

CUSTOMARY LAND TENURE AMONG THE HIGHLAND PEOPLES
OF NORTHERN ETHIOPIA
A BIBLIOGRAPHICAL ESSAY

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In 1960 the Emperor promulgated a new Civil Code for Ethiopia. This enactment ostensibly marked the end of the application of customary law throughout the Empire. Article 3347(1) of the Code states:

Unless otherwise expressly provided, all rules whether written or customary previously in force concerning matters provided for in this Code shall be replaced by this Code and are hereby repealed.

Inasmuch as the Code is intended to cover the whole of the civil law, it would appear that, at the very least, all private law of customary nature had been outlawed. The draftsman of the Code, Professor René David, has reported:

While safeguarding certain traditional values to which she remains profoundly attached, Ethiopia wishes to modify her structure completely, even to the way of life of her people. Consequently, Ethiopians do not expect the new Code to be a work of consolidation, the methodical and clear statement of actual customary rules. They wish it to be a program envisaging a total transformation of society and they demand that for the most part, it set out new rules appropriate for the society they wish to create.¹

Actually, Professor David may not have been as critical of the field of customary law as his statement seems to suggest. The original draft of the Code, together with

¹"A Civil Code for Ethiopia: Considerations on the Codification of the Civil Law in African Countries," Tulane Law Review, 37 (1963), 193.

the "exposé des motifs et commentaire des documents," which have recently become available to the faculty and students of the Faculty of Law, Haile Sellassie I University, disclose that David made a careful study of the customary law of the Ethiopian peoples and introduced principles of this legal system into his draft of the Civil Code.² It was during the consideration of the draft Code by the Codification Commission and Parliament that many of the carefully drawn adaptations of customary law principles and most of the transitory provisions that would have permitted of an accommodation to the new law over the years were eliminated. Thus Ethiopian customary law has been largely stricken from the legal system, and will eventually become a thing of the past.³

For the moment, however, customary law continues to play a significant role in certain areas of the law. Land law is one of the spheres which has not been completely recast. An exception to the general rule of prescriptive ownership of land by reason of payment of taxes upon it for fifteen consecutive years is provided in Art. 1168(1):

Provided that no land which is jointly owned by members of one family in accordance with custom may be acquired by usucaption and any member of such family may at any time claim such land.

Again, the chapter on agricultural communities opens with the statement of the general principle, Art. 1489:

Land owned by an agricultural community such as a village or tribe shall be exploited collectively whenever such mode of exploitation conforms to the tradition and custom of the community concerned.

Perhaps most significant are the transitory provisions which declare that, until registration of land has been

²This is clearly demonstrated in the paper written by Bilillign Mandefro, cited infra, # 48, particularly pp. 39 ff.

³For the role of customary law in Ethiopia, consult Sedler, "The Development of Legal Systems: The Ethiopian Experience," Iowa Law Review, 53 (1967), 594-602.

introduced, the customary rules relating to the formalities of alienation of immovable property, limitations on full ownership, and grants of mortgages shall be complied with (Arts. 3363-67). Since title registration has not been introduced into any of the northern provinces of Ethiopia, it is evident that the rules of customary land law, as far as these apply, are still in force.

A bibliography of customary land tenure was not undertaken to provide a guide to the current land law of areas where the Civil Code has not yet penetrated. The elders or local officials are quite familiar with the customary law of the community where a dispute is to be settled by recourse to arbitration or adjudication. It has been compiled in the main to afford student and scholar access to notes by early travellers, to reports made by administrative officers during Italian occupation, and to studies by scholars published pretty much during the first half of the present century. The current bibliography is readily accessible elsewhere. The customary land law of the highland peoples of the northern provinces is a heritage unique to Africa, part of a legal system where the dynamic development of legal institutions can be traced through the years. The system of land-holding in one of the areas of the north has had the good fortune, or should one say, the misfortune, to have been rather well investigated and reported upon, by foreigners. The experience of the past, both the techniques of field study and the information which has been assembled, should prove of value to today's scholar delving into the structure of land tenure in areas where previous knowledge is largely absent. There is no one system of land-holding throughout the northern highlands. It is the divergency in practice between the one community and the other, the distinction in the rule of law between the one clan and the other, within the same tribal group, that is of primary significance. The difference in the connotation of communal tenure (rest, resti) and of 'feudal' land (gult, gulti) among the Loggo Sarda of Acchelè Guzaï in Eritrea (see item #6, infra) and among the Amhara of Dega Damot in Gojjam (see item #43, infra) is basic not only to a knowledge of the customary law, but to an understanding of Ethiopian culture and society. Time is running out for gathering information from the elders, or for searching out the writing (debter, defter) which may provide

compilations of the law during the past. All tools available should be put in the hands of the researcher. Hopefully, this bibliography is one contribution.

