

To Claim a Colony: The Evolution and Impact of Italian Colonial Land Laws in Eritrea from 1884 to 1907.

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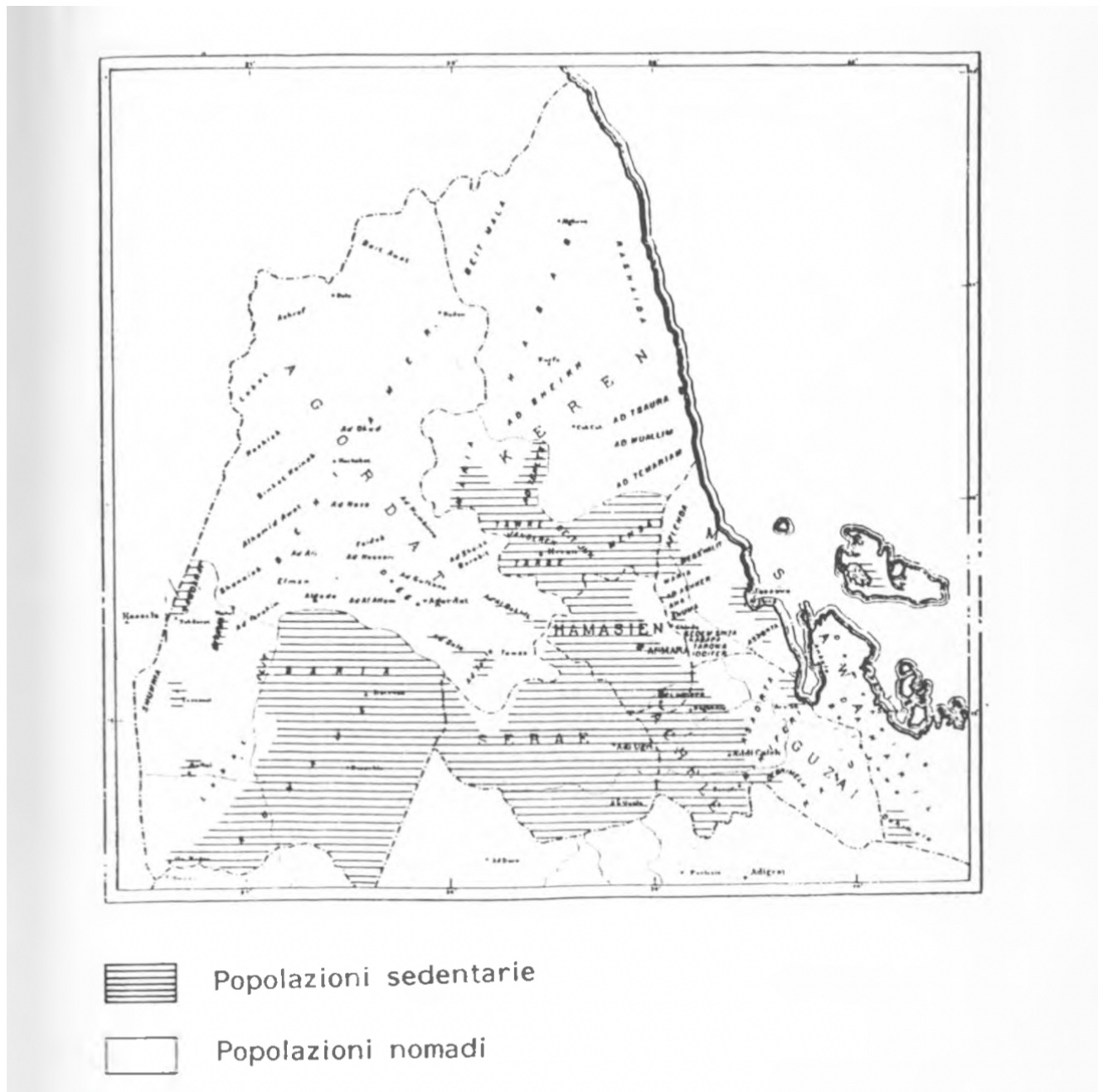
MAPS OF ERITREA

Figure 1: Early Italian map of Eritrea from the Istituto Geografico Militare in Florence



Source: Irma Taddia, *L'Eritrea – Colonia: 1890-1952. Paesaggi, strutture, uomini del colonialism* (Milano: Franco Angeli Libri, 1986), 19.

Figure 2: Map of sedentary (*popolazioni sedentarie*) and nomadic (*popolazioni nomadi*) groups in Eritrea



Source: Irma Taddia, *L'Eritrea – Colonia: 1890-1952. Paesaggi, strutture, uomini del colonialism* (Milano: Franco Angeli Libri, 1986), 43.

INTRODUCTION

“To fully understand the land tenure regime in Kunama and Nara, it is worth remembering that these populations, nowadays as well as in the tradition, are not organized as tribe but simply by association or community, where everyone is equal and no one is superior. United solely by religion and language, they splinter into different groups for pastoral or water necessity, without any resulting dependency on one another.”¹

In response to a memo sent by the colonial governor of Eritrea in 1904, the resident Alberto Pollera described the nature of society in the lowlands of Western Eritrea. The memo asked Italian residents to survey local populations and their patterns of land use in order to understand pre-existing rules and laws before Italian colonization.

