers are occasions which helped me to open my eyes in my march from rigid legalistic formalism toward a wider conception of the law as a system, a process, and a social institution. The march began in 1965 at a Woreda Court in Addis Ababa, located on Russia Road near Menelek Hospital. The 'march' continued in 1967 near a rural village named Sululta, 22 kms north of Addis Ababa but 15 km across the countryside, off the Dessie Road. And, the third part of this 'march' involved an analytic, critical and reflective reading of a book after I joined the University Faculty (UA, School of Law) in the 1970s.

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The First Event

I was a new graduate from a US law school when I took a law teaching job at Addis Ababa (then Haile Selassie I) University in 1964. Like most newly-graduated young lawyers, I felt that I was at a height of professional competence, equipped with all the tools and kits for finding, interpreting, analyzing and applying legal rules, principles and procedures. And like most young lawyers of my age, I was very comfortable with the entrenched conceit of 'thinking like a lawyer' until a certain case decision in the Woreda Court convinced me that there is much more in law than only the façade of formal rules and procedures.

The case I watched in the courtroom involved a boundary dispute between two neighbors. Surprisingly, both parties were unhappy about the court decision. The person who lost the case was sad because the decision involved a fine of 35 Birr. The woman who obtained a favorable decision was also unhappy because the penalty of fine (payable to the state) did not resolve her problem. She had come to the wrong (criminal) court in the first instance, because when she filed a complaint at a Police Station she thought that the proceedings which ensued would solve her problem. And now she had to go again to a civil court regarding her border demarcation complaint.

I gained a big lesson from watching this court case, and it was indeed a wake-up call to engage in deeper critical reflection regarding the rigid formalistic conception of the law. Even though the woman 'won' the case, it meant nearly nothing to her. I thus learned that law is not only about formal rules, but needs to be understood properly, and I started to expand my thinking.

This event marked the beginning of my 'overall focus on "legal systems". The woman who had lodged complaint in this case had focused on the law as she understood it from the perspective of the traditions that she and most people like her understood. To her, there should be no difference between a civil or a criminal case. The law represented a series of rules in society that were either followed or violated. In this case, her neighbor had violated a rule by moving the boundary of his land onto hers. She felt justified in going court to correct the wrong. She had not considered whether the remedy she was pursuing was a criminal or a civil one.

It would not have mattered in the traditional system. She would have simply petitioned because of the violation of the rule. If she was proven to be right, she would have gotten her land back and her neighbor would have been shamed because he acted inappropriately. She chose to go to the official government court (presumably through the Public Prosecutor's Office), because

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she was living in the city and, apparently, assumed that it was more appropriate to do it in this way.[1] Since she did not really appreciate the full implication of going to the government court, things got confused. I was a witness to this confusion and tried to sort it out, which led me to begin to understand the implications of having a full system of traditional law available. Of course, the basic question I had to ask was why were we just teaching our students the formal government law which, it turned out, was only being used by a very small minority of people who had legal cases.

As a parallel matter, I started to believe that the real task of a lawyer is his/her capability to avail peace, harmony and equitable remedies by keeping people (as much as possible) out of expensive and time-consuming litigations. I concluded this because of the special nature of the traditional system which I would spend a great deal of time trying to understand. Traditional courts tried try to resolve the disputes between the parties and reach an actual resolution of the differences with a formal reconciliation process at the end of the process when the parties acknowledged the violation of the rules or the mistakes that were made.

The traditional system did not make a declaration of right and wrong or impose punishment. Instead its goal was to make peace in the community. There are of course matters which inevitably go to courts. Nevertheless, my first-hand observation taught me the limitations of certain court litigations even where a party might have 'technically won.'