A search through the holdings of libraries in New York, Addis Ababa, Asmara and Rome was supplemented by the use of several bibliographies in compiling the listing.⁴ The bibliography attempts to record, in chronological sequence, the more extensive treatments of customary land tenure among the highland peoples of Ethiopia from the earliest essays to the present day. The listing is not exhaustive because passing references in general works on law or occasional allusions to land usage in geographical descriptions, during the early days, or in economic studies, at the present time, are not included. Hopefully no significant item within the scope of the topic has been omitted, but notice of omissions will be gratefully received. There has been no attempt to digest the content of the book or article cited since there is a good deal of duplication in the succession of studies. Rather, the effort has been to afford as full a bibliographical reference as possible, and to point out the features of the work which give it its general character or mark it as somewhat unique. All the items listed--save the few specifically noted--are to be found in the New York metropolitan area, and copies are available through the African Law Center, at the established charge.

⁴Of particular value:

a) Dainelli, G. - Marinelli, O. - Mori, A. "Bibliografia geografica della Colonia Eritrea, I. Anni 1891-1906" [Geographical bibliography of Colonia Eritrea, I. Years 1891-1906], Rivista Geografica Italiana, 14 (1907), Supp., 1-72.

b) Mininni Caracciolo, Mattia. Bibliografia giuridica coloniale (Italia) [Colonial legal bibliography (Italy)] (Roma, Il codice tributario dell'Africa Italiana, 1943). 125 p.

c) Vanderlinden, J. "Outline of a Bibliography on Ethiopian Law," Journal of Ethiopian Law, 3 (1966), 256-83.

The earliest efforts in describing land-holding in the area of Ethiopia are those of an Italian Captain (later Major) attached to a battalion of indigenous troops engaged in the occupation and administration of the highlands of Eritrea. With the support of Ferdinando Martini, the outstanding Governor of the colony at that time, Capt. Perini, having acquired proficiency in Tigrinya, engaged in detailed research into the historical traditions and the customs of the clans inhabiting the high plateau territory.

1. Perini, Ruffillo. "Sulla proprietà fondiaria nel Seraè" [On real property in Seraè], Nuova Antologia, 3^a ser., 45 (1893), pp. 663-93.

This first study opens with an enumeration of the clans which inhabited this region of southwestern Eritrea at the time the Italians occupied the area. The bulk of the paper is devoted to a simple description of various types of communal tenure to be found throughout the area. That known as medrì restì, commonly held property subdivided once and for all among the heads of the families of the communities and transmitted to their descendants from generation to generation, was the predominant variety. Perini makes a brief comparison with the situation in Hamasien, the region to the northeast, and with that in Acchelè Guzaï adjoining Seraè on the southeast. As the result of guerilla warfare between the inhabitants of Seraè and Acchelè Guzaï shortly before the Italian occupation, the former region was largely abandoned. Recent re-occupation, shortly before the Italian entry, calls for the enactment of regulations respecting land-holding, according to Perini. Much of this article is incorporated in Perini's major work, infra, # 9.

In the bibliography primarily devoted to the geographical field, another work of Perini's is cited, which is used as the basis for the study listed below as # 4. Unfortunately, though quotations in this latter work indicate that Perini's series of articles constituted a valuable survey, neither the magazine in which the articles appeared nor the reprint of the study is available in this country.

2. Perini, Ruffillo. "La zona di Asmara. Circo-scrizione storica ecc." [The zone of Asmara. Historical extent, etc.], Rivista Militare Italiana, 1894, pp. 681-95, 873-906, 969-86, 1063-89, 1184-1207.

Within this series there must have been treatment of the traditions and customs of the people of Hamasien, of which Asmara became the capital. Luckily, Perini later consolidated his studies in his major work, noted below, # 9.

Another bibliography, that of Mininni,⁵ cites further

3. Perini, Ruffillo. "I resti e i gultì nell' Hamasien" [The estates and tenures of Hamasien], Nuova Antologia, March, 1898.

The bibliographer undoubtedly obtained his citation from other sources (e.g., Sertoli Salis, infra, # 20) but this article, apparently concerned with the particulars of land tenure in Hamasien, is not to be found. Perhaps the reference is to a separate publication of part of the work listed as # 2, but extensive search did not lead to identification of this title.⁶

At the turn of the century, a semi-popular survey of land tenure throughout Ethiopia was contributed to a political and literary magazine by one of the well-known explorers of the country,

4. Traversi, Leopoldo. "La proprietà della terra in Ethiopia" [Real property in Ethiopia], Rivista Politica e Letteraria, 13 (1900), pp. 117-37, and 14 (1901), pp. 111-22.

The two parts of the author's study are devoted to land-holding in the northern regions and in the southern regions. For the former he leans heavily on Perini's article noted above (# 2), though he himself had observed particulars in his many expeditions.⁷ Traversi's

⁵Op. cit., note supra.

⁶The incorrect reference may also be to Perini, Ruffillo. "Una escursione nello Scioatte-Anseba" [A trip to Scioatte-Anseba (the seven Anseba communities, in Hamasien)], Bollettino della Società Geografica Italiana, 3^a ser., 7 (1894), 621-34, largely geographical description, but with some notes on the inhabitants and their land.

