

THE FACES OF JUSTICE

TRADITIONAL LAW - COURTS IN ETHIOPIA

By Emnetu Tesfay

The beginning of Ethiopia, or Abyssinia as it was known in the old times, go back to times of myth and legend. One of their most cherished traditions is that of the descent of their line of kings from the offspring of Solomon and the Queen of Sheba who is supposed to have visited king Solomon at Jerusalem about 1000 years B.C. Reversing this alleged early contact, the Ethiopians are also known for their long isolation from the outside world allowing themselves to practice ancient customs unchanged in modern times. This article is a glimpse of the concept of justice and humanity, the protection or persecution of the individual in feudal Ethiopia.

LITIGATION. A POPULAR SOCIAL EVENT

The penal law of Ethiopia until the early forties was based on the Mosaic Law and ancient Jewish customs. Justice was frequently administered in an informal and casual manner for petty offenses while crimes were dealt with astonishingly drastic punishments. There was no lawyer class, and every man considered himself quite able and willing to plead his own case. It is said that the Ethiopians take pleasure in legal disputation for its own sake, and on the most trivial pretext they carried their disputes before the courts.

Native courts were often held under the shade of fig trees. In the crowded courts, the accuser takes his place on the judge's right hand, the accused on the left. The judge proceeds to hear the testimony of the accuser, accused and witnesses. For the Ethiopian litigation was and still is a challenge and opportunity to display his knowledge of court procedure, and ability to persuade. However the attention of the court usually was diverted to side issues, to disputes within disputes. One party would accuse the other of abusive language or of incorrect procedure, thus in the middle of the action the accused may become the accuser. The jurors, who were proposed by either party but were acceptable to both, must settle this side issue before the judge could resume consideration of the main cause.

Accuser and accused were given all the time they desire to argue their own cases, for time was of small importance. Each of the adversaries could present his own case, relying heavily on eloquence and legal manipulation to prove the justice of his cause. These spirited court proceedings eventually gather momentum and acquire more or less the status of popular social events.

THE CHURCH AS SOURCE OF EVIDENCE

When witnesses are lacking in a case, or when an accuser insisted that the accused himself should be his witness, recourse had to the religious oath. Then the parties make arrangement to meet at the church door on a certain Sunday before mass. The judge appoints a "commissioner" and several jurors to accompany them and a priest must also be present. The evidence sworn used to be given overwhelming weight by the judges, an interesting sidelight on the immense prestige of the church under the old dispensation.

The people entertained strong belief that an offender, as a sinner would not skip punishment from the creator. With that in mind, any sickness or misfortune was immediately linked to the persons wrongdoings. And if the punishment did not come during the lifetime of a wrongdoer, the belief reiterated, that he would still be accountable when the day of judgement comes. This is further illustrated by the fact that conciliators when they were unable to reconcile a bitter plaintiff with his alleged wrongdoer, they would as a final attempt suggest " that all the matter be left to God. " This would instantly soften the bitter heart and worry the defendant.

LITIGATION ON THE SPOT

For alleged petty wrongs a man could join his opponent in hailing a passer-by to serve on the spot as judge, there to remain until a decision is reached. Usually, they selected an older person, for as the Ethiopian proverb says, " with age comes wisdom." The opposing parties then proceed to argue. The judge thus chosen was bound by custom to act, since refusal might deprive him of a judge, when sooner or later he, too would need one. " By the death of Haile Sellasie " they would say in formal salutation, pledging the judge to act. and so begins the trial. The suddenly chosen judge eventually gives his decision, which may or may not be accepted. If it is not acceptable, the case is carried to government courts.

Criminal cases, of course, were tried by officially constituted judges. The law had a more serious side when the offense is grave. And the ancient Mosaic principle of, "eye for an eye and a tooth for a tooth ", was not entirely outmoded. Theft was one of the most grave crimes. According to the old Ethiopian law, a first conviction resulted in the amputation of the left hand. A second costed the thief his right foot, a third the right hand and a fourth the remaining foot. These penalties have been very much softened during the reign of Haile Sellasie, although they remained legal in most parts of the rural country side well throughout the thirties.

THE AFERSATA

This is another interesting and unique aspect of criminal investigation practiced in feudal Ethiopia. This procedure was applied to identify and trap a criminal within a village. It was conducted upon a request by an individual with the approval of the village judge. In this kind of trial, every body in village where the trouble occurred is confined within a fence of thorny bushes. No one may go out even to milk a cow . They then select eight to ten agents called " birds," who take an oath, the substance of which is, " what I saw and heard, I will not hide."

There is then a long waiting period, sometimes lasting several days, during which the agents quietly circulate in the crowd and see and listen. And there is little to eat or drink. Finally, a " bird" tells the judge the name of the thief. If he is within the enclosure he is taken off to jail. If he has already made his escape, the whole village is fined. Such was the Ethiopian legal process called Afersata.

NEITHER A BORROWER NOR A LENDER BE

When an Ethiopian debtor was unable to pay, the creditor upon proof of his case applies before a court to be "given his hand." This consists in linking the right hand of the debtor to the left hand of the man he owes, by a chain, and thus they travel about together until the debt is discharged. Although it is told that it was the creditor who fed the debtor during their association, nevertheless the debtor in order to avoid humiliation usually managed in a short time to raise enough money to effect his release.

It can be said that the logic behind the severity of the punishments under the traditional law was to serve as a warning to potential offenders. And in the absence of a police force, the responsibility rested collectively on each and every citizen. In 1941 the emperor by proclamation discouraged this massive waste of time, which suppressed a social institution as old as the state itself and rendered a whole code of customary law obsolete.

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