'Spirit-possession' sessions and dispute resolution

The second eye-opening event involved 'spirit possession' sessions which are part of the dispute resolution process of the traditional legal system. I visited a number of them in 1966. First, I visited one of the leading figures who had a very large following. Although I did not proceed with a full analysis of this spirit institution, it was clear that throughout Ethiopia there were many persons who claimed to have spirits. A hierarchy of persons with spirits clearly existed with the *Ye-Arussiwa Emebet* at the pinnacle. *Ye-Arussiwa Emebet*

[1] I later learned that there were, in fact, rules in the traditional sector that it was considered inappropriate to bring a case to the government court when a local court institution was available. Later on, I witnessed a rather lengthy and powerful petition that was brought against a villager who had inappropriately brought a case in the government Woreda court. In the end, the person who had brought the complaint to the official court was made to pay, both financial terms and with his reputation for the violation of the rather rigid rule that villagers are not permitted to petition to the official government court when traditional institutions are available.

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who was the first spirit-possessed person whom I visited on a whim. I was curious about her and the phenomenon of spirit possession which I was told involved both healing and conflict resolution.

I made a second visit to her headquarters, *Ferekessa*, on Mohammed's birthday which was the day of a giant celebration with individuals present from all over Ethiopia. Many people believed that her spirits were very powerful and socially positive. As I said just above, I attended the annual celebration for Mohammed's birthday, which was held at Ferakessa in Arussi province. I estimate that there were between 80 and 100,000 people present to be near her, which was certainly indicative of her presumed power.

While present, I saw the holder of the spirit [2] both resolve disputes and perform what some people felt was miracle health cures of blindness and deafness At this time, I was teaching Conflicts of Law (Private International Law) which generally was comprised of cross-border legal disputes which were normally international in nature. I decided also to incorporate into my Conflicts of Law course "internal" conflicts, that is, conflicts between systems within the same geographical borders. In Ethiopia it meant looking at the conflicts between the formal governmental system and the more informal, and unrecognized traditional system.

My reading led me to believe that the "law" in the traditional system was as much a legal system as the formal law promulgated by the Parliament. I was convinced that the traditional legal structure should be incorporated into the overall legal system, but, of course, I realized that it was a political decision that would have to be made by the government. I had been evolving a sense of law which could incorporate the traditional law into the overall system with no definitional problem. I felt it was important to deal with tradition as a real part of the legal system and perhaps someday there would be a realization that it should be recognized, as I was convinced that it was going to remain a strong force within the overall dispute-settlement regime in Ethiopia.

This in turn led me to consider incorporating into my classes some of the relevant activities of traditional law. Part of this construct included what I had witnessed on my visits to Ferakessa, that similar people possessed by spirits offered the public. I learned about a person named Basha Reta who lived nearer Addis Ababa, and was believed to have a spirit called "Adal

[2] At this time it was a man named Lij Taye Gessesse, who was a lineal descendant of the original spirit holder who held the power of the spirits. The original spirit holder had migrated from Wollo Province in central northern Ethiopia to Arussi. Lij Taye passed away during the period of the Derg and I am not certain now who holds the power of the spirits of *Yearusiwa Emebet*.

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Moti", among others. I learned that Adal Moti was considered a very powerful spirit.

Although I have never believed in spirit possession systems, the psychiatric functions of Basha Reta (similar to those of Lij Taye Gessesse, the Arussi Imebet) were fascinating because there were a great many people who were being healed from ailments that seemed to have psychological factors or that were nerve-related. As a lawyer, what fascinated me most were the hundreds of disputes that were being resolved by Basha Reta at his sessions on Sundays and Wednesdays.[3] My students and I started to attend the Sunday sessions[4] and learned many lessons on how disputes were being resolved so that both parties were happy and reconciled.

The visits to Basha Reta's sessions taught me that such traditional institutions can have a positive contribution towards peace, order, harmony and development (as long as certain aspects of exploitative 'witch-crafting' are prohibited) if the reverence which is accorded to such persons by communities can be constructively used for the purposes of dispute resolution, environmental protection, and other endeavors of community development. These are indeed among the core objectives of every legal system.

My students and I thus learned that law is not only about formal legal provisions. We started to expand our understanding of law beyond the formal. Such occasions nurtured my curiosity about the relationship between law and society. Until the mid 1960s the young lawyer's soul in me had a passionate belief in the "magic" available in formal legal rules to regulate society. Gradually, however, I learned to be more modest, and to recognize that laws should be understood in a far wider context.