⁷Traversi's letters describing his expeditions, with a few references to land-holding among the peoples he visited, are published in the second and third series of volumes of the Bollettino della Società Geografica (during the 80's and 90's of last century).

discussion of land tenure in the north is largely limited to the province of Tigre, and is of interest for an early, though brief, discussion of gultì, "the grant of the usufruct of a certain part of the territory [held by the clan] given or temporarily granted to a meritorious or approved person, or vested permanently in a family or clan, or by donation in a church or a monastery." The definition is taken from Perini, but Traversi deals at some length with the rights and obligations appertaining to the chief of the gultì, the sciùm gultì (Ital. transliteration; shum gulty, Eng. transliteration), and the head of the community, the sciùm addi, as recipients of the tribute.

The earliest efforts of the outstanding scholar of Ethiopian culture and language during the first decades of this century in the sphere of land tenure are

5. Conti Rossini, Carlo. Ricordi di un soggiorno in Eritrea [Records of a sojourn in Eritrea], fasc. 1 (Asmara, Tip. d. Missione Svedese, 1903), part V, no. I.

This is the Tigrinya text of a very brief 'legge' (customary law compilation)⁸ of the Loggo Sarda, a clan settled in south-east Eritrea, which Conti Rossini had discovered between the folios of a manuscript in the church at Sarda. He describes the 'legge' and the traditions of this people in

6. Conti Rossini, Carlo. "I Loggo e la legge dei Loggo Sarda" [The Loggo and the law of the Loggo Sarda], Giornale della Società Asiatica Italiana, 17 (1904), pp. 1-63.

Only a few words in the 'legge' refer to land tenure, but Conti Rossini offers a comprehensive description of the types of land-holding among the Loggo Sarda, pp. 31-42. He presents a full historical development of the evolution of land tenure, based on a study of the ancient chronicles, and compares the regimes of land tenure in Seraè and Acchelè Guzaï. The scholarly treatment of all aspects of the law and customs of this people sets a high standard that is rarely, if ever met, but displays what a

⁸An annotated check list and bibliographical description of the compilations of customary law of the highland peoples of northern Ethiopia will be published in a future issue of African Law Studies.

wealth of information can be gathered and presented by the scholar who is at home both in the manuscripts hidden away among church and convent treasures and in field investigation among the Coptic peoples.

The next contribution stems from official records,

7. Falcone, Ranieri. Relazione giudiziaria letta nell'udienza inaugurale del 22 Gennaio 1904, Tribunale di Appello della Colonia Eritrea (Asmara) [Judicial address read at the inaugural session of January 22, 1904, Court of Appeal of Colonia Eritrea (Asmara)] (Napoli, Luigi Pierro e figlio, 1904).

As an appendix to his address, the judicial magistrate added a collection of the digest of cases, pp. 65-105, heard by the regional magistrates of Eritrea during 1903. Many of these cases involve controversies concerning restì land (collectively owned) and its distribution, and show the extent to which the colonial power through its judicial tribunals established rules in the field of customary law. Some of these cases are included within a later collection (# 12).

There is reference, in the geographical bibliography cited, to a book which may in part be devoted to the customary law of land tenure, but it has not been seen by the writer,

8. Da Offeio, F. Dall'Eritrea. Lettere sui costumi Abissini [From Eritrea. Letters on Abyssinian customs] (Rome, Filiziani, 1904). 160 p.

It is stated that some of the letters of this traveller contain observations on the peoples of the highlands. Whether any of these deal with legal customs respecting property is not known.

The first exhaustive treatment of the historical traditions and social life of the inhabitants of the highlands of Eritrea is the volume in which Major Perini published a revised version of his earlier studies, considerably enlarged in scope,

9. Perini, Ruffillo. Di qua dal Marèb (Marèb-mellàsc') [On this side of (the river) Mareb: Mareb Mellasch] (Firenze, Tip. Cooperativa, 1905). 463 p.

The chapter on public law (pp. 361-405) in the section of

the volume devoted to social life affords an excellent description of the constitutional organization of the societies, the civil and military hierarchies, taxes and tribute, and of particular interest, the relation of the internal affairs of Mareb-Mellasch to the powers of the Empire of Ethiopia at the time of the Italian occupation. The discussion of the incidents of the property held as gultì (pp. 393-400), is particularly valuable, since shortly after the establishment of Italian rule, this was completely altered.

A survey of all phases of land-holding in Ethiopia and Eritrea was presented at the first congress of scholars at Asmara,

10. Odorizzi, Dante. "Notizie sull'ordinamento della proprietà terriera in Etiopia e nella zona abissina della Colonia Eritrea" [Remarks concerning the regulation of landed property in Ethiopia and in the Abyssinian zone of Colonia Eritrea], Congresso coloniale italiano in Asmara, 1905, Atti, I (1906), pp. 255-75.