The start of Pollera’s response encapsulates the colonialist binary Italians adopted to understand social order in Eritrea: Pollera interprets a lack of tribal organization as rooted in ‘the tradition’, that which doesn’t distinguish hierarchy and only unites by religion and language. Pollera implies decisions are made not with respect to rules or laws, but rather by measure of necessity. These features of local rule defined the colonized in the eyes of Italians, and opposed the latter’s tribal, rule-centered way of life. What were the implications of such an interpretation for the consolidation of the Eritrean colony and foundational colonial laws?

In 1869, an Italian shipping company by the name of Rubattino bought a portion of land in Assab, a city on the Red Sea's coastline in what is today known as Eritrea. Initially, the

¹ “A ben comprendere il regime delle terre nel Baria e nei Cunama, è bene ricordare che queste popolazioni, tanto ora come nella tradizione, mai sono state costituite in tribù, ma semplicemente in associazioni o comunità, dove tutti sono uguali e nessuno è maggiore. Uniti solo dalla religione e dalla lingua, si frazionano in gruppi diversi per necessità di pascolo o di acqua, senza che perciò ne risultasse una qualsiasi dipendenza dagli uni sugli altri.” Residente Alberto Pollera, “Regime delle terre,” copia di rapporto N.866 in data 6 dicembre 1904 alla circolare N. III07 del 20 ottobre 1904, Governo della Colonia Eritrea, inventory 46, box 16, Ferdinando Martini Papers, Archivio Centrale dello Stato, Rome, Italy, 1. Translation mine.

purpose of the purchase was to store coal. Eventually, the company sold the lot to the Italian government in 1882. This contract, *Provvedimenti per Assab*, formally recognized the territory as the property of the Italian government. Gradual occupation by the Italian military ensued and in 1890, King Umberto I signed a royal decree uniting all occupied territory under the colony of Eritrea.²

This project uses the Italian colony of Eritrea from 1890 to 1907 as a case study on the implications of dissonant conceptions of ‘law’, and more specifically, how Italian officials bound colonial territory to customary law for the sake of logic. Framed within a discourse of legal anthropology, this project maps how a concerted focus on occupying, dividing and controlling territory at the very start of the Italian government’s presence in Eritrea had a significant impact on the formulation of colonial laws and the gradual institutionalization of the colony. I understand institutionalization as the creation of an Italian colonial government in Eritrea—that is, a presence of administrative organs (ministries) in the colony that are derivative of those in the metropole.

As a way to measure the importance of land policy against other tools of colonial conquest, this project grounds Italian colonial law within a distinct binary positing the territorial ambition of colonialism against its ideological project. My research critically examines the emphasis of land policy in colonial legal documents, versus the emergence and impact of theories by Italian intellectuals on the necessity of colonialism for the moral development of the ‘subjugated race’. Land—its occupation, division and control—act as counterweight to more ideological justifications—the right of Italians to ‘civilize’ and economically ‘modernize’

² Francesco Filippi, *Noi Però gli abbiamo fatto le strade: Le colonie italiane tra bugie, razzismi, e amnesie* (Torino: Bollati Boringhieri, 2021), 76.

Eritrea—to understand codified colonial rule. Their coexistence is not necessarily conflictual; colonial officials used both land as well as ideology to encrypt Italian, and more broadly Western, ideals of society. But, this project posits land policy as a key component to the way Italians maintained social order in the colony. I argue the maintenance of this order relied on a distinct binary which submitted the colonizer's law, 'civil' and 'modern', against that of the colonized which was 'ancient' and 'traditional.'

ITALIAN COLONIALISM IN CONTEXT

In order to distinguish Italian colonialism on the African continent from other European imperial powers, it is worth highlighting some key features of British and French colonial rule in Africa. In *Colonialism in Question: Theory, Knowledge and History*, the historian Frederick Cooper deploys the case of French imperialism to exemplify a colonial rule defined by the ambiguities of citizenship, in opposition to British imperialism which illustrates the ambiguity of the relationship between capitalism and imperialism.³ With respect to the former, Cooper calls into question the efficacy of the apparent resolution of this ambiguity through the distinction between *subject* (involuntarily incorporated into society with obligations but no rights) and *citizen*, or active member of the polity, in the French colonies. In the case of Algeria, Cooper considers the limited number of Muslims that followed through the process of citizenship as emblematic of the fiction that Algeria was a part of France and not a colony; the project of assimilation served to control the colonized communities, rather than incorporate them into the imperial-polity.

In Britain's case, Cooper places an emphasis on the Atlantic slave trade as a key factory towards building a strong British state, and thereafter British imperial hegemony. Cooper argues

³ Frederick Cooper, *Colonialism in Question: Theory, Knowledge, History* (Berkeley: University of California Press, 2005), 173.

this intricate network of imperial trade became the basis for territorial colonization in Africa, as well as in Asia and the Pacific, and gradually adopted cultural and racial dimensions. Questions of emancipation after the abolition of the slave trade opened a new age of British imperialism characterized by scientific racism and, eventually the ethnization of Africa to effectively control territory.⁴ Imperial British rule relied on commodified colonial rule alongside the modification of local customs and socio-cultural categorizations and was thus similarly socially as economically defined.

