

## SHARING THOUGHTS

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## SOME NOSTALGIC THOUGHTS ON THE TEACHING OF LAW IN ETHIOPIA

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*Girma W. Selassie, Dr.\**

This year, we celebrated the fortieth anniversary of the first graduates of the oldest Law School in Ethiopia. Given the fact that the beginning of modern legal education in this country is so recent, it must be a matter of serious concern that we are already talking about its decline<sup>1</sup>.

Without pretending to contribute in any significant way to the stemming of that trend, I wish to share with the reader some of my experience as a student of law and, later, as a teacher. I hope that the changes that manifested themselves in my career will provide us with some of the raw material we may need for future discussion of the subject.

In raising a few of the problems that legal education has encountered, it is not my intention to criticize anyone. On the contrary, I applaud especially the heroic efforts of the many teachers of law who are doing their utter most to maintain a reasonable standard under extremely difficult circumstances.

In the course of relating my experience, I do make some general assertions at the risk of taxing the reader with self-evident propositions. But I believe that the obvious are often the most illusive and yet the most persistent that they deserve our constant attention.

In light of the difficulties under which our law schools function today, I may also sound a bit idealistic. Yet, overwhelmed as we are with today's manifold problems, and in the case of the new colleges, with all the strain and stress that come with the process of growing up, we should never stop yearning for the ideal, lest we accept the transient for the permanent.

I have been teaching law, albeit intermittently, for about thirty years. Obviously, lots of things have changed since. Of particular interest to me, however, is that the quality of legal education has changed drastically,

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<sup>1</sup> Some of the ideas contained in this article were earlier presented at a faculty seminar at the Law Department of Unity University College.

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changing with it the quality of my own teaching. Yet, I do not presume to have a remedy for any of the ills that afflict legal education in Ethiopia. They are too pervasive and this probably is hardly the forum. I will simply mention some of the symptoms of the ailment as they manifested themselves in the experience of one teacher and leave to the reader and others the onerous task of diagnosing the disease and writing the prescription. In the following pages, I will, for the most part, focus on the methodological aspect of teaching law, as opposed to content.

### **The Socratic Method:**

I vividly remember my first hour of my first day of my first year in Law School as a student. Having just completed freshman year, I had been admitted to one of the most prestigious faculties at the time. That first morning, an American professor (who also happened to be the first dean) walked into the classroom, literally asking a question: “Who decides?” To my absolute terror, he pointed his finger at me. I didn’t have the foggiest idea what he was talking about. Despite that I was dumb-founded and my face was soaked in sweat, he wouldn’t give up or change his victim. “Who decides - The President, The Congress, or the Supreme Court?” I didn’t know what all those characters were. Several days earlier, he had posted a reading assignment<sup>2</sup> and none of us had seen it. I believe he was aware of that but he wouldn’t relent. He kept hounding us one after another.

As noted earlier, we had just come out of freshman year where we were comfortably lectured to and we dutifully took notes, studied those for the most part and made good grades. The earlier years were not much different except learning by rote reigned supreme both in secondary and elementary schools. Hence, most of us thought that the behavior of the American professor was entirely ridiculous. The excruciatingly long hour finally ended and we were breathing a little easier when another professor walked in and continued with a similar barrage of questions of his own. He also had posted a reading assignment.

It did not take us long to realize that the professors at the Law School were not crazy. It was the methodology that was different. The Socratic method required a thorough preparation on the part of the student before class and an active participation in class. The teacher did not lecture; he only prodded students to examine all aspects of an issue, consider alternatives, and draw their own conclusions.

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<sup>2</sup>The case was *Marbury v Madison*, 5 US (1 Cranch) 137, 2 L.Ed. 60

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Despite its obvious limitations when applied in a continental legal system like ours<sup>3</sup>, over the years I fell in love with the Socratic method because of one supreme virtue I saw in it - it is the exact antitheses of learning by rote. Unlike the latter, it encouraged students to analyze problems, to examine them from different vantage points, to reason, to argue and to question – in sum, to think.

Even if we overlook for a moment the very many reasons why the quality of legal education suffered setbacks during the past few decades, our educational system generally has yet to rid itself of a longstanding malaise - a culture of learning by rote. In traditional schools, the caliber of a student was, for the most part, measured not by his reasoning or analytical aptitude but by how fast he could memorize volumes of religious material. One may even venture a conclusion that inquisitiveness was in fact discouraged and, depending on the nature of the dogma one questions, it may even constitute a blasphemy. If one gets to the stage of interpreting the dogma, that is also handed to the student ready-made and all that is expected of him is to accept and memorize.

At this point, I cannot resist relating a couple of anecdotes in the hope of pointing up the effect of such a methodology. Here is the first. I was listening to a radio program one Sunday morning many years ago. A *lalibela*<sup>4</sup> was being interviewed. After several songs or lamentations in which he praised to heaven those who gave him money and condemned to hell those who did not, the reporter asked him if he composed those pungent verses. The *lalibela*'s response to that question was what impressed me most. I do not think a translation would do justice to the flavor of the one-word statement. Hence, here it is in the original: ያለአባቱ!<sup>5</sup>

I also recall a recent visit to Lalibela (the historic site in northern Ethiopia) where a deacon, who doubled as a tour guide, explained to me how those marvelous stone-hewn churches were constructed. “King Lalibela built a cubit<sup>6</sup> during the day”, he told me with an air of absolute certainty, “and angels arrived at night and added two cubits to the building.” He was

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<sup>3</sup> It should be readily admitted that the Socratic method requires quite a bit of adapting from the heavily case method of the common law to our highly statutory legal system. But I know that is possible, especially with a generous use of hypothetical cases.

<sup>4</sup> A beggar who sings you out of bed long before dawn.

<sup>5</sup> A crude translation may be: “How can that be possible? It is not in my genes!”

<sup>6</sup> The length of the forearm.

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adamant that the churches could not have been built without divine intervention.

Perhaps the problem goes even deeper than the methodology employed by the traditional schools in teaching young people or the wider congregation. It may also have its roots in our culture. Bear with me, therefore, as I relate one more incident. In the 1970's, a foreign multi-national corporation had a vast cotton plantation in the Awash valley. At one point, the government of the day asked the company to provide employment to at least some of the herdsmen who lost their traditional grazing land to development. Accordingly, the company persuaded a young herdsman to join its workforce and train as a tractor operator.

Within weeks, his German trainer was marveling at how fast the former shepherd, who had never before even touched any machine, could acquire the technical skill and operated a modern tractor with such ease and dexterity. But, months later, he said he was struck by one other observation. Every time they opened the hood of the tractor, the young man showed no curiosity whatsoever and he never asked how and why the machine functioned as it did. He just touched the right buttons, shifted gears, stepped on the pedals and worked the wheels as he was shown. Everything else was *Yal'abte*.

I do not know if the traditional method works for any other field of learning but I am convinced that it does not for the teaching of law. Our ideal is to train intelligent lawyers - intelligent not in the sense of possessing high I.Q but in the sense of being able to reason, analyze, question, and comprehend<sup>7</sup>. In the words of one philosopher: "intelligence does not consist of masses of factual detail." That is particularly true of the teaching of law. We seldom have facts to teach. We teach principles. We teach philosophy. We teach the fine art of reasoning.

By insisting that Law Schools should train students to become "intelligent" lawyers, I am not discounting the fact that all professions seek to do more or less the same thing with their students. It has long been recognized that "learning without thought is waste of labor."<sup>8</sup> However, one should admit that the degree and intensity to which each profession employs the art of reasoning on a daily basis vary. A lawyer has often to think on his feet and how well he thinks may make the difference between life and death. For a lawyer to reason and to persuade are the staples of his profession.