The material is given in brief statements, organized under some thirty headings (e.g., types of agrarian possession, norms in the event of litigation, ownership of houses, voluntary abandonment of restì), with a brief glossary of terms. In a postscript the author notes that his remarks derive, in addition to his own studies and observations, from the studies of Major R. Perini, Major A. Mulazzani,⁹ and Captain A. Sapelli.¹⁰

⁹The author of a leading geography text, Geografia della Colonia Eritrea [Geography of Colonia Eritrea] (Firenze, Bemporad, n.d. [1904]), which contains scattered notices on land tenure, and of an unpublished monograph--cited by Duncanson, Africa, 19 (1949), p. 145 n. 2 --Norme dell diritto consuetudinario secondo il costume dell'Atchemè Melegà [Norms of the customary law according to the custom of the Atchemè Melegà] (1898), not seen.

¹⁰Reference to Capt. Sapelli, as the third of the military men Governor Martini assigned to ethnographical study, was found, but no title of work published by him.

The report of the governor of Eritrea for the years 1902-1907, submitted to the Italian Parliament in 1913, contains a wealth of information on the development of the colony. Among the reports of his subordinates are surveys of land tenure in various areas,

11. Martini, Ferdinando. Allegati alla Relazione sulla Colonia Eritrea [Appendices to the Report on Colonia Eritrea], Vols. II/III (Roma, Tip. d. Camera dei Deputati, 1913), pp. 1706 f., 1742 ff., 1766 ff.

Among the series of monographs issued by the government in the colony of Eritrea is one of particular interest to the lawyer,

12. Colonia Eritrea. Diritto consuetudinario; Raccolta di massime giurisprudenziali di diritto consuetudinario delle popolazioni dell'Eritrea (= Colonia Eritrea. Legislazione, notizie e studii sull'Eritrea, No. 18) [Customary law; Collection of judicially declared rules of customary law of the population of Eritrea (Colonia Eritrea. Legislation, notices and studies on Eritrea, no. 18)] (Asmara, Tip. E. de Angeli, 1909). 36 p. Paragraphs ## 92-104 of the collection set forth the general principles of the various aspects of land law which had been pronounced in the decisions of the Italian courts in the colony.

In the first monograph devoted entirely to the customary law of one of the regions of Eritrea, there is some discussion of the rules of land tenure among the various clans within the area,

13. Capomazza, Ilario. Il diritto consuetudinario dello Acchelè-Guzai. Massimario raccolte da I. Capomazza (= Colonia Eritrea. Legislazione, notizie e studii sull'Eritrea, No. 27) [The customary law of Acchelè Guzai. Set of rules collected by I. Capomazza] (Asmara, Fioretti, 1909, reprinted 1937). 232 p.

The notices on land tenure are given under the several compilations (legge) of the various ethnic groups, particularly pp. 83 ff., 89 ff., 150 f., 197 f.

An article in a journal which has not as yet been located in this country may well be in point,

14. Zapponi, A. "L'ordinamento fondiario della Colonia Eritrea" [Land regulation in Colonia Eritrea], Rivista d'Africa, 1911, pp. 665-80, and 1912, pp. 22-50.

The topic may well be the colonial government's regulation of real property, and thus have nothing to do with customary land law, but the extent of the article seemed to warrant its inclusion.

There is another monograph by Capomazza which contains a number of pages devoted to land tenure as revealed in one of the customary law compilations,

15. Capomazza, Ilario. Istituzioni di diritto consuetudinario del Seraè: La legge degli Atchemè-Melgà [Institutions of customary law of Seraè: The law of the Atchemè-Melgà] (Macerata, F. Giorgetti, 1912). 133 p.

Three types of land-holding are described, pp. 69 ff.: 1) restì, collectively owned land which the clan took by conquest when it occupied the area which acceded to the possessors by inheritance, 2) uorchì, property obtained by purchase, with annual rents in kind to the first vendor and his successors, and 3) moras, property obtained by gift. Further particulars of real property law are succinctly presented.

Two decades after the initial effort into the study of land tenure in Ethiopia a definitive monograph on the subject was published,

16. Pollera, Alberto. Il regime della proprietà terriera in Etiopia e nella Colonia Eritrea (= Ministero delle Colonie, Ufficio di studi coloniali, Rapporti e monografie coloniali, n. 12) [The system of landed property in Ethiopia and in Colonia Eritrea (Ministry of Colonies, Office of colonial studies, Colonial reports and monographs, no. 12)] (Roma, Tip. Nazionale, 1913). 61 p.

Only the first part of the work deals with the incidents of customary land law in the highlands, thus constituting a brief survey, though in its thirty pages it touches upon all points.