Italian colonialism presents yet another exception to neatly defined notions of colonial rule on the continent. In his survey on Italian expansion overseas, Italian scholar Nicola Labanca first distinguishes Italian colonialism from other European powers by its much later start: Italian expansion into Africa began at the close of the nineteenth century.⁵ Thus, while France and Britain were starting to profit from their colonial endeavors (*valorizzare*), Italy was just starting to conquer and felt the need to catch up. Secondly, Labanca argues Italian colonial politics lacked the two distinctive, yet contestable, features of French and British colonial rule. In demarcating the barriers to French nationality and citizenship, French colonialists assembled in parliament and created *un parti colonial*, which was absent from Italy's Lefist, liberal regime until at least 1911.⁶ Furthermore, although Italians weighed colonialist endeavors as economic pursuits, specifically with respect to Eritrea and later Libya, the importance of capitalized expansionism (gentlemanly capitalism) was not nearly as central as for the British empire.⁷

Most importantly, Labanca frames the origins of Italian expansion in East Africa as an accident of British foreign policy. In order to secure control of Egypt and access to the Suez

⁴ Cooper, *Colonialism in Question: Theory, Knowledge, History*, 184.

⁵ Nicola Labanca, *Oltremare: Storia Dell'espansione Coloniale Italiana* (Bologna: Il Mulino, 2002), 61.

⁶ Labanca, *Oltremare*, 62.

⁷ Labanca, *Oltremare*, 62.

canal, the British needed to maintain stable relations with Sudan and the Ethiopian empire. The British and the Ethiopian Negus Yohannes IV reached a pact of non-hostility in exchange for the latter's access and service of Massawa's port. In assuring the protection of the port from French or German interests, the British placed the Italians as "harmless" gatekeepers.⁸ It is worth remembering these 'accidental' origins to Italian expansionism in the region as various historians have argued Italian colonialism was fundamentally improvised, rather than rooted in any ideological or economic project.

RELEVANT HISTORIOGRAPHY

In discussing different conceptions of 'law', the anthropologist John Comaroff's study on the cultural logic of dispute based on the ethnography from two Tswana chiefdoms provides a useful point of entry. As he explains differences between rule-centered and processual paradigms which governed the discipline at the time, Comaroff argues that both methods of analysis aim at answering one central question: "Whether Western legal arrangements may validly provide a baseline for cross-cultural analytical purposes—and, by implication, to what extent the concepts of English or American law should delimit the content and scope of comparative legal theory."⁹

Comaroff's question considers the implications of adopting a Western perspective to differences in legal issues embodied by differences in culture. Such an approach is twice removed from the act of imposing one culture's legal methods (rules and/or processes) over another: first by way of assessing the impact on cross-cultural analysis by such an imposition, and secondly, by the resulting remodeling of comparative legal theory. If we apply the question in its most fundamental form to the project of direct colonial rule—a practical example of the

⁸ Labanca, *Oltremare*, 63.

⁹ John Comaroff, *Rules and processes: the cultural logic of dispute in an African context* (Chicago, IL: University of Chicago Press, 1981), 4.

domination of one legal system over another—we can determine potential reasons for gaps between colonial law and its successful imposition. Furthermore, in its more metaphysical form, Comaroff’s question reminds the historian to consider their own perspective as machines of analysis, that which is framed by our own culture and formation.

Contemporary scholars have contributed to Comaroff’s study by analyzing the role of colonial institutions, functionaries and society in forming legal systems. Italian anthropologist Gianni Dore uses colonial monographs to understand how Italian functionaries constructed tradition with respect to the marginalized community of the Kunama in Eritrea.¹⁰ By means of “practical ethnography”, Dore considers how Pollera’s monographs served to reorganize territory, restructure spaces, and reformulate relationships with peoples, an effort to codify local customs.¹¹ Historian Richard Roberts reaffirms the colonial project of inventing tradition to codify customs, as well as to reshape gender relations and forms of authority.¹² My research accepts Robert’s argument that both common and civil law practices rested on the need to have a code or body of African ‘indigenous law’. Subsequently, the creation of ‘native’ courts separate from the metropolis’ law confined local legal practices as well as erroneously tied territory to law.¹³

A seminal work on questions of agriculture and the transformation of land in Eritrea remains Irma Taddia’s *Eritrea - Colonia: 1890-1952, Paessaggi, strutture, uomini del colonialismo* published in 1985. Trained as a historian of modern African history, Taddia centers the colonized society of Italian Eritrea to stress the transformation of ‘traditional’ agriculture

¹⁰ Gianni Dore, “Identity and Contemporary Representations: The Heritage of Alberto Pollera’s Monograph, ‘I Baria e i Kunama,’” *Northeast African Studies* 10, no. 3 (2003): 71-99.

¹¹ Dore, “Identity and Contemporary Representations,” 74.

¹² Richard Roberts, “Law, Crime, and Punishment in Colonial Africa,” in *The Oxford Handbook of Modern African History*, eds. John Parker and Richard Reid (Oxford: Oxford University Press, 2013), 174.

¹³ Roberts, “Law, Crime, and Punishment in Colonial Africa,” 175.

under a European political power. At the time of publication, not many scholars studied Italian colonialism in Africa, and even fewer with a critical lens. The esteemed historian Angelo del Boca had just finished his four-part series on Italians in East Africa (*Gli Italiani in Africa orientale*), and although revolutionary in its manner of recounting the fact-based history of Italian colonial rule from start to finish, it was more of a historical narrative than analytic text. Taddia's study breaks with past, passive interactions with the legacy of Italian colonialism in Africa to suggest an analysis of the impact of colonial rule on Africa and Africans, rather than following the history of Italians in the region.¹⁴ Thus, Taddia claims her research adopts both an anthropological and ethnological lens to discern changes in agriculture over the colonial period. Further, as my research opts for a focus of the colonizer and their imposition of legal methods to control the colonized, Taddia's work serves as a counterpoint to clarify how such rule materialized on the ground in Eritrea, and whether local customs were abandoned with the gradual consolidation of the Italian colony.