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<sup>7</sup> I like the meaning my dictionary gives the word intelligence as "being awake, being alive"

<sup>8</sup> Confucius

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Hence, the lecture system, in its purest form where students are least participatory, is an extremely inadequate methodology for the teaching of law. It only leads our students to fall back into the traditional comfort zone of memorizing their notes and regurgitating whatever the teacher told them in class. The man after whom the Socratic method is named, the Greek philosopher, Socrates, believed that “the human mind is not a passive vessel into which a teacher poured knowledge. Participants in a dialogue [are] obliged to play an active role and to think critically about human values.”<sup>9</sup>

While I am at it, I may also quote Immanuel Kant, a nineteenth century German philosopher:

Immaturity is the incapacity to use one’s intelligence without the guidance of another. Such immaturity is self-caused if it is not caused by lack of intelligence, but by lack of determination and courage to use one’s intelligence without being guided by another. Sapere aude! (Dare to know!) Have the courage to use your own intelligence is therefore the motto of the enlightenment.... It is so comfortable to be a minor! If I have a book which provides meaning for me, a pastor who has conscience for me, a doctor who will judge my diet for me and so on, then I do not need to exert myself. I do not have any need to think.<sup>10</sup>

In our case, we may add: if the student has a teacher to think for him, he does not have to exert himself. He does not have to think.

One of the most important principles that should guide a lawyer’s professional endeavor is *audi alteram partem* - hear both sides. Listening to both sides dispassionately, without being driven by some preconceived idea or theory, requires an open mind that is used to weighing opposing views. According to one scholar, “A person who derives all his instructions from teachers or books, even if he escapes the besetting temptation of contenting himself with cram, is under no compulsion to hear both sides.”<sup>11</sup>

I admit that there is seldom such a thing as pure *Socratic* or *lecture* method. Many good teachers employ a healthy mixture of the two in varying degrees of combination, and meanwhile use the *case problem method* which nurtures and enhances knowledge and skills towards grasping core facts, identifying issues, exploring primary and secondary authorities, and solving the issues through critical analysis and synthesis with the due accuracy, precision and clarity. In short, legal education demands a substantially bigger dosage of student participation in the learning process.

<sup>9</sup> Perry, Marvin, *Sources of Western Tradition*, v.1, p.79

<sup>10</sup> *ibid.* p. 405

<sup>11</sup> Polka, Brayton, *Readings in Western Civilization*, v.2, p. 294

Most of my Ethiopian teachers had their roots in religious schools, as did many in my generation, including myself. I do not believe the chain of learning by rote has been broken yet. The Addis Ababa University Law School, when I knew it, had broken that chain through the use of the Socratic and case problem method.

Over the years, however, I have been compelled to almost abandon the method I love. It works only if there is active student participation. We came to a stage where the response to any question I asked was usually a deafening silence. Often the shrugging of the shoulders takes the place of a simple “I don’t know.” If someone volunteers to answer, it happens to be one of the very few who always save an awkward situation. So, I have largely given up on the Socratic method. I lecture, mostly to blank faces, ever wondering if I am connecting with the majority of my students.

### **The Policy Oriented Approach:**

Whether or not we are devotees of the Socratic Method, I don’t believe there is an option to adopting a policy-oriented approach to the teaching of law. It is a truism that law is nothing but an expression of policy. A student who merely studies the law without uncovering the policy that underlies it could be likened to a person who buys a package without finding out what it contains. I have often noticed among many of my students the tendency to read code provisions in the same way one reads a book of verse – read the words, commit them to memory and move on. They do not realize that the provisions of a law are not important in themselves. What is important is the policy they are designed to advance.

Most students realize the importance of a policy-oriented study of law not long after they secure their first employment as lawyers, if not before. It is common practice in any public or private agency to refer all knotty problems to the legal department, whether the issue is one of law or not. I had just completed my second year at Law School when I landed a summer job at one of the ministries of the time. To my utter astonishment, the first assignment I was given required writing an opinion advising the Assistant Minister what to do about a spying activity that went foul in Somalia. An Ethiopian spy had been arrested and the matter was receiving some international publicity. I had to say something; I was the lawyer. We certainly cannot teach our students about every conceivable policy. That is impossible. But we can teach them how to think in terms of policy.

We should also recall that we live in an era of rapid change. Many aspects of our lives undergo radical change in a short span of time demanding change in

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the laws that regulate them. Our future lawyers should not only be able to readily absorb and work with the constantly changing laws but should have the necessary attitude, talent and breadth of knowledge to help craft and engineer them.

As one of our tools to that end, we should relentlessly ask the most natural question: “Why”? Our youngest ones often irritate us with its constant use. Tell them to do something. They ask why? Tell them not to do something. They do the same<sup>12</sup>. The question irritates us because it challenges our intelligence. That is precisely why we should use it generously in stimulating our students. It is a sure way of forcing them to discover and bring to the surface the policy that lurks behind every provision of any law. It works for analyzing provisions that lay down the simplest of rules to principles that are philosophically loaded. If the law requires that two witnesses should attest all written contracts, ask why documents should be attested and why two witnesses? If the Constitution guarantees equality of everyone before the law, ask the students what that is supposed to mean; if it is a practical proposition in a world of vast economic and social disparities; if it is any more than a national ideal, etc. In the process of trying to answer these questions, students get to think and know something about the practical and aspirational rights as well as some of the social, economic and political realities of the country – not a bad spin-off from a single provision of the law.

Socrates gained fame that has not abetted two millennia later by persistently asking a related question: *what do you mean?* Let us emulate him in our own small way. It will help reduce careless talk and remind students that every word a lawyer utters in his professional capacity carries shades of meaning on which the liberty of others may depend.

### **The Comparative Approach:**

Ethiopia’s legal system is still evolving despite that we imported a massive body of “modern” law over half a century ago. To date, no systematic study has been conducted to find out the extent of its application or the impact it has had, if any. That the bulk of the laws survived three governments with radically different political and economic outlooks, gives rise to an intriguing question as to their place in our society and the extent to which they have really been effective. This is important in light of the controversy raging among legal scholars regarding the question whether the transplantation of

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<sup>12</sup> Soon enough, of course, we literally kill this natural inquisitiveness by constantly telling them to shut up – one of the possible causes of our docility, often mistaken for gentleness, in the classroom or beyond.

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laws from one socio-economic milieu to another can ever work. Be that as it may, we live in a constantly changing world and there is no question that our legal system will have to keep pace, especially in light of the much-heralded phenomenon known as globalization.

If we are to produce future lawyers with the knowledge and caliber necessary to spearhead the growth and refinement of our laws, Law Schools need to expose them to different legal systems. We need to adopt a degree of comparative approach in all courses we offer. More often than not, there is an alternative to every system and our students would do well to know them.<sup>13</sup>

### **Reading and Writing:**

We used to believe that whatever goes on in the classroom counts only for a fraction of the learning process in a Law School. Students are supposed to supplement that with a substantial dosage of reading on their own. But the lamentable state of libraries gives them a ready excuse not to. Yet, that is not the real or, at least, the principal reason. Too many students simply do not have the requisite vocabulary to read and understand a textbook in English, a language that we continue to pretend to be the medium of instruction. By and by, therefore, I had to substantially reduce the generally fruitless task of giving students reading assignments. Instead, I have grown to be reliant on the occasional handouts I issue.

There were also times when writing was believed to be an indispensable skill a future lawyer should acquire. During his professional life, a lawyer prepares a huge amount of legal documents. Among other things, it is one of the major ways through which he expresses his art of communication. Hence, a writing skill is of paramount importance to every lawyer. For that reason, we were advised to incorporate writing into every course we taught. Consequently, at least one writing assignment was a must for every course. For the most part, I have also given up on that “archaic” practice.

These days, one feature of teaching law that traumatizes me is grading student exam papers. It has been years since I stopped taking offense at gross grammatical errors since such are no longer exceptions to the rule. Why should I expect reasonably decent grammar from a law school student, a future lawyer? I have also magnanimously relinquished the idea of expecting cogent and tight arguments from my students. Why should I demand such a rigid standard? After all, they are only students of law, tomorrow’s judges, attorneys, and counselors.

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<sup>13</sup> Incidentally, all the approaches suggested above are complementary.