One of the principal subordinates during the regime of Ferd. Martini as governor of Eritrea contributed an interesting chapter to a collective enterprise,

17. Caffarel, William. "La legislazione dell-'Eritrea," L'Eritrea economica. Conferenza tenuta in Firenze (= Biblioteca geografica dell'Istituto geografico De Agostini, n. 1) [The legislation of Eritrea. Conference held in Florence (Geographical Library of the De Agostini Geographical Institute, no. 1)] (Novara/Roma, Ist. Geogr., 1913), pp. 461-92.

As an introduction to the colonial legislation, the author briefly summarizes the content of the customary land law (pp. 478 ff.).

The termination of the first period of the study of customary law in Ethiopia, and more particularly in Eritrea, is marked by the appearance of the standard text in the field, internationally recognized as a scholarly contribution of the highest order,¹¹

18. Conti Rossini, Carlo. Principi di diritto consuetudinario dell'Eritrea [Principles of customary law of Eritrea] (Roma, Tip. Unione Ed., 1916). 802 p.

In a volume of eight hundred pages the leading scholar in the field presents a thorough treatment of the whole subject, a treatise which still remains the outstanding work in the field. In great part the work serves to describe elements common to the customary law of the highland peoples of northern Ethiopia; in particulars only is it restricted to Eritrea. Land tenure and the incidents of the law of real property are dealt with in considerable detail (pp. 95-163), deserving of special attention for the correction of erroneous conceptions which had been introduced in earlier years. Unfortunately, the absence of an index restricts the easy utilization of the volume.

More than a decade elapsed before a further significant contribution was made in the field of Ethiopian customary land law, undoubtedly due in part to the devastating effect of the First World War in Europe. In a handbook devoted to the social life and culture of the Ethiopian

¹¹The work received an exceptionally favorable review by a leading scholar of legal history, Josef Partsch, Archiv für Papyrusforschung und verwandte Gebiete, 7 (1924), pp. 279-84.

people, Conti Rossini devoted a chapter to a description of the customary law of real property because, as he says, of its great importance to an understanding of the society and because some errors have obscured proper knowledge of the subject.

19. Conti Rossini, Carlo. L'Abissinia [Abyssinia] (Roma, Cremonese, 1929), pp. 107 ff.

Remarks on royal property and a tenure peculiar to Shoa are joined to the discussion of collectively held property (rest) and feudal tenures (gult).

As the first chapter of a monograph on the legislative activity of the colonial power,

20. Sertoli Salis, Renzo. L'ordinamento fondiario eritreo [The Eritrean system of real property] (Padova, Cedam, 1932), pp. 19-35.

the author deals with the Ethiopian customary land law and the Eritrean political and constitutional system at the time of the Italian occupation of the colony. The bibliography cites many of the works listed above, including the erroneously cited article of Perini (# 3).

The first significant contribution to Ethiopian customary land law by an Englishman is contained in

21. Walker, C. H. The Abyssinian at Home (London, Sheldon Press, 1933). 220 p.

This volume comprises the translation of Amharic notes which the British consul for Western Ethiopia had made from the interrogation of illiterate provincials in Shoa, and to a degree, among the Galla. There are only occasional references to land tenure in the north, a greater amount of space devoted to the simple tales of land measurement and feudal bonds in the west and southwest.

In a little known lecture to agricultural technicians, Conti Rossini presents in broad lines the extent of the knowledge concerning customary land tenure in Ethiopia,

22. Conti Rossini, Carlo. "Il regime fondiario indigeno in Etiopia e i mezzi di accertamento della proprieta" [The system of indigenous land law in Ethiopia and the means of ascertaining ownership], Corso di organizzazione tecnico-agricolo-coloniale (Roma, Tip. Ed. Sallustiana, 1936). 17 p. (reprint).

This is a brilliant essay which afforded his audience as

well as today's reader with a comprehensive and readily understandable picture of the intricacies of the subject.

In a survey of the existing structure of the law in Ethiopia, preceding a brief outline of the legislation then being introduced,

23. Agresti, Luigi. Cenni degli antichi e dei nuovi ordinamenti giuridici dell'Abissinia [Remarks on the ancient and the new legal systems of Abyssinia] (Napoli, Soc. Afr. d'Italia, 1936). 37 p.

there is a three-page treatment of the incidents of collective property and the feudal bonds thereon, pp. 10 ff.

In a similar study by another professor, with a fairly extensive bibliography,

24. Mario, Fulvio. "I diritti consuetudinari delle gente etiopiche e il diritto coloniale italiano" [The customary laws of the Ethiopian peoples and the Italian colonial law], Archivio V. Scialoja per le consuetudini giuridiche agrarie, 4 (1937), 3-20.

the author devotes some pages to a discussion of the customary land law, pp. 14-17. Interesting is a brief discussion of agrarian contracts, with reference to Mulazzani, A., I contratti agrari nel Seraè (n.d.), not seen.

A consideration of the policy which should be adopted with respect to the modernization of the land law, a perennial concern,

25. Neri, Italo. "Aspetti del problema fondiario etiopico" [Points of view on the Ethiopian land problem], Rivista delle Colonie, 11 (1937), 36-48. is based upon a competent presentation of the essential aspects of land tenure in Ethiopia under customary law.