Around the same time as Taddia published her work, the historian Tekeste Negash also released his study on Italian colonialism. Titled *Italian Colonialism in Eritrea, 1882-1941: Policies, Praxis and Impact* and published in 1987, Negash's survey aims to assess the material impact of colonial rule in Eritrea as well as trace a partial theory of colonialism. To do so, Negash bases his historical analysis on the political economy of Italian colonialism and its educational, and 'native' policies in particular. Most pertinent to my project, Negash presents a synoptic view of Italian colonialism in order to convey the arbitrary nature of expansion in Eritrea. Historians as early as Antonio Gramsci have argued for the mythical foundations of

¹⁴ Irma Taddia, *L'Eritrea – Colonia: 1890-1952. Paesaggi, strutture, uomini del colonialism* (Milano: Franco Angeli Libri, 1986), 29.

Italian expansion as a settler policy for Italian peasants.¹⁵ Negash accepts this proposition and presents early settler colonialist projects at the start of expansion as a method of distraction from southern Italian discontent.¹⁶ This argument among many others made in his study reiterates the somewhat accidental nature of Italian colonialism and grounds my analysis on the importance of land and ideology.

With respect to more contemporary studies on Italian expansion in Eritrea, I engage primarily with the work of Nicola Labanca who has written extensively on Italian expansion in Africa and the distinction between colonization and colonialism. In his survey of Italian colonialism, *Oltremare: Storia Dell'espansione Coloniale Italiana*, Labanca differentiates between Italian colonization (the practice of conquering land) and colonialism (the ideological project of subjecting foreign populations), the former of which was integral to Italian colonial expansion. In transitioning from what Italians interpreted as a 'traditional' agrarian economy to a capitalist, colonial economy, Labanca argues Italian colonization did not impose enough of a definite and homogenous character, thus translating into limited capital.¹⁷ I seek to map the transition of Eritrea from a settler colony, to a source of raw materials and capital within legal documents, and more importantly, underline land acquisition as a driving force.

Further, Labanca highlights a gap in our knowledge about the history of Italian colonial institutions within a legal framework. He stresses the need for a more theoretical analysis of these institutions drawing on national legislation and legal manuals.¹⁸ Labanca notes that historians should not only focus on colonial law—*diritto coloniale*—but they should also

¹⁵ Tekeste Negash, *Italian Colonialism in Eritrea, 1882-1941: Policies, Praxis and Impact* (Uppsala: Uppsala University Press, 1987), 36.

¹⁶ Negash, *Italian Colonialism in Eritrea, 1882-1941*, 37.

¹⁷ Labanca, *Oltremare*, 317.

¹⁸ Labanca, *Oltremare*, 331.

examine the jurisprudence of colonial tribunals and courts. Italian jurists at the time defined colonial law by its exceptionality because of the lack of European, ‘civilized’ law, resulting in the prioritization of Italian law over local law.¹⁹ In this view, I aim to understand how this colonialist binary reinforced an otherization of locals and framed the study and interpretation of the law.

METHODOLOGY

To assess the impact of land policy on the formal consolidation of the colony, this study adopts a chronological approach and unfolds along the timeline of early Italian expansion in East Africa. My first chapter considers how Italian intellectuals first conceptualized colonialism on the continent in ‘moral’ terms. I examine the writings of Pasquale Stanislao Mancini, the minister of foreign affairs from 1881 to 1885, Enrico Catellani, a prominent professor of law and Giovanni Bovio, a left-wing intellectual and politician at the turn of the century.²⁰ I assess their historical relevance by outlining how their rhetoric was implemented, if at all, in the foundation of the colony and early legal systems. I outline fundamental contradictions between justifications for the civilizing mission, and the actual colonial enterprise.

The second chapter focuses on the formal creation of Eritrea, and its origins as a martial state. I consider the military occupation in the early years of Eritrea’s foundation an important factor in the stagnation of effective civil codes.²¹ In addition, I analyze the language in the first ‘constitution’ of Eritrea in 1890 (*Ordinamento della Colonia Eritrea*) and subsequent

¹⁹ Luciano Martone, *La Giustizia nelle Colonie Eritrea* (Torino: Giappichelli, 2015), 6.

²⁰ Giovanni Bovio, *Il Diritto Pubblico e Le Razze Umane* (Napoli: Cav. Antonio Morano, 1887); Pasquale Stanislao Mancini, *Della Nazionalità come fondamento del diritto delle genti: Prelezioni al Corso di diritto internazionale e marittimo* (Torino: Tipografia Eredi Botta, 1851); Enrico Catellani, *Le colonie e la conferenza di Berlino* (Torino: Unione Tipografico-Editrice, 1881). For secondary reading, see Olindo De Napoli, “Race and Empire: The Legitimation of Italian Colonialism in Juridical Thought,” *Journal of Modern History* 85, no. 4 (2013): 801–32.

²¹ Irma Taddia, *L'Eritrea – Colonia: 1890-1952. Paesaggi, strutture, uomini del colonialism*; Isabella Rosoni, *La Colonia Eritrea. La prima amministrazione coloniale italiana (1880-1912)* (Macerata: eum Edizioni Università di Macerata, 2006).

ratifications presented to the Italian parliament.²² According to Italian historian Irma Taddia, the goal of institutionalization was to legally unify territory and perfect the duality of administrative organs to rule on cases between Italians as well those between locals.²³ In conjunction with Taddia's argument, in this chapter I analyze the ways gradual institutionalization created more barriers for the Italian government to rule effectively because it relied on the division of land and people rather than on unification of the colony under Italian sovereignty.