Instead, in the majority of cases, I hunt – in the jungle of incoherency and incomprehensible ramblings - for a phrase or even a word that would suggest to me that the student has some idea about the answer to the question. Such a discovery may assure him a passing grade. Two or more such discoveries, I might even give a “B”, a letter the value of which has depreciated many fold over the last few decades. This is indicative of the fact that intensive courses *in the English language as well as in research and writing* are needed more than ever before in every Law School.

### **The Humanities:**

If I may revert to where it all began, the freshman year was designed to prepare students for specialization. Before they embarked upon their narrow fields, they were required to take several courses in the humanities - languages, history, philosophy, logic as well as economics, political science, public administration, etc. The idea was to afford the future specialists a broader perspective and appreciation of the intricacies of life and to equip them with the skills and discipline necessary to handle themselves in the complex world that awaited them. The humanities are supposed to give them “the philosophical insight and deep serenity, and the broad understanding that are the hallmarks of the mature man, the man who is rightly attuned to the world in which he lives.... Fragmented education is not sufficient preparation for a full life or sound leadership.”<sup>14</sup>

Future lawyers had to spend an additional year – called pre-law – before they were admitted to the study of law proper. They took more humanities courses as well as other social science subjects while at the same time getting introduced to the study of law. One should not consider this a luxury since in most other countries the study of law is undertaken only after one has earned his undergraduate diploma. Today, for lawyers, the study of the humanities and other social science subjects has largely been consigned to the past.

### **The Use of French and Latin:**

For much of the time I was associated with the Addis Ababa (earlier, Haile Selassie I) University Law School, Legal French was a compulsory course. The reason is that several of our codes, including the Civil and Commercial Codes, were drafted by Frenchmen and they drew heavily on French law. Therefore, a fuller understanding of a substantial portion of our law often requires going back to the primary source. Although some may consider this a luxury, I still believe that a smattering of the French language to be a useful tool to any Ethiopian lawyer worth his salt.

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<sup>14</sup> Salisbury, Rachel, *Better Language and Thinking*, New York, 1955, p. 205

On the other hand, I do not wish to lament the death of whatever little use we made of Latin in teaching law in the past. That probably is its universal destiny. Still, I will miss the brevity and precision of many Latin phrases. Just try and see how many English words you would need to adequately convey the idea contained in the two-word phrase *mutatis mutandis*. I also wonder if a few Latin phrases, sprinkled here and there in our teaching, writing or speech, do not lend lawyers that professional air that sets us apart from others. Hence, whatever their practical worth, I would like my students to leave law school with a bunch of them. On a less serious tone, they may, at least, find them useful at a party when conversing with some pompous engineer or medical doctor.

The foregoing bleak picture does not lead me to the conclusion that our students today are less intelligent. On the contrary, young people today are far smarter and better informed than I was at their age because of greater exposure to the modern media. That many of them have literate parents is also a huge advantage. The problem is that they are less equipped and less prepared for the kind and level of training we are supposed to be offering them in Law School.

#### **The Less Committed Teacher:**

It would not be honest to confine my lamentations to the plight of students because I also find myself a less committed teacher than I was during my earlier years. Sometimes through the force of circumstance, at others, because I find it more profitable, I have turned into a part-time teacher. Inevitably, that has considerably diminished the quality of my teaching. First, I am not sure if I prepare for my classes as well as I would if I were a full-time teacher because my priority lies elsewhere. Second, I am not available for student consultation. I meet the students for the compulsory contact hours and jump into my car and vanish as rapidly as I came in. But we used to believe - in those antiquated days - that students should have the opportunity to get the assistance they needed outside the classroom. That is why every teacher had to post his office hours and keep them. Those, in fact, were the minimum since students could come to my office any time, stop me in the corridors, or even join me at the café. That was possible because, for the better part of every working day, I was there on campus. My current students have totally been deprived of that privilege.

There were times also when we believed that a law school is not only a teaching place but also a research center since teaching and research are intimately related. One nourishes the other. Teachers, sometimes assisted by

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senior students, are supposed to be the principal researchers. But as a part-time teacher, I am generally not available to engage in that important activity. “The average don [teacher]”, observed Harold Laski in one of his letters to Justice Holmes, “is too much absorbed in the daily round to grasp the relation of research to teaching. He cultivates his little garden; but I don’t think he experiments enough with new seeds.”<sup>15</sup>

Professor Griswold, a former dean of Harvard Law School, also expressed an opinion on the subject of research and law schools. “In addition to being effective teaching agencies, [law schools] should become, on a scale far greater than has heretofore been the case, centers for carrying on of research into the law and its development and its application to the solution of current problems encountered in the adjustment of human relations.”<sup>16</sup> The near extinction of the few professional journals we had loudly proclaims the current state of research in this country. It should, however, be granted that substantial research takes money but I do not know many scholars who have developed worthwhile projects and failed to secure funding. The stark truth is that most of us simply do not have the time, the initiative or even the courage.

There are also a host of other extra-curricular activities that enrich the learning process in any law school. These include running publications, organizing debates, moot court competitions, trips to courts, parliament, etc. But as a part-time teacher, I am not available to organize or participate in these or similar endeavors. But while I am talking about myself, a part-time teacher, I cannot help wondering if today’s full-time teachers are immune to these afflictions.

### **How We Got Here:**

How did we get to this point? The answer to that question may not be simple. Nor is it my intention to go into the developments of the last thirty or more years. But I will simply allude to a couple of incidents for the reader to ponder.

There were times, a couple of decades ago, when we were told that the education system in this country was heavily biased in favor of the urban elite and against the peasantry and the workers. It was a veiled warning that we should not fail students who came from the latter two social strata once

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<sup>15</sup> Howe, Mark, Holmes - Laski Letters, v.1, p.341

<sup>16</sup> Griswold, Erwin, Educating Lawyers for a Changing World, in the Lawyers Treasury by Eugene C. Gerhart, pp. 410-11

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they were admitted under a policy that sought to make up for past imbalance. If we are still paying for the good intentions of those days, as some suggest, I am not certain.

Others point to the impressive expansion of elementary and high schools over the same period and argue that we always gain quantity at the expense of quality. That the new schools were largely manned by high school dropouts, untrained and poorly motivated for the teaching profession, did substantially compound the problem bringing us dangerously close to realizing one writer's observation about another country that "everybody incapable of learning has taken to teaching". The proponents of this argument stress that few teachers can produce their "betters" and that the youngsters who are today's students of law are products of those circumstances.

The newest and most extraordinary development in the history of Ethiopia's modern education is the sprouting of private colleges. The question is what impact will these have on the quality of education in this country, at least in the short term. We may have to wait and see. In the meantime, while driving around the country, I couldn't help wondering where we found all the qualified teachers to man all those one-room colleges, bearing grandiose names, that have mushroomed in scores of small towns where one can hardly find a decent café. We could also ask if these new institutions have even a minimum of the facilities requisite to producing a reasonably qualified graduate.

Let me also share with the reader a casual exchange I had sometime ago with one of the guards at the gate to a private college. I was coming in for my evening class when he waved from a distance indicating that there was no parking spot for me. All the same, I approached, and somewhat haughtily, told him that I was a teacher. He acknowledged recognizing me but insisted that the parking lot was full. I should have ended the conversation right there. "May be", I suggested, "we should reserve some spots for teachers". The guard had a ready response: "But the students are our paymasters." That pretty well cut me to size and I quietly backed up.

But it got me thinking. How does the fact that students pay for their education change the student-teacher relationship and the quality of education? The experiences of other countries may assure us that there is no cause for alarm. But I do not know how much comfort I can take in that given the fact that this is a novel experience in our country. Secondly, since not all private colleges are equal, I wonder to how many students being paymasters is the principal qualification to earning a graduation gown and a parchment. It will take

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sometime for everyone to understand that paying does not always mean buying.