The leading treatise on Italian colonial law, the third edition of which appeared at this time, will serve as a typical example of the somewhat cursory treatment given customary land law in Ethiopia by the authors of the manuals prepared for law students in Italian universities; reference to the works of other authors will be found in my bibliography on African law, in the series "Law Books Recommended for Libraries" of the Association of American Law Schools, to be published by Fred B. Rothman & Co., South Hackensack, N.J., next year.

26. Cucinotta, Ernesto. Diritto coloniale italiano [Italian colonial law] (3rd ed., Roma, Soc. Ed. Foro Italiano, 1938), pp. 471 f.

This particular statement is valuable by reason of extensive bibliographical references.

An exceptional study of the feudal land relations (gultì) in the province of Tigre is afforded by

27. Villari, Gerardo. "I 'gultì' della regione di Axum" [The gultì of the region of Axum], Rassegna economica dell'Africa italiana, 1938, pp. 1430-44.

The study actually deals with the monetary tribute and payments in kind to which the ecclesiastical institutions (churches and monasteries) in Axum and its surroundings were entitled as a usufruct on gultì land.

The legal definition of gult (gultì) and of rest (restì), together with delineation of the variations to be found in the two institutions, is explained by

28. Conti Rossini, Carlo. "Gult (Gultì)," Novissimo Digesto Italiano, 6 (1938), 616; and "Rest (Restì)," Novissimo Digesto Italiano, 11 (1939), 491-93.

The distinct meanings of the term expressing a feudal tie are carefully set forth, and the relation of the normal collective type of land tenure to other kinds of land tenure is given.

There is very little discussion of land tenure in the next item cited, but since it deals at some length with a typical compilation ('legge') of customary law, it serves to demonstrate that only a small portion of current customary law is periodically restated. The great mass of customary law principles which have undergone little change and are not, at the moment of the compilation of the law, in any doubt, are not reflected in such a work as

29. Conti Rossini, Carlo. "Lo statuto dello Scioattè Ansebà (Eritrea)" [The statute of the Scioattè Ansebà (Eritrea)], Scritti giuridici in onore di Santi Romano, 3 (1940), 345-66.

Only a few paragraphs of the 'law' which has been translated and annotated have anything to do with land-holding, e.g., time for payment of tribute, guards for fields, recognition of the bounds of the neighbors' fields.

A monograph on the agrarian law of the newly established segment of Italian empire,

30. Ambrosi, Luigi. Aspetti di diritto agrario nelle terre dell'A.O.I. (= R. Università di Roma. Pubblicazioni dell'Istituto di diritto agrario, 6)

[Aspects of agrarian law in the areas of Africa Orientale Italiana] (Milano, Giuffrè, 1941). 66 p. contains some discussion, in the opening pages, of the land tenures which were to be encountered in Ethiopia, as well as the measures which should be taken in modernizing the land law of the country. Much of the treatment, of course, deals with areas outside the northern highlands.

In a study devoted to social and legal conditions in the western portion of Tigre,

31. Gesiotto, Adolfo. "Breve studio sociale e giuridico sul Tigray occidentale (con particolare riferimento alle regione di Axum e del Tembien)"

[A brief social and juridical study of western Tigre (with particular reference to the regions of Axum and of the Tembien)], Archivio V. Scialoja per le consuetudini giuridiche agrarie, 7 (1940), 59-85, and 8/9 (1941/1942), 71-91.

a considerable portion of the work deals with a description of the various types of land tenure, the incidents of the feudal tributes and obligations, and related property matters.

During the British occupation at the close of the war, an administrative officer was assigned the preparation of a report on land tenure in Eritrea. This report was republished, and constitutes one of the best surveys of customary land tenure and litigation respecting real property of this area that is to be found.

32. Nadel, S. F. "Land Tenure on the Eritrean Plateau," Africa, 16 (1946), 1-22, 99-109.

This periodical being available to all, it is unnecessary to dwell upon the subjects dealt with in the course of the study.

With the support of the Italian Commissioner of the region of Seraè, in Eritrea, an assemblage of the notables of the greater portion of this area compiled a new version, in 1941-43, of the customary law not yet definitively settled, the 'law' of the Ačchemè-Melgà. The

Tigrinya text and Italian translation, with annotations, has been edited in two parts, by the Regional Commissioner and his secretary,

33. Savoia-Genova, Eugenio di, duca di Ancona - Simonini, Giovanni. Consuetudini giuridiche del Seraè, raccolte dall'assemblea dei suoi notabili ad iniziativa del Commissariato regionale di Addi Ugri [Legal customs of Seraè, collected by the assembly of its notables at the initiative of the Regional Commissariat of Addi Ugri] (= Rassegna di Studi Etiopici, Supplemento al volume VII, [and] Supplemento al volume XI) (Roma, Tip. Pio X, 1948 and 1953). 217 p.