In the third and final chapter, I explore the impact of the reign of Ferdinando Martini, the first official governor of Eritrea, on the colony's legal development from 1897 until 1907. This period of Italian colonialism encompasses a shift from a more transitory, military colonial rule, to a consolidated, civilian form of colonialism—the latter of which was ruled by a governor, rather than a military commander, who deferred to a set of legal codes or a constitution to rule. I contextualize Martini's rule as one that sought to understand the Eritrean landscape and its inhabitants in an effort to build an established colonial government. To do so, Martini sent out numerous expeditions and surveys conducted by Italian residents in the colony (such as Alberto Pollera) to better inform policy and legislative decisions. The resident therefore took on the institutional task of collecting and transcribing information about local customs. I examine the accuracy of these reports and their contribution to the invention of tradition for the sake of confining customs and reconciling differences in law.²⁴ I conclude that Martini's civilian

²² Royal Decree of 1 January 1890, n. 6592., ser. 3a., reproduced in Carlo Schanzer, ed., *L'acquisto delle colonie e il diritto pubblico Italiano* (Roma: Ermanno Loescher and Co., 1912), 133-134; *Disegno di Legge: Ordinamento della colonia Eritrea* N. 57, legislative act by Giulio Prinetti on 13 March 1902, Governo della Colonia Eritrea, inventory 46, box 16, Ferdinando Martini Papers, Archivio Centrale dello Stato, Rome, Italy.

²³ Irma Taddia, *L'Eritrea – Colonia: 1890-1952*, 64.

²⁴ Risposte alla circolare N. III07 del 20 ottobre, 1904, Governo della Colonia Eritrea, inventory 46, box 16, Ferdinando Martini Papers, Archivio Centrale dello Stato, Rome, Italy.

government didn't necessarily entail civilian rule, but rather relied on the collection of knowledge about civilians for the purpose of a better system of colonial control.

While my research addresses various parts of the law—moral, personal and land—I hope to trace how each is interconnected. I demonstrate how the optimization of territorial occupation was correlated to difficulties in the institutionalization and standardization of colonial law. Historical analysis of the laws the Italian parliament passed may indicate a focus on the control over territory, but I accept the existence of civil, penal, and personhood colonial laws in Eritrea. Most importantly, my focus lies in reconstructing the manual Italian colonists used to claim Eritrea as their first colony in the nineteenth century.

CHAPTER 1: COLONIALISM IN THEORY (1884-1890)

At the end of the nineteenth century, European intellectuals espoused colonial expansion as part of an emerging nationalist sentiment. In his comprehensive study on Italian expansion, contemporary historian Nicola Labanca argues that the ideals of self-determination which inspired the Risorgimento, the great political and ideological epic that led to Italian unification, slowly transformed into a vision of imperialism and conquest after 1861.²⁵ In 1871, a year before his death, the national hero Giuseppe Mazzini outlined Italy's claims to Africa dating back to the Roman empire, and called for the land's reacquisition:

Tunisia, Tripoli and Cyrenaica constitute part of this African territory which, of utmost importance for the continuity with Egypt and through it, Syria with Asia, belongs up to the Atlantic to the European system. And on the peaks of the Atlas, the Roman flag waved when, after the conquest of Carthage, the Mediterranean was our sea, *Mare Nostro*. We have been masters of the region since the fifth century. Today, the French eye the region and will have it before long if we do not.²⁶

Mazzini established a historical precedent for Italian colonialism in Africa; because the land was once under Rome's reign, Italians had a right to conquer. Italian historian Federico Curato explains how Mazzini tied this justification for Italian imperialism, referred to as the Roman myth (*il mito di Roma*), to the capital's relocation from Florence to Rome in 1871.²⁷ In a somewhat contradictory manner, Mazzini projected national self-determination as a competition between European states—such as France in the quote above—to conquer the most foreign

²⁵ Nicola Labanca, *Oltremare*, 57.

²⁶ “Tunisi, Tripoli e la Cirenaica formano parte, importantissima per la continuità coll'Egitto e per esso e la Siria coll'Asia, di quella zona Africana che appartiene veramente fino all'Atlantico al sistema europeo. E sulle cime dell'Atlante sventolò la bandiera di Roma quando, rovesciata Cartagine, il Mediterraneo si chiamò Mare Nostro. Fummo padroni sino al V secolo, di tutta quella regione. Oggi i Francesi l'adocchiano e l'avranno tra non molto se noi non l'abbiamo.” Citation from Federico Curato, “Aspetti Nazionalistici della Politica Estera Italiana dal 1870 al 1914,” *Il Politico* 47, no. 2 (1982): 256. Translation mine.

²⁷ Federico Curato, “Aspetti Nazionalistici della Politica Estera Italiana dal 1870 al 1914,” 255.

territory. Early on, Italian expansion in the Mediterranean was a reactionary response to the foreign policy of other European states and led to a degree of improvisation which would later recur in Eritrea, their first formal colony. With time, intellectuals and parliamentarians would add moral and racial layers to Mazzini's historical and nationalistic justifications in their efforts to convince other members of parliament and the public's opinion of the necessity for imperialism.