**Summary:**

Let me sum up at the risk of somewhat repeating myself. The point I tried to get across is that the kind of knowledge a lawyer should gain is not “mere factual information about the content of ... the law, but [also] both factual information and the various skills necessary to process it.” Major among such skills are: communication, analysis, problem solving, research, synthesis and evaluation. It is worth our while to look at some of these more closely.<sup>17</sup>

- **Communication:** Lawyering may be many things in today’s multi-faceted professional life, but first and foremost, it is the ability to ‘present or convey information’ in the most effective manner. The primary task of a lawyer is to persuade – be it in a courtroom, boardroom, or in his small office talking to his client. He cannot accomplish that if he lacks in communications skill. He would be like a singer who lost his voice. But our students will find it hard to acquire that skill unless they are given the opportunity while in law school to answer questions, to argue and debate issues. For practical purposes, effective communication takes two forms: oral and written. We need to prepare our students in both media.
- **Lawyers are the envy of other professionals for their other quality:** their ability to break complex problems down to their elements thereby rendering them susceptible of solution. Among all professionals, lawyers are renowned for their unique ability to disentangle apparently knotty problems. For our students to live up to that reputation, they need to employ their analytical skills. The lecture system is the least desirable way of helping students acquire the requisite power of analysis. It requires a methodology that enables them to dissect problems from different angles and points of view. It requires students to take the time to write papers analyzing problems on their own and defending their analysis and conclusions.
- **Analysis is not an end in itself.** It is a tool to solving problems. A lawyer should develop the skill necessary to draw the most logical conclusion thereby resolving the issue at hand. This is critical to a lawyer be he a judge, an advisor, or an attorney. Once again, problem solving is not a skill a student acquires by sitting in a lecture and taking notes,

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<sup>17</sup> Inspired by Beale, Andrew, Solving Problems in Constitutional and Administrative Law, pp. 1-2.

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memorizing and repeating them during exam. In every class he should be given a problem to solve. He should be challenged with written assignments that require him to resolve complicated issues.

- Closely related to analytical skills is ‘synthetic skills’. This is the power to “combine the various elements into a whole in order to give a complete picture of the issue” at hand. Whereas others may see only numerous individual trees and vainly attempt to pursue each, a lawyer can see the forest. It is also desirable that students acquire this skill in law school by exposure to problems involving multiple, often apparently contradictory, issues.
- All the above should be enhanced by another vital lawyerly skill - the ability to discover new and relevant information. Every lawyer should know how and where to find the laws and the facts he requires to solve a problem. These research skills are also best acquired while in law school.

We in the teaching profession can exert ourselves a little more and demand as much from our students. The downward spiral should stop somewhere. Let us resist compromising our standards any further. Students may not answer our questions in grammatically correct English or their thoughts may not be coherent or well reasoned; but let them answer questions any way. They may not produce a well-written paper; let them write any way. They may not read every thing we assign them; let them read any way. We can rest assured that they will be better persons and better lawyers for every such effort.

Evidently, teachers alone won’t be able to solve all the problems alluded to above. Some of them are beyond our reach. Law Schools should critically examine their syllabus and delivery method with a view to addressing actual problems. At a national level, one of the most daunting challenges of our day is infusing quality into our educational system, lest we allow mediocrity to take root and become self-perpetuating. \_\_\_\_\_■

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# LIVING WITH MY STRANGE THOUGHTS

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*Selamu Bekele\**

When my friend Dean Elias Nour contacted me after about thirty years of never seeing one another I did not know what to expect. I am glad we met. He revived my interest in strange thoughts. He invited me to write an article for their Journal. To my surprise he said I could write on any subject that may interest me. The surprise is: does that mean any topic and if so, how come he is confident that I can produce a worthwhile article on any other topic except on a very specific area of the law?

To be given such broad latitude on a topic puts the writer in some difficulty. So I chose a topic that is not controversial and for which no one can accuse me of bias or subjectivity. The topic is a personal and subjective experience. It is my strange thoughts with which I lived for quite a while now. If such thoughts are annoying to some, *caveat* reader.

I present them raw, uncensored, unabashed and naked. They may not be related with one another as such. They may have a common bond being thoughts about our world and humanity. I know well that I have no expertise to consider them except for an inquisitiveness of an interested mind.

## **Our beginning and destiny**

Scientists tell us that the whole universe and what exists in it, including us, is the result of a *Big Bang*. Such was a never repeated explosion of light some 17 billion years ago. I ask how, why and for what purpose did such happen? What existed before the Big Bang? What exists in the full vastness of the universe?

The Bible puts it simply like this. "God" said let there be light and there was light. So went the process of creation and on the sixth day "God" created man and woman who became the parents of the whole of the human race.

Indeed the Big Bang was a powerful explosion and a great source of LIGHT. Is there a connection between the Big Bang and the biblical creation story? Who is this biblical God? What is its nature and how does it exist? What is

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its role in the process of the existence of the universe? Is it interactive with men? In his book called *Candide*, Voltaire said, " If there was no God, men would have created him."

When NASA sent its first machine to explore space and fly beyond our planetary system, Carl Sagan begged it to turn the camera towards earth before the machine left our planetary system. It was done and a picture was transmitted to earth. The picture is that of a small speck of light. What we take as granted for a watery, fertile and gorgeous planet is a small speck of light from out there. It indicates no sign of water nor life, leave alone intelligence and civilization. It looks so fragile.

Within the last fifty or so years man has achieved a lot and has discovered, invented and created a lot of amazing and miraculous things. Where will human technology eventually reach? What more will it achieve? Did the human race ever have the civilization and technology we have in the last fifty years?

I understand at CERN in Switzerland they are smashing particles with bigger accelerators. They are either making or discovering new particles. The natural elements we used to call elements and atoms are now no more significant. At CERN the latest talk is the particle called "higgs".

Now that we know as never before and are yet to know more about the human body, including DNA, genetic gnome, the brain etc., what will it make of us? Will death be conquered? Will we all live a long happy life free of diseases and discomfort?

A series of questions make me sleepless many a night. Consider the following. Will the universe come to an end? If so why, how and when? If not what then? What is our future in the next 100 or 1000 and so on years? What happens when we die? Do our consciousness, mind and/or soul also die? Is there or no life after death? If there is what kind? Do the dead keep in touch with the living? If they do, how, why and in what way? Can we prove the existence or non-existence of God? If so what will be the consequence?

I somehow believe that if we can get a truthful answer to some of these questions our problems in this world may be alleviated. Certainly so long as we live with many hereditary, natural and man made handicaps our problems will never be completely solved. Even if we solve our present problems others may replace them because of the very nature of the universe, our planet and existence.

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I once said a one eyed man becomes king in a country of the blind, paraphrasing H. G. Wells. My friend Ephraim Yemaneberhan said, "Not really, what if in the country of the blind they have super senses of cognizance and eye is irrelevant? Our one eyed man may be a primitive species, only good as a guinea pig." I conceded a point to my friend there.

### **The rich and the poor**

The more our civilization becomes more complex the more our problems become difficult. As individuals, a nation or continent, the rich get richer and the poor get poorer. Only a fraction lives reasonably well. The rest of us toil and labor at the bottom of the pyramid. We toil for them. This is not at all leftist. I am not a leftist at all and have never been. This is what I think is reality. In most things I am liberal. In some I am conservative. You will be surprised if you know.

I suspect Europe and North America have been dominating world development in their favor for quite sometime. In this struggle for development Asia is scrambling, Latin and South America are struggling, Russia is trying to sort out its new status of second rate power, Middle East is in an unending complex problem of oil interest, war and conflict of civilizations and Africa (with some exceptions) seems to be simply a continent of failed states.

Ethiopia has so many unique things only peculiar to it. Many of them do not go along with world development. Is that why it is poor? How can it come out of the cycle of poverty and misery? Other African countries that she was leading a few decades ago have surpassed her now.

### **A small *mittad* and *ingocha***

Very few people, rightly or wrongly, rule and determine the fate and destiny of the absolute majority of the human race. Talk about democracy, polling and people's right is not at all reality. The difference between the western system and others is a question of approach and matter of degree. How can this change and people become the masters of their destiny, fate and fortune and make their leaders truly accountable?

The politicians, media, business world etc. operate to win our mind and control it and make us serve them. This is clearer in politics and religion. How can we be free of the bad effect of this?

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How will people, as a whole be free, well off and live in peace? For how long will the human race be spared of nuclear disaster?