Courtroom settings and litigations represent the conflict (as opposed to the love and mutual respect) aspect of laws. Litigations can be dramatic, and tend to capture our attention. However, contractual obligations performed according to the law, peace, and harmony in social relations and the entire spectrum of tranquil human relations constitute over 99% of our daily behavior. Normal human interactions, including disputes, do not usually go to court. And all these ordinary interactions involve norms of conduct of which formal laws

[3] There was a certain irony in Basha Reta's activities. He lived in an area that had large numbers of Amhara and Oromo people. Fortunately, he was powerful enough to have acquired an Amhara styled spirit which appeared on Sundays and an Oromo styled spirit which appeared on Wednesdays. For purposes of convenience our visits to Basha Reta were virtually all on Sunday.

[4] I took no more than three students with me on each visit, as I was driving and there were only four seats in my Volkswagen Beetle.

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are only one piece. Again, I have come to believe that the best lawyers are those who can settle disputes without going to court, unless it becomes absolutely necessary.

Edgerton's book

The third event which enabled me to open up my eyes further was a book entitled *Rules, Exceptions and the Social Order*, by Robert Edgerton, which I read when I was pursuing graduate courses in Social Anthropology. The definition of law as a set of rules enacted by a legislature (or as a case precedent) might help a student to pass exams. But such a conception cannot withstand various debates related to the essence of law, the origin of laws and the future of laws.

Edgerton's book examines the issue of where legal rules come from as a matter of social development and a consideration of social structural reality. It explores how rules come into existence from the point of view of the members of societies and the manner in which societies continuously change. The book then indicates that in due course of change in social order, many legal rules that were *principles* become *exceptions* . The book further shows that the exceptions might eventually become irrelevant and disappear as a result of obsolescence owing to social change and progress.

In other words, laws are generated by societies as rules of expected social behavior and they serve as the normative framework toward the attainment of order, peace, harmony, and development. In its narrower formalistic conception, we talk about rules that are being violated. Such is the mindset of conflict-oriented lawyering. In due course, however, we can grow toward having a wider conception of legal rules as set of norms and processes that enable a society to function properly, effectively, and harmoniously.

Concluding reflections

No legislature can pass laws that change people, although in the 1960s there were theories that took the position that law indeed could radically change human behavior. Instead, too-rigid and heavily formalistic legal rules will tend to make people circumvent such laws. To a certain extent, laws can be instrumental to change, whenever societies become ripe to make an evolution of a qualitative transformation. Otherwise, the faster laws change in haste (unmatched by their natural rhythmic clock) the more they become superficial and unenforceable.

A valuable example to refer to, which is in many ways the forerunner of the Ethiopian attempt to change its law, is the modernization of law in Turkey.

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Attaturk attempted to engineer radical change in the legal system starting in the 1920s, by sending a group of students to study law in Switzerland and then adopting many of the Swiss Codes. This was an attempt to secularize and modernize the law of Turkey. Attaturk's attempt has been studied to evaluate the impact of reception of laws and legal systems in a form that is incompatible to the already existing indigenous law.[5]

Indeed, Ethiopia has a treasure of profound traditions which have been nurtured and reinforced by many generations. Law abiding citizenry in Ethiopia can be illustrated by an example recently raised by one of my friends: you can see beggars in front of jewelry shops in Piazza with a fragile glass window separating them from unguarded sets of jewelry that are worth hundreds of thousands of Birr. Yet the beggars respect this barrier and do not smash the windows to rob instead of begging.

There may of course be many ups and downs in the march towards the imported definition of 'development', *inter alia*, owing to a global setting which seems to be unfavorable to less-developed countries like Ethiopia. There may thus be 'bumps' on the rough road ahead. Such setbacks may unfortunately erode some elements of Ethiopia's legal traditions. Eventually, however, I am optimistic that every positive aspect of a tradition lives, and that is why it deserves the name 'tradition.' ■