This chapter examines the contributions of Italian intellectuals to colonial ambitions in view of an emerging national identity. I examine the attempts to justify conquest theoretically, and how morality eventually entered this discourse in the form of the concept of moral duty, *un dovere*. The case of the jurist Pasquale Stanislao Mancini exemplifies how some intellectuals were more concerned with the practical and commercial implications of conquest than building an Italian national identity through a shared, ideological belief. Following the Congress of Berlin in 1884, the jurist Enrico Catellani contributed to a legal framework for Italian colonialism that simultaneously affirmed the use of colonialism for the spread of civilization while also negating the use of violence for subjugation. Over time, and as the Italian government sent its first expeditions to the Red Sea, anti-colonialists such as Giovanni Bovio changed their minds and began to consider it the duty of Italians to 'civilize' Africans, regardless of any practical benefit to colonial expansion. The analysis of these texts raises the question of how occupation and expansion was theoretically and legally justified to the general Italian public in the face of anti-colonialist sentiment, and highlights the burgeoning contradictions surrounding Italy's theoretical framework for colonial ambitions in East Africa. I consider that intellectuals theorizing about the validity of Italy's colonial project undermined its overall legitimacy as contradictions rose to the surface.

Following the annexation of the papal states in 1871, with the exception of the Vatican state, Italians struggled to forge a national identity through *l'irredentismo*, a movement which aspired to complete the unity of Italian territories lost or annexed in the past. These territories included Trieste and Trento, which still belonged to Austria, and Nice and Savoy ceded to France in exchange for military intervention in the war against Austria in 1860. But, *l'irredentismo* caused divisions within parliament and posed a threat to potential European alliances such as the eventual Triple Alliance of 1882 between Italy, Germany and Austria-Hungary.²⁸ By 1881, as an alternative means to consolidate Italian national identity, the leftist government of Agostino Depretis considered exploration in Africa. Depretis appointed, as foreign secretary, Pasquale Stanislao Mancini who would later develop the foundations for the Italian school of international law, *il diritto internazionale*.²⁹

As early as 1851, Mancini as a professor of law at the university of Turin had understood the origins of nationality as the basis for both public and private law. In his lecture 'Nationality as the foundation of people's rights' (*La nazionalità come fondamento del diritto delle genti*), Mancini posited nationality, and not the State, as the most fundamental element in constituting people's rights. Through eloquently phrased philosophical arguments, Mancini defined nationality as a spirit that encompasses laws, language, customs, and race. With respect to the last, Mancini defined race as an expression of an "identity of origin and of blood."³⁰ In his view, the nation resembled a family, connected by blood. Scholars such as Olindo De Napoli have assessed Mancini's correlation between race and nationality in the context of the idea of race as integral to the building of empire at the end of the nineteenth century. According to De Napoli,

²⁸ Curato, "Aspetti Nazionalistici della Politica Estera Italiana dal 1870 al 1914," 258.

²⁹ Amedeo Giannini, "Il diritto internazionale in Italia (1851-1948)," *Rivista di Studi Politici Internazionali* 15, no. 3/4 (1948): 380.

³⁰ Pasquale Stanislao Mancini, *Della Nazionalità come fondamento del diritto delle genti: Prelezioni al Corso di diritto internazionale e marittimo* (Torino: Tipografia Eredi Botta, 1851), 34.

Mancini's fusion of race and nation provided the necessary justification for Italians at the time to join the other European nations in their mythical crusade of civilization against 'barbarity'.³¹ Additionally, scholar Nicola Camilleri stresses Mancini's early colonial policies as representative of the idea of the 'civilizing mission' in which it was the Italian colonizers' task was to educate the colonized. Camilleri notes how Mancini believed the territory of Assab—purchased by the Italian company Rubattino in 1869—was Italian territory rather than foreign territory under Italian sovereignty, and this status merited the imposition of Italian law, rather than consular law.³² In 1882, parliament passed a law ("*Legge per la Colonia italiana di Assab n. 857*") which placed Italians living in Assab under Italian law and 'natives' under 'customary law', as long as such law did not go against 'universal morals and public order.'³³ Camilleri uses Mancini's address to parliament on the instructive value of this law as evidence for the secretary's belief in and pursuit of a civilizing mission. Camilleri writes, "Consistently with the idea that colonialism would lead to better life conditions for the "natives," during a parliamentary questioning Minister Mancini reassured the assembly that the Italian colonizers' task was to serve as their "educators" (*educatori*)."³⁴ Despite the fact that Mancini did not tackle questions of citizenship and personhood in the colony, Camilleri argues his speech would have "tremendous consequences" on the evolution of legal relations between colonizer and colonized.

However, in his lecture, Mancini did not endorse the project of colonialism. Rather, he pointed to a universal moral order based on the freedom of nations to develop and grow. When such liberty threatens the universal moral order, Mancini noted that there is not only a right, but a

³¹ Olindo De Napoli, "Race and Empire: The Legitimation of Italian Colonialism in Juridical Thought," 806.

³² Nicola Camilleri, "Colonial Subjects and Others: Racism and Inequality during Italian Rule in the Horn of Africa," *Northeast African Studies* 20, no. 1-2 (2020): 31.

³³ Camilleri, "Colonial Subjects and Others," 31.

³⁴ Camilleri, "Colonial Subjects and Others," 31.

duty (*dovere*) to intervene for the sake of humanity.³⁵ Otherwise, although he never invoked the word ‘colonialism’, the professor strongly condemned any nation that intervenes to the point of depriving another of its law and full autonomy.³⁶ Mancini maintains that every nation should consist of both a physical and moral constitution, the latter of which regulates the unity and stability of the nation through liberty. Only when this liberty, both individual and national, begins to infringe on and negate the liberty of others should nations consider intervention. Later in his career as foreign secretary, Mancini would return to his theory of the ‘universal moral order’ to defend colonial laws which established separate legal systems for Italians and Africans. But, De Napoli and Camilleri’s historical arguments linking Mancini’s rhetoric on nationality and race to actual colonial action in Africa are premature. In his early work, Mancini spoke of an Italian moral duty within the view of the nation’s internal organization and structure, rather than in terms of exporting civilization to races deemed inferior.