As long as the size of the *mittad* remains small the *injera* will remain small and more of us will fight only for a small piece. Yet our numbers increase beyond the size of the *injera*.

### **Youth, old age ... *in continuum***

Was it Bernard Shaw who said the following? Youth is quick and nimble, but unwise and nature wastes years on it. Age is slow and tottering, but wise. Yet nature is miserly in years for it. Youth is not always quick and nimble and nor is it unwise. The aged is certainly slow and tottering and yet it is not always wise. Generations replace one another. They must not antagonize, but rather cooperate. The aged should leave place to youth. On the other hand youth should not make age irrelevant. It should rather learn from the experience of age.

Certainly a given generation has to make its own world and be responsible for it. Yet the world of that generation must be responsible for the next. We may not be responsible for the mistakes of our fathers, but we are condemned by their mistakes.

### **Rat race versus virtues**

I strongly believe that an endeavor to improve the welfare of a fellow being is a noble and worthwhile affair. A very solely greedy and selfish venture is unwholesome (and eventually greed begets greed, *ad infinitum*—onto endless rat race). We may not live by bread alone, but we cannot live without bread. This is true. I may prefer unpretentious and simple life but that does not mean such is a standard way of living.

Tolerance is a good mechanism of peaceful social life. Aggression, whether by individuals, groups or states must not be tolerated. When it occurs it must be managed carefully. Arrogance of any sort is the worst that can happen to anybody. It exists in company of vanity and downfall.

We may not solve all the problems of society, but we must try the best way we know how. This is the main duty of those of us who are public officials at any level. After all, public officials are living on the taxpayers' money. A problem solved in time will add a lot to the public welfare.

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We must somehow be thoroughly educated in the basics of good life and civilization, e.g. use of roads, garbage disposal, not pissing ... in the open, avoid pollution of any kind (including noise), cleanliness, respecting the humanity and person of others, respecting the law rather than the wrath of officialdom etc. Officials should learn to serve the people rather than being opportunistic and become servants of political will.

### **Why are we poor?**

The common people in Europe and North America were far worse off than the poorest country at present. They had child labor, street children, homelessness, oppression of women, abject poverty etc. It is with time and prosperity that they overcame all that. How did they manage to do that? Let's be honest. Most of us consider 'work' as a burden, and 'leisure' as virtue. But what we usually consider as 'leisure' is 'idleness', because 'leisure' always accompanies 'work'. Of course, we can choose idleness and poverty as a package, and that seems to be the case.

Nyrere of Tanzania once said, after visiting Europe and seeing what they have done, we in Africa have to run while they walk in terms of development. May be running is not enough. May be we must employ a super sonic jet plane. So that is that.

Under ancient empires slaves worked with the threat of the stick. And civilization invented the carrot to motivate us to work. The stick is obviously outdated. Nor does the bitter taste of poverty seem to be an eye opener towards the promised land of carrots.

### **Common property of the human family**

There are some wealth that must be the common property of all human race, even the coming generations. Accordingly they must be so protected and not be left to be exploited and destroyed by only few.

Who owns the fresh air that we breath, and what right do industrialized countries have to pollute it beyond its potential for natural regeneration? What right do we have to cut trees that are hundreds of years old. And how long should chopping wood for sale and fuelwood continue while many NGOs are busy conducting hundreds of extravagant symposia and travels rather than supplying poor farmers with *yegaz midija* (*kerosene mini-stove*) substitutes.

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### **Some more thoughts**

In our cultural and social values there are some we are better without, e.g. extravagant wedding and burial ceremony, unnecessary expenses and wastage of time, arranged or forced marriage etc.

How can the gap in the life of urban and rural Ethiopia be narrowed? surely not by neglecting or reducing urban needs.

In some countries they try to protect animal rights beyond that of human beings. Are human rights in good standing in some countries?

Most animals fend for themselves within a year or two of their birth. A human takes a lot longer. We humans are very expensive investment. Yet I somehow feel we deserve it.

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### **Strange thoughts about the law (in non-technical parlance)**

It is in light of the above strange thoughts in mind that I go next to strange thoughts about law. People are often cynical about law and lawyers. But society cannot live without both. If there is no law it will be law of the jungle and big or smart fish eats small or dumb fish. A law not enforced should never have been enacted.

I still believe a rule of law is better than rule by men or force alone. A law must be enacted to govern and for the welfare of all and not to favor or victimize a section of society. Nor should the law and the courts be instruments of political will. Only an issue that gets a fair and square political decision should be enacted as law. This does not foreclose the enactment of law for the development of the under developed sections of society. This must be at the expense of all of society.

I strongly believe an independent court system and administration of justice is the only guaranty to our life, liberty and property. Courts must be absolutely independent from any sort of direct or indirect influence or pressure by any authority, group or individual. Judges must be economically secure and highly paid and get benefits. The best and meritorious lawyers only must be appointed to the bench.

I prefer the US model of constitutionalism, role of a supreme court and checks and balances. It has the maximum chance of protecting due process of law, life, liberty and property.

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I believe the constitutionality of laws must be contested in and decided by a court and not by any other institution in the final resort. The court is the only institution capable to do this. An independent, knowledgeable, well-staffed and impartial court is the best arbiter of legal disputes, including constitutionalism. Constitutional dispute is a court case and not administrative or legislative case. Settling a court case must only be on the merit of the case and law.

An executive branch of government or bureaucracy not accountable would tend to be corrupt, oppressive and destructive. A parliament that is not fairly elected and is only a rubber stamp is as good as none. Whether a people are educated or not they must be able to scrutinize their government and leaders and make them account.

All officialdom must be model to the public in respecting the law, even traffic law. Otherwise it teaches citizens to be lawless. All laws, including ordinances, must be strictly implemented. Illegal crossing of a road or going on the wrong side of a road must be penalized. Where the guilty (of such misdemeanors) cannot pay fine they should do community work. All forms of vagrancy, including begging, must be put off the street. This includes the clergy who on the street by blaring a megaphone beg money for building of a church.

Tax must not be too heavy as to impoverish the general public. After all almost all tax and a rise in price is eventually paid by the final consumer of fixed income. There must be a strict price regulation and control. When the reason for raising price is no more, the jacked price must lower. Examples are a cup of tea (price of sugar), a cup of coffee (price of coffee beans), price of crude oil etc. Artificial price hiking must be checked.

With development and civilization a lot of other disadvantages and problems come along. Crime may increase and the traditional bonds that tie social relations may fall apart. There is a price to pay. It is not a free ride.

A society must have a good balance between *order* and *freedom*. Without order, freedom is anarchy and chaos. It serves no purpose. Without freedom, order is oppression and destruction and it is misery and sufferance.

Humankind's advantage is its intelligence. Unless it is hampered by disease man must use it wisely. It must be used for the good of the human race. Those who are underprivileged for any reason must not be excluded nor patronized, but rather encouraged and given an opportunity. They must be provided with proper facility to aid their handicap.

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Invention should be patented up to a time. A trade must have its secrets as long as it lasts to be a secret. All other knowledge and know-how must be transmitted truthfully and freely.

As they say thoughts lead to action. Or do they? Strange thoughts lead to strange acts and deeds.

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### **Snippets from memory**

Under the leadership of Mengistu Neway and others there took place a coup in 1960 to overthrow Emperor Haileselassie. As student leaders, we organized the support for the coup. I was Treasurer of the Student Council. Well we survived, except some incidences that were tragicomedy.

In 1969 I met the Emperor in person in his office in Jubilee Palace. His hands were shaking constantly and sometimes he used to laugh suddenly for no apparent reason. Otherwise he was lucid of mind, talked properly and what he talked made sense.

He had me called on several occasions from my office for two months and we discussed a lot on many topics concerning the country. In the end he ordered me to write what I told him and submit it. I did that. I gave him most of my strange thoughts in twenty pages. He never had me called after that.

An example of what I told him is the following. Let not only common criminals be punished, but also those who kill society, embezzle and take bribes. Ministers and officials must be punished like common criminals for their misdeeds under the Penal Code. Law must apply equally to everybody. What strange thoughts and foolishness to tell that to him after the coup. I am sure the document exists in the former Ministry of Pen.