The statements in the compilation having to do with land law and related agricultural matters (pp. 91-119) disclose the extent to which customary law was still being re-fashioned, even after decades of Italian rule. The restatement of customary norms regarding restì--defined, from the point of view of public law, as lands which collectively or individually belong to private persons by right of ancient occupation or immemorable and uncontested possession, and in private law, lands now subdivided in perpetuity among the indigenous inhabitants, transmitted through male descendants and alienable [under certain conditions] to strangers--occupies the greater part of the portion devoted to land matters.

The law which has just been mentioned formed the basis of a short study by an English anthropologist,

34. Duncanson, Dennis J. "Sir'at 'Adkeme Milga'--A Native Law Code of Eritrea," Africa, 19 (1949), 141-49.

A few pages on landright summarize the portion of the 'law' devoted to the customary land law of these ethnic groups.

Lectures on customary law at the School of Jurisprudence at Asmara, capital of the then autonomous Government of Eritrea, form the basis of a treatise on the customary law of the population of the country. It is his reliance on the customary law in practice, in judicial decisions, and in the rules set forth in the new compilations of the law of various clan groups that warrant, according to the author, a comprehensive supplement to the Principi of Conti Rossini (supra, # 18).

35. Ostini, Felice. Trattato di diritto consuetudinario dell'Eritrea [Treatise on the customary law of Eritrea] (Asmara, Off. Graf. della S. A. Corriere Eritrea, 1956). 195 p.

Part I of the treatise is devoted to the customary law of the highland regions, chaps. X-XII (pp. 88-104) thereof dealing with land law and related topics. As indicated, attention is frequently directed to the rules set forth in the 'laws' of Adghenà-Ghelebà, of the Atchemè-Melgà, of the Loggo Ciuà, and other clans of the highland area.

In an unpublished Ph.D. dissertation at the University of Pennsylvania, an American scholar has produced a fairly comprehensive picture of the social life and culture of an important segment of the population of north central Ethiopia.

36. Messing, Simon D. "The Highland-Plateau Amhara of Ethiopia" (Univ. of Pennsylvania dissertation, 1957). 715 p.

Only a few pages of the work (pp. 242, 251 f., 257) are devoted to the rules of customary land law, sufficient, however, to point up the regional variations among the Amhara peasants of the northern provinces.

In a short study devoted to the policy which the new Government might follow in the attempt to curtail and resolve age-old controversies respecting the occupation and use of land in the plateau regions,

37. Ostini, Felice. "La questione terriera sull'altipiano eritreo e le sue possibili soluzioni legislative e giudiziarie" [The land question on the Eritrean highlands and its possible legislative and judicial solutions], Bollettino dell'Istituto di studi etiopici, Asmara, 2 (1957), 39-46.

the author surveys the trend of this problem since the time of the Italian occupation, in the course of which he points out the tenacity of principles of the customary law.

It was shortly after the re-establishment of independent Ethiopia that Ethiopians themselves, men learned in the ways of the people as well as young students at institutions of higher learning, turned their attention to the investigation of the customary practices of their own

population. It is manifestly impossible for a foreign bibliographer to compile a comprehensive listing of the items which have appeared in printed form, let alone manuscripts and mimeographed papers, concerned with aspects of customary land tenure in the northern provinces. Current bibliographies and book reviews stemming from a number of departments of Haile Sellassie I University at Addis Ababa most adequately serve this purpose.¹² It may be useful, however, to indicate the present author's selection of the more significant works among those which have come to his attention.

A brief survey of property-holding according to the ancient tradition in four of the northern provinces, probably first written in Amharic and later translated into English (? 1951) and into French (by Henri Vernede, ? 1953), was published,

38. Mahteme Sellassie Wolde Maskal. "The Land System of Ethiopia," Ethiopian Observer, 1 (1957), 283 ff.

A Master's thesis at the University of Illinois by an Ethiopian, unpublished,

39. Mengesha Workeneh. "Agrarian Structure and Agrarian Reform in Ethiopia" (M.Sc. Thesis, University of Illinois, 1961).

contains a brief survey of communal tenure systems in the provinces of Tigre, Begemdir-Semen, Gojjam, part of Welo and part of Shoa.

First written in 1944 when the author was Director General of the Land Revenue Department, a corrected edition was prepared in 1955, which eventually was translated into English,

40. Gebre Wold Ingida Worq. "Ethiopia's Traditional System of Land Tenure and Taxation" (trans. by Mengesha Gessesse), Ethiopian Observer, 5 (1962), 302-38.

The description of land tenures in each of the provinces is briefly presented, with reproduction of the legislation concerning land reform and land tax making up a good portion of the study (pp. 325 ff.).

¹²Supra, note 1c; Professor Vanderlinden will undoubtedly offer current bibliography from the files of the Documentation Center established at Addis Ababa. Note also Register of Current Research on Ethiopia, ed. by R. Pankhurst.