It wasn’t until after the Congress of Berlin of November 1884 and the almost complete partition of Africa among European states that Mancini’s defense of nationality gradually became more colonialist in tone. In May of 1884, Mancini delivered a speech to the *Camera dei deputati*, the lower house, where he expressed his vehement disapproval of Italy’s colonial expeditions in distant lands.³⁷ However, by the end of the year, Mancini solicited British consent to occupy Massawa as a means to deter any French ambition in the area.³⁸ Italian scholars such as Angelo Del Boca and Federico Curato attribute Mancini’s conversion to the Congress of Berlin where he obtained a new understanding of the political and economic relevance of colonialism.³⁹ In his

³⁵ Mancini, *Della Nazionalita come fondamento del diritto delle genti*, 42.

³⁶ Mancini, *Della Nazionalita come fondamento del diritto delle genti*, 43-44.

³⁷ Citation from Angelo Del Boca, *Gli Italiani in Africa Orientale: Dall’Unità alla marcia su Roma*, (Milano: Mondadori Editore, 1992), 124.

³⁸ Curato, “Aspetti Nazionalistici della Politica Estera Italiana dal 1870 al 1914,” 264.

³⁹ Del Boca, *Gli Italiani in Africa Orientale*, 125; Curato, “Aspetti Nazionalistici della Politica Estera Italiana dal 1870 al 1914,” 263.

survey on the development of Italian nationality from 1870 to 1914, Curato explains that Mancini requested consent to occupy Massawa multiple times from Lord Gramville, the British foreign secretary, who seemed indifferent to the cause.⁴⁰

Mancini became the pioneer of Italian imperialism but he needed to convince anti-colonialist members of parliament as well as the general public's opinion of his colonial policies. In doing so, the foreign secretary tried to present Italy's expedition in the Red Sea as a political strategy to become a stronger European state, especially in the context of Italy's alliance with Germany and the Austro-Hungarian empire (the Triple Alliance of 1882). Rather than presenting the mission as a civilizing one, Mancini sought to demonstrate how colonial politics were complementary to continental ones, and how Italians would find 'the keys to the Mediterranean' in the Red Sea, thus recalling Mazzini's aspirations for a *Mare Nostrum*.⁴¹ Mancini also assured members of parliament that the Italian presence in the Red Sea would limit itself to commercial interests, rather than territorial expansion.

At the advent of Italy's colonial enterprise in the Red Sea, the foreign secretary centered his defense of the expedition on the strategic importance of such action, rather than any moral or nationalistic sentiment. Despite his early reflections on the moral and racial basis to nationality and the rights of people, Mancini avoided creating parallels between the moral supremacy of Italians and their right to enter the Red Sea. Ultimately, we note a stronger emphasis on the political and practical utility of colonial expeditions at the start of Italy's imperial age, as opposed to concerns with moral superiority or 'civilizing' responsibilities.

ENRICO CATELLANI

⁴⁰ Curato, "Aspetti Nazionalistici della Politica Estera Italiana dal 1870 al 1914," 264.

⁴¹ Labanca, *Oltremare*, 66.

In light of the Congress of Berlin, an Italian jurist from Padova, Enrico Catellani, traced the validity of colonialism with respect to the principles of international law. For the majority of his life, Catellani was a university professor of international law. His writings often appeared in academic spheres (near the end of his life, Catellani had compiled a portfolio of nearly 200 scholarly publications), although scholars have noted the resounding nature of the jurist's reflections on government. By 1920, Catellani was elected senator to Italy's bicameral parliament.⁴²

Catellani drew from his own life to inform his rhetoric on international law: the jurist was born into a Jewish family in Veneto in 1856, when it still belonged to Austria. Witnessing the unification of his homeland with Italy and later the antisemitic laws of fascist Italy, Catellani questioned the idea that the right to nationality was the foundation to the rights of people. In 1885, Catellani published a volume on colonies and the Congress of Berlin (*Le colonie e la conferenza di Berlino*), which continued to serve as a reference point for the juridical explanation for colonialism in international law until after the Second World War and indicated Catellani's interest in colonial studies.⁴³

In his lengthy study, Catellani validated the "march of civilization" as the history of humanity. He argued that humans have always conquered land to expand borders and, as a result, spread ideas and 'civilization.' After proving that the origins of civilization are rooted in colonialism, Catellani argued that not all races are equally equipped for further colonization, and those who rebel against the natural conditions, *esigenze della natura*, are subject to extinction. Just like plants and animals, humans transplanted to an environment different than their own

⁴² Amedeo Giannini, "Ricordo di Enrico Catellani," *Rivista di Studi Politici Internazionali*, 16, no. 1 (1949): 59-60.