In 1975 I was ordered to serve in the Campaign for Development Through Cooperation. My normal life was shattered.

At one point I told my boss Kiross Alemayehu that the case of all imprisoned campaigners be reviewed under a directive or decree to be enacted by Derg. Kiross said he would present the idea to the top leaders of Derg. One day he took me to the office of Derg in Menilik's Grand Palace without any fanfare. That was the second time I had been in that office. I was also in there once during the time of the Emperor. I would be in there several times later. It was an office of power and supreme authority.

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In that office were Mengistu Hailemariam, First Vice Chairman (but secretly I was told that he was the Chairman of Derg), chairing, Atenafu, Gebreyes (who died later in a plane crash), acting as secretary of that meeting, Teka Tuloo and Endale Tessema. The discussion on the amnesty started. There was opposition to the idea. I was asked to explain the purpose etc. I did what I could. A certain person said that what I said was "imperialist and CIA stuff". I withhold his identity because I believe it is proper and fair.

Mengistu said, "If we cannot agree here I will take the issue to the Big Assembly of Derg." He stood up to go, but I raised my hand. He asked me what I want and he was still standing while the rest of us were still sitting.

I said, "What I said earlier is in the interest of the country. I do not understand the socialism or communism you people are talking about. The allegation of the previous speaker is totally false and if he has any evidence let him come out with it. I am sorry of such allegation."

Mengistu simply said, "Forget it, Professor, it is inconsequential." He went out. The strangest of them all it was.

The Proclamation was drafted by me and enacted by Derg without any change. I was ordered to establish a quasi-court committee and review the cases of campaigners. It was a daunting job. All the files of imprisoned and accused campaigners were brought to us from all over the country. We reviewed some ten thousand cases. We released nine thousand plus prisoners free. We ordered that some cases be transferred to the normal courts, because they do not fall under the amnesty Proclamation. We strongly recommended that similar imprisonment should not take place in the future. We finished the job in three months. How strange it was?

Soon after wards I proposed to Kiross that the campaign should be wound up and liquidated. I was again ordered to explain. I explained several times to the same inner Derg committee. This time around Dr Asfawu and Haile Woldemichael were also present. They were directors of two *memerias* of the Campaign Head Quarter. This time around there was no rubbish about "imperialism and CIA". We had heated debate on all sides.

Eventually it was agreed to wind up the campaign and bring back all the campaigners. A special super charged high committee was established to that effect. Each of its members was appointed by Derg order signed by Mengistu. (Note that Teferi Benti, the President of the country, was still around.) The title of the order was "High Revolutionary Duty".

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By verbal order transmitted to me I was told to chair the Committee. We organized into four sub-committees. Our decisions were democratically arrived at by majority vote after a heated, orderly and fair debate. Strict parliamentary rule was followed.

To make the story short the Campaign for the Development through Cooperation was wound up. The campaigners were all returned to Addis Abeba, except for those dead, missing or exiled. A great parade was made at the Revolution (Maskal) Square. Every participant got a certificate of participation. I gave a final report to Derg. I also gave a certificate to myself and went back to AAU to teach.

Mind you this was way back before all the terrors, killing, power struggle, turmoil and gun politics. It was surely strange. I never dreamt, leave alone thought, strange or otherwise, that I would be in that mess.

Then came the year 1991. While Derg was not exiting and Ihadeg was cautiously entering, there occurred a power vacuum. We were generally told to stay home for our own safety. Everybody stayed at home except for very few strange ones like me.

First I saw an army with irregular or no uniform marching in two lines, entering the city. I was at Wingate Secondary School then. I came along with it. It camped in Medhanealem Secondary School and the nearby Customs (Finance) Police Head Quarters.

Next day I started traveling to some parts of the city. Generally it was quite. I went to Sidest Kilo. The AAU campus was forlorn. I went to Arat Kilo and Menilik's Grand Palace. I saw one person carrying out one of those decorated red chairs. There was another person in blue overalls walking behind me. He was holding a pair of black army boots. I asked who those people in the Palace were. He told me they were "taking" (*yezerfalu* would have been more appropriate) things. He showed me the black army boots he "expropriated", as he put it. He advised me to go and help myself. I dared not.

I went further towards Estefanoss Church and on the way I saw some three decapitated tanks. They stayed there for several years. Then I returned back to Arat Kilo to my younger brother's apartment in front of the Faculty of Science of AAU. I knocked and they opened for me. They were surprised to see me. From there I went to *Markato*. My beloved great market was deserted and absolutely quite. All shops were locked firmly. Not even stray dogs were

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yawning around. I went back home. My mother reprimanded me. I reminded her that I was a gentleman of fifty-two years.

Is it not a strange world? So here I am living with my strange thoughts in a strange world. What to do about all these, strange is it not? \_\_\_\_\_■

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## ስለዳኝነትና ዳኛ (በኢትዮጵያ ሁኔታ)

መንግሥቱ ኃ/ማርያም አርአያ፣ (ኮ/ል)\*

ዳኝነት በተለያዩ የማኅበራዊ ስብስቦች ወይም የጎሳ መሪዎች፣ በኃይማኖት አባቶች ወይም ጉባዔዎች ከዚያም በስፋ መልኩ በተለያዩ ስርዓተ ማኅበሮች ሥልጣን በያዙ መንግሥታት ጥላ ሥር በሚቋቋሙ ተቋሞች የሚከናወን ነው።

ሰዎች ዳኝነት ለማግኘት በአቤት ባይነት፣ በከላሽነት ወይም በተከላሽነት በይግባኝ ባይነት ወይም በመልስ ስጭነት የሚቀርቡ ሲሆን፣ በወንጀል የተደነገጉ ደንቦችንና ሕጎችን በተመለከተ፣ በፍትህ ብሔር ደግሞ ተነፃፃሪ መብት ያላቸው ግለሰቦች ወይም ድርጅቶች መብታቸውን ለማስከበር በመፈለግ ለሚካሄዱ የፍሬ ነገርና የሕግ ክርክሮች ዳኝነት ሚዛናዊ ወሳኔ ይሰጣል።

ዳኝነት ከሦስቱ የመንግሥት አካላት አንዱ ነው። ዳኝነት የሚሰጠው በፍርድ ቤቶች ወይም ለመዳኝነት በመንግሥት ወይም በማኅበረሰቡ ሥልጣን በተሰጣቸው ፍርድ ቤት መሰል አላት አማካይነት መሆኑ ይታወቃል። በዚህ አጭር ጽሁፍ አስተያየት የሚሰጠው በመንግሥት በሚቋቋሙ መደበኛ ፍርድ ቤቶች ሲሆን ስለሚገባው ጉዳይ ነው። በመርህ ደረጃ ፍርድ ቤቶች ከማናቸውም ተጽዕኖ ነፃ ሆነው የሚሠሩ ናቸው። የሠመረ ዳኝነት እንዲኖር የፍርድ ቤቶች አወቃቀር፣ የሰው ኃይል መሟላት፣ የዳኞች ልምድ፣ ብቃትና ዕውቀት፣ የማስቻያ ቦታዎች ብዛት፣ የድጋፍ ሠራተኞች ብዛት ብቃትና ዕውቀት፣ ለዳኞች የሚከፈል ደመወዝና ጥቅማጥቅም፣ የዓቃቤ ሕጎች የጠበቆችና ነገ ረፈጆች የሙያ ብቃት፣ የሕጎች ግልጽነትና መሟላት አስፈላጊ ሁኔታዎች ናቸው። በፍርድ ቤቶች የሚሰጥ ፍርድ ወይም ወሳኔ መልሰም መሆን የመልሰም አስተዳዳሪ ገጽታ እንዲጎላ ያደርጋል፣ ቅሬታን በማስወገድ ሰላምና መረጋጋት ያሰፍናል፣ ዴሞክራሲያዊ ስርዓትንም ያጎለብታል።