A leading scholar in Ethiopian studies published, as the first of a series of studies on land tenure under the auspices of the Institute of Ethiopian Studies and the Faculty of Law of the University, a monograph on the scores of instruments executed in previous centuries which gave rise, in great part, to the institution of gult (gulti), which played such a prominent role in land law in earlier times.

41. Huntingford, G. W. B. The Land Charters of Northern Ethiopia (= Monographs in Ethiopian Land Tenure, No. 1) (Addis Ababa, Haile Sellassie I University, 1965). 132 p.

The study is of primary importance for historical and toponymic research, and affords a starting point for the investigation of a significant portion of the field of land tenure.

A second monograph, by the Director of the Institute of Ethiopian Studies, primarily concerned with the efforts of the rulers in recent centuries to consolidate imperial rule, stresses the importance of land policy in this regard.

42. Pankhurst, Richard. State and Land in Ethiopian History (= Monographs in Ethiopian Land Tenure, No. 3) (Addis Ababa, Haile Sellassie I University, 1966). 211 p.

Particularly relevant to the evolution of land tenure in the northern highlands, pp. 74 ff. (policy of Ras Gugsa, 1799-1825), 93 ff. (land reforms of Theodore II, 1855-1868), etc.

A paper delivered at the third international conference of Ethiopian studies at Addis Ababa points up a very important distinction between European feudalism and the incidents of land tenure in northern Ethiopia.

43. Hoben, Allan. Land Tenure and Social Mobility among the Damot Amhara (n.p., mimeographed, 1966).

This paper illustrates the close tie between the institutions of rest and gult and the positions of power in a society in eastern Gojjam.

A brief study of land-holding in a small community northwest of Gondar in the province of Begemdir,

44. Debebe Work. "Land Tenure System in Mekkara," Economics Journal, 1 (1966), 37 ff.

provides insight into the effect of customary land tenure upon agricultural labor.

In a survey of the F.A.O. land policy project in Ethiopia,

45. Lawrence, J. C. D. - Mann, H. S. "F.A.O. Land Policy Project (Ethiopia)," Ethiopian Observer, 9 (1966), 286-336.

a section is devoted to the suggested defects of the communal land tenure system and the proposals designed to remedy the situation (pp. 314-19).

An attempt to justify the perpetuation of the customary land tenure system in Eritrea at the present day,

46. Ambaye Zekarias. Land Tenure in Eritrea (Ethiopia) (Addis Ababa, Addis Printing Press, 1966). 80 p.

gives a brief survey of the incidents of land-holding under the customary system, in the northernmost province, without attempting to describe the variants which are to be found in the several regions. One of the most important portions of the work is perhaps the English translation of part of Governor Martini's report to the Italian Parliament, in 1913, respecting concessions of state lands to colonists, up to 1907 (cf. vol. I, pp. 163-274, of item # 11).

Typical of a series of reports which contain incidental information respecting the forms of customary land tenure is

47. Teame Beyene - Zagaye Asfaw. Report on Tigre Province (Addis Ababa, unpubl. mimeo. report, Archives, Fac. of Law, 1967). 25 p.

which describes the system of land-holding in seven districts of the province, with an added exposition of the nature of the gult of the Cathedral of Zion in Axum. Other important topics discussed are the landlord-tenant relationship and the types of land disputes noted.

A fine example of the type of research that is now being undertaken by law students at the University is afforded by

48. Bilillign Mandefro. Agricultural communities and the Civil Code. A Commentary (Addis Ababa, mimeo., School of Law, 1968). 72 p.

This study, to which reference has been made in the opening pages of this essay, devotes a considerable number of

pages (9-25) to a description of the types of communal land tenures which are to be found among the highland peoples of the north, particularly in the regions of Hama-sien, Seraè and Acchelè Guzai of the province of Eritrea. The author relies chiefly on Ostini (# 35) and Ambaye Zekarias (# 46) as secondary sources, and translations of many of the 'laws' furnished by his co-students for primary material. Altogether, there is a very adequate presentation of the traditional law, the point of departure for the author's consideration of the section on agricultural communities in the Civil Code.

The bibliography may conclude with reference to the first series of government surveys which concerns, at least in small part, communal land tenure in one of the provinces of northern Ethiopia.

49. Ministry of Land Reform Administration. Report on Land Tenure Survey of Welo Province. (Addis Ababa, Dep't. of Land Tenure, mimeo., 1968).
58 p., tables.

It is only in the two northwestern districts of the province, Lasta and Wag, that the system of land holding conforms in general to that which is characteristic of the peoples of the northern highlands, the subject-matter to which the entries in this bibliography are directed. This first report, then (pp. 45-52), is the forerunner of expected surveys for the high plateau regions of the provinces of Eritrea, Tigre, Begemdir and Semen, Gojjam and part of Shoa. Hopefully, the time has not elapsed during which scholarly research can reconstruct the historical evolution and present status of customary land tenure of those parts of Ethiopia in which fairly exhaustive reliable information is lacking.