ዳኝነት የሠመረ እንዲሆን የብዙ ወኖች አስተዋጽኦ የሚጠበቅ ቢሆንም ዋነኛው ባለቤት ግን ዳኛው ነው። ቀደም ባሉት ጊዜያት ዳኛ የሚመረጠው ከማኅበረሰቡ መሀል በዕ ድሜው፣ በባህርይ ዕርጋታና ጨዋነት፣ በነገርና አነጋገር አዋቂነት ነበር። እንደጎሳዊነት ስብ የዕድገት ደረጃ በዳኝነት የሚመረጡ ሰዎች በአምነት ላይ የተመሠረቱ ደንቦችን በሂደትም የወጡ ሕጎችን በተወሰነ መልኩ ያወቁና የተረዱ፣ የተወሰኑትም የመንግሥት ደጋፊ የሆኑ ነበሩ።

በአሁኑ ጊዜ ዳኞች የሚሾሙት የፌዴራል ዳኞች አስተዳደር ጉባዔ ማቋቋሚያ አዋጅ ቁጥር 24 1988 አንቀጽ 8 ሥር የተዘረዘሩትን ሁኔታዎች የሚያሟሉ መሆናቸውን በማ ረጋገጥ በአስፈጻሚው የመንግሥት አላ ተመርጠው በዚህ አላ አቅራቢነት በሕዝብ ተወራኝ ምክር ቤት ሲሆን አስፈጻሚው በሚመድበውና በሚያስተዳድረው በጀት የሚሠሩ ናቸው። ከዳኝነት የሚሻሻሉት ወይም የሚሰናበቱበት ሥርዓትም በዚህ አዋጅ በአንቀጽ 5(3) ለጉባዔው በተሰጠው ሥልጣንና ተግባር ላይ ተመስርቶ የሚወጣውን የሥነ ምግባር ደንብ በመተላለፍ ወይም በአዋጁ በአንቀጽ 2(1) በዲስፕሊን ጥፋት፣ እንዲሁም በአንቀጽ 2(2) ጉልህ በሆነ የሥራ ችሎታ ቅልጥፍና ማነስ ሥር ተ ደንግጋል።

ቀደም ባለው ጊዜም ሰለዳኛ ሥነምግባርና ለዳኝነት ስለሚያስመርጡ መመዘኛዎች በፍተ ሐነገሥት ተደንግጎ ይገኛል። በመሠረቱ ዳኛ እንደሁላችን በአርአያ ሥላሴ

\* የሕግ አማካሪና ጠበቃ (የቀድሞ ጠቅላይ ፍርድ ቤት ሰብሳቢ ዳኛ)

የተፈጠረ ሰው ነው። ሰው እንደመሆኑም ጠንቅቆና ደካማ ጎኖች ያሉት ከስሜት ተጽዕኖ ነፃ ያልሆነ፤ ፍላጎቶችና የሕይወት ግቦች ያሉት ነው። ስለዚህም የተደላደለ ኑሮ መምራትን፤ በሥራው መከበርንና መታወቅን ይፈልጋል። ዳኝነት የሕዝብ አደራ ነው። የግል ፍላጎቶችና የሕይወት ግቦች ያሉት ዳኛ የሥራው ባሕሪይና የሕዝብ አደራ የሚጥሉበትን ከባድ ቀንበር ለመሸከም ይገደዳል። እነዚህን ቀጥሎ በመጠኑ ለመዳሰስ እንሞክራለን።

ዳኛው የሚረከበው የዜጎች ነፃነት & ሀብትና ሕይወት የሚጠበቅበትን መንበር ነው። ይህ የዳኝነት መንበር ታላቅ የሕዝብ አደራ የተጣለበት ነው። አደራውን የተቀበለ ሰው በአደራ ሰጪው ኅብረተሰብ ዘንድ እንዲከበር የሚሰጠው ውሳኔም ተቀባይነት እንዲኖረው አስፈላጊውን ጥንቃቄ ሁሉ ማድረግ አለበት። ይህ ጥንቃቄ ከአለባበስ፤ ከንጽህና፤ ቁጥብነት፤ ለክብሩ ተመጣጣኝ ባልሆነ ቦታና አባባሊ አለመገኘት፤ ሥራና ቀጠሮ ከማክበር ይጀምራል። ንጽህናውን የማይጠብቅ የአዘቦት ልብስ ለብሶ በሕዝብ የአደራ መንበር ላይ የሚገኝ ዳኛ እፊቱ በሚቀርቡ ሰዎች ዘንድ ሊከበር አይችልም። እፊቱ የሚቀርቡ ሰዎች ያከበሩት ቢመስል ጉዳያቸው እንዳይበላሽ፤ መንበሩ ለዳኛው የሚሰጠው ሥልጣን እንዳይጎዱ በመፍራት ብቻ ነው።

ዳኛ ሥራውን በነፃነት መሥራት አለበት። ነፃነቱ የሚጠበቀው በዋናነት ከመንግሥት ጣልቃገብነትና ተፅዕኖ ቢሆንም ከዚህ ባልተናነሰ ከንደኛ፤ ከቤተሰብ፤ ከዕውቂያ ከሚመነጭ፤ ምናልባትም ጉቦ፤ የማይገባ ጥቅምና መደለያ ከሚያቀርቡ ግለሰቦችና ድርጅቶች ተጽዕኖም ነፃ መሆን አለበት። ከመንግሥት የሚመጣን ጣልቃ ገብነትና ተጽዕኖ ለመቋቋም የሥራ ዋስትናውንና፤ ዕድገቱን ከማጣት ጋር ሊገናዘብ ስለሚችል በተለይም እንደልብ ሥራ ለመለወጥ በማይቻልበት ሁኔታ ከባድ ሊሆን ይችላል። ነፃነትን ለማስከበር ቁርጠኝነትና የመንፈስ ጥንካሬ ያስፈልጋል። ሌላው ተጽዕኖ የዕለት ጥቅምንና የሥራ ዋስትናን የሚያሳጣ ባይሆንም የአክክልኝ ልክልህ መጠቃቀምንና ማገበራዊ ግንኙነትን ሊያበላሽ የሚችል ስለሚሆን ይህንንም ፈተና ለመቋቋም የሚከብድ ይሆናል። ቢሆንም ፈተናውን ተቋቁሞ ለማሸነፍና የሕሊና ነፃነትን አረጋግጦ ለመኖር ይቻላል።

ለዳኝነት የሚሾም ሰው በተቻለ መጠን በቂ የሕግ ዕውቀት ሊኖረው ይገባል። በተቻለ መጠን የተባለው በሀገሪቱ ለው የባለሙያ እጥረት አንጻር መታየት ስላለበት ነው። የተወሰነ የሕግ ዕውቀት ለሥራው ለመመረጥና አገልግሎቱን ለመጀመር በቂ ቢሆንም ይህን ዕውቀቱን የግራ ቀኝ ተሟጋቾች ከሚያቀርቡት ክርክር በመማር ማዳበር፤ የግል የንባብ ባህልን በማዳበር ወይም ቀጣይ ትምህርትን በመከታተል ማዳበር የግዴታ ይሆናል። ዳኛው በዕውቀት አልፎ ለተገኘ የሚሰጠው ፍርድ ወይም ውሳኔ እንደውሳኔ በበላይ ፍርድ ቤት ለተሻሻለ በሰተቀር ተፈጻሚነት ቢኖረውም የተሟላ ፍርድ ወይም ውሳኔ ላይሆን ይችላል።

ለዳኝነት የሚመረጠው ሰው በተቻለ መጠን በጎልማሳነት ዕድሜ ላይ ያለ ቢሆን ይመረጣል። የፌዴራል የዳኞች አስተዳደር ጉባዔ የአንድ ዳኛ ዕድሜ ከ25 ዓመት እንዳያንስ ደንግጓል። አሁንም በተቻለ መጠን የተባለበት ምክንያት በዚህ ዕድሜ ክልል ውስጥ ያሉና ለዳኝነት የሚመረጡ ሰዎች ብዛት በቂ ስለማይሆን ከሕግ ትምህርት ቤት የወጡትን መጠነኛ ልምድ አግኝተው በቀጥታ እንዲመደቡ ማድረግ ሁኔታው ስለሚያስገድድ ነው። ጎልማሳነት ከወጣትነት የዕድሜ እርከን ያለፈ ወይም በመጨረሻው አባባሊ የሚመደብ በመሆኑ ግለሰቡ መጠነኛ የሕይወት ተሞክሮ ሊኖረው ስለሚችል፤ ምናልባት ቤተሰብ የመሠረተና የጎሳፊነት ስሜቱ ሊዳብር ስለሚችል፤ የሥነ ልቡና ግንዛቤውም በመጠኑ ሊያድግ ስለሚችልና በአጠቃላይም ማገበረሰቡ የሚጥልበትን ከባድ ቀንበር ለመሸከም የተሻለ ዝግጁነት ስለሚኖረው ነው።

ዳኛ ከፊቱ የሚቀርቡ ባለጉዳዮችን፣ ጠበቆቻቸውንና ነገረፈጆችን በእኩል ዓይን ማየት አለበት። ሀብታሙን በሀብቱ ምክንያት ሊያከብረው ድኃውን በድኅነቱ ሊንቀው አይገባም። በአንጻሩም ሀብታም በመሆኑ ሊጫነው ድኃ በመሆኑ ሊያዝንለት አይገባም። ሀብቱን አይቶም የማይገባውን ሊያደርግለት አይገባም። ተከራ-ሪዎቹን በእኩል ዓይን አለማየት የዳኝነትን የሚዛናዊነት መሠረታዊ መርህ ያፈርሳል። በታወቀ ፕሮግራም አቤቱታ ለማቅረብ <ልሆነ በስተቀር በያዘው ጉዳይ ላይ አንዱን ወገን ከሌላው ለይቶ በግል ማነጋገር አይገባውም። ባለጉዳዮችን በግልጽ ችሎት እንዲያነጋግር አስፈላጊ የሆነውም ባለጉዳዮቹ በሚሰጠው ፍርድ ወይም ውሳኔ እምነት እንዲኖራቸው፣ ተመልካቹ ሕዝብም በችሎት ከሚረዱ ክርክር ትምህርት እንዲወስድ ታስቦ ነው።

ዳኛ ታጋሽ፣ ብዙ ከመናገር ይልቅ ጥሩ አድማጭ መሆን ይገባዋል። ከፊቱ የሚቀርቡ ሰዎች ዳኛው በያዘው መንበር ፍርድ ወይም ውሳኔ ለማግኘት እንጂ በግል የሚለምኑት እርሱም በግሉ የሚሰጠው ልዩ ችሮታ ስለሌለ በተገቢው አክብሮት ሊያስተናግዳቸው ይገባል። በመሠረቱም እዚያ መንበር ላይ የተቀመጠው ተገቢውን አገልግሎት ለመስጠት መሆኑን መርሳት የለበትም። የችሎቱን ክብርና ስርዓት ለማስከበር ጥብቅ፣ ነገር ግን ለተከራ-ሪዎቹም ሆነ ለተመልካቹ ተገቢውን ሰብዓዊ ክብር የሚሰጥ፣ ትህትና ያለው መሆን አለበት። ስድብና ዛቻ እንዲሁም ትዕቢት የዳኛ ስነምግባር መገለጫዎች አይደሉም። በአንጻሩ ዳኛውን እንዲጠላና እንዲናቅ የሚያደርጉ፣ የባለጉዳዩንም ሆነ የተመልካቹን እምነት የሚያሳጡ ናቸው።

በዳኛ ፊት ቀርበው የሚከራከሩ ሰዎች የተለያዩ ሁኔታ ሊያሳዩ ይችላሉ። ዳኛው በመንበሩ አባት፣ አስተማሪ፣ ስርዓት አስጠባቂ አንደመሆኑ በስሜቱ የሚረዳው ሁኔታ ቢኖርም የያዘውን ጉዳይ በሚቀርብለት ማሰረጃና የሕግ ክርክር ላይ ብቻ ተመስርቶ ሊወስን ይገባል። ከዚህ ወጥቶ ፍርድ ወይም ውሳኔ ቢሰጥ የፍርድ ቤቱን ክብር ያዋርዳል፣ ሥራውንም እምነት የማይጣልበት ያደረጋል።

ዳኛው ሐዘን፣ ንድገት፣ የበቂ እንቅልፍና ዕረፍት ማጣት፣ በሥራ ብዛት በመሰልቸት በአጠቃላይም የስሜቱ ሚዛናዊነት በታወከበት ጊዜ ፍርድና ውሳኔ ለመስጠት መቸኮል የለበትም። የቀረበለትን ጉዳይ በወቅቱ አከራክሮ ውሳኔ ሊሰጥ ይገባል። የሚቀርብለትን ጉዳይ በማቃለልና በመናቅ፣ ወይም አክብሮ በማየት መፍራትና መሸሽ የለበትም። የሚሰጠው ቀጠሮ አንድን ጉዳይ ለማከናወን አስፈላጊ መሆኑን፣ ከጉዳይ ብዛት ወይም ከሰዓት መጠበብ የተነሳ ብቻ የሚተላለፍ መሆኑን ማረጋገጥ አለበት። የቀጠሮ መንዛዛት ስንፍናን፣ ለመወሰን ቁርጠኝነት አለመኖርን፣ ከተከራ-ሪ ወገኖች የማይገባ ጥቅም የማግኘት ፍላጎትን ሊያመለክት ስለሚችል እያንዳንዱን ቀጠሮ ቁምነገር የሚሠራበት እንዲሆን ይጠበቃል።

ጉቦ በመቀበል፣ የተስፋ ቃል በማግኘት አንዳንድ ፍርድ ወይም ውሳኔ ማዛባት በዳኝነት ላይ የሚከሰት ክፉ ደቁ ነው። ተከራ-ሪዎች ጉዳዮቻቸውን ለዳኛ ሲያቀርቡ በአብዛኛው የማስረጃ፣ የፍሬ ነገርና የሕግ ድጋፍ አለን ብለው ነው። ይህን ሁኔታ አሟልቶ የቀረበ ባለጉዳይ በሌላው ወገን በተሰጠ ጉቦ ወይም ጥቅም ወይም በተፈጠረ ግንኙነትና ዝምድና ምክንያት ቢለወጥበት ውጤቱ የባለጉዳዩን መረታት በዚያውም የመብት ማጣት ብቻ ሳይሆን የፍትሕ እጦትን ያስከትላል። የፍትሕ መታጣት ደግሞ ሕዝብ በፍርድ ቤቶች ላይ እምነት እንዳይኖረው ከማድረግ በላይ የሕዝብን ሰላምና መረጋጋት ያሳጣል።

አንድ ዳኛ ሲሾም የሚፈጽመው ቃለ መሐላ “... ፍርድ ቤት ዳኛ በመሆን ተሾሜ ሥራዬን ስጀምር የተጣለብኝን ክፍተኛ ኃላፊነት በታማኝነት ለመፈጸም ቃል እገባለሁ።” የሚል ነው። ዳኝነት በቂ ደመወዝና መተዳደሪያ እንዲሁም ተገቢ የሥራ ሁኔታ በተሟላበት ቢሠራ የሠመረ ይሆናል። ዳኝነት የተሟላ የሚሆነው ግን ዳኛው ነፃነቱን አስከብሮ ሕሊናውንና ሕግን ብቻ መሪውና መመሪያው አድርጎ ሲሠራ ነው።

ጉቦ ተቀባሎ የሚፈረድ ዳኛ ለትርፍ እንደሚሠራ የሚቆጠር እንጂ ዳኛ ሊሆን አይችልም። የዳኛ ትርፍ መልካም ሥነምግባሩ፣ ችሎታውና ስሙ በጥቅሉም ተቀባይነት ያለው ፍርድ ወይም ውሳኔ መስጠቱ ነው። ለሕሊናው ያልተገዛና ያልታመነ ሰው ጨርሶ ዳኛ ሊሆን አይገባውም።

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