⁴³ Giannini, "Ricordo di Enrico Catellani," 60.

need to undergo a critical period of adaptation.⁴⁴ Catellani continued by offering an ethnographic explanation for the colonization of regions and climates by different races whereby each race is better adapted to conquer land whose climate is similar to their own.⁴⁵ The jurist outlined the capacities of different races—defined as a biological phenomenon and categorized by skin color—but suggested that it was the duty of the colonizer race to ‘civilize’ and impart their morals to those being colonized: “But another principle more important than the rapidity of the diffusion of races springs from the history of the mixed races: that is that the two races don’t simply merge, but they add up and multiply; and that in the union of the savage individual with the civilized individual, the characteristics of the latter have an influence in determining the moral praxis of the society.”⁴⁶ Catellani proposed a version of colonialism that aims to create a mixed society, that of the ‘savage’ and ‘civilized’, whereby the latter contributes their morals to the future generation; he therefore tied the process of civilization to a hierarchy of morals. Catellani did not refute the project of colonialism, but suggested that its lawful progression depended on the integration of the colonizer and the colonized, rather than the subjugation of the latter by violent means. Further, in his defense of this version of colonialism, Catellani explored the role of morals in forming the new colonized society. Rather than defending the practicality of conquering new lands for the benefit of the colonizer’s economy, Catellani advocated for the dispersion of the colonizer’s morals and a peaceful civilizing mission.

In fact, Catellani condemned the use of violence as a means to affirm the right to establish and rule a colony. While a nation which proclaims sovereignty over land also affirms its

⁴⁴ Enrico Catellani, *Le colonie e la conferenza di Berlino* (Torino: Unione Tipografico-Editrice, 1881), 18.

⁴⁵ Enrico Catellani, *Le colonie e la conferenza di Berlino*, 18.

⁴⁶ “Ma un altro principio più importante ancora della rapidità della diffusione, scaturisce dalla storia delle razze incrociate; quello cioè che le buone qualità dei due componenti non si elidono, ma si sommano e talora si moltiplicano; e che nell’unione d’un individuo selvaggio con un individuo civile le caratteristiche proprie di quest’ultimo hanno la preponderanza nel determinare l’indole morale della prole.” Catellani, *Le colonie e la conferenza di Berlino*, 46-47. Translation mine.

right to rule that land, a nation which relies on the violence of conquest draws their right to rule from such violence. In turn, the violence stains the growing empire with guilt and remorse.⁴⁷ Catellani extended his disapproval of the use of force against foreign populations in the context of public law. The jurist stated that the right to nationality is not everyone's and cannot develop anywhere. Instead, Catellani pleaded to God that states focus on the implementation of the right to life and property, those rights which belong to every human around the world and can develop anywhere.⁴⁸ In this manner, Catellani diverged from Mancini's belief that nationality was the foundation of people's rights and instead affirmed the right to life and property as the most basic rights of people. The scholar De Napoli references Catellani in light of an emerging historiographical debate which posited a dichotomy between the nationalism of the early nineteenth century, centered on fighting oppression, and that of the end of the century which relied on aggressive, discriminatory policies.⁴⁹ De Napoli notes the relevance of this split with respect to France and Germany, but argues that in Italy's case, the transformation of national pride to racial pride was "felt to be a natural development" as Italy aspired to become a great nation of Europe.⁵⁰ For De Napoli, Cattelani's belief in the utility of imperialism to spread civilization reinforces the theoretical apparatus upholding colonialism, despite his insistence on its non-threatening and peaceful execution. I interpret his writings differently. The jurist catalogued the effectiveness of different colonial projects of European nations present at the congress of Berlin and ultimately promoted non-violence, as opposed to suggesting an ideological framework for Italian foreign policy in Africa.

GIOVANNI BOVIO

⁴⁷ Catellani, *Le colonie e la conferenza di Berlino*, 8.

⁴⁸ Catellani, *Le colonie e la conferenza di Berlino*, 40.

⁴⁹ De Napoli, "Race and Empire," 812.

⁵⁰ De Napoli, "Race and Empire," 812.

Conversion towards more colonialist attitudes was not exclusive to the foreign secretary Mancini. The intellectual and parliamentarian Giovanni Bovio's writings serve as an example of early justifications of colonialism that took a more moralistic approach, rather than a practical or strategic one. As Mancini's expedition to the Red Sea became more expansionist—in April of 1885, he ordered his troops to occupy the shoreline from Massawa to Assab—the secretary faced increasing opposition from anti-colonialist groups in parliament. Bovio, along with other radical socialists in parliament scrutinized Mancini's expansionist ambitions to the point of Mancini's dismissal from office.⁵¹ In January 1887, Italian troops led by the colonel Tommaso de Cristoforo attacked Ethiopian forces in the battle of Dogali, a battle they lost in efforts to secure their presence in Massawa after occupying with British consent (see Figure 1 for an artistic representation of the battle painted by an Italian artist in 1896 who was commissioned by the ministry of public education to commemorate the fallen soldiers). Back in Rome, parliament split into two factions: those against and those for the continuation of the colonial expedition. Giovanni Bovio was among those supporting the reinforcement of Italian troops in the region. Amidst anticolonial protests in the streets, Bovio advocated for the symbolic value of the battle to the people's patriotism.⁵² This patriotic response to the defeat at Dogali marked a distinct shift in Italian foreign policy towards viewing expansion as a basis for national pride.⁵³ The act of commemorating the battle with impressive artwork (*La Battaglia di Dogali* measures 4 meters high by 7 meters long) reiterates Bovio's efforts to find pride from their defeat. In the span of two years, Bovio changed his anticolonial politics for the sake of the motherland, *la patria*.

⁵¹ Del Boca, *Gli Italiani in Africa Orientale*, 190-191.

⁵² Curato, "Aspetti Nazionalistici della Politica Estera Italiana dal 1870 al 1914," 265.

⁵³ Curato, "Aspetti Nazionalistici della Politica Estera Italiana dal 1870 al 1914," 265.

Figure 1: *La Battaglia di Dogali* by Michele Cammarano⁵⁴

In March of 1887, two months after the battle, Giovanni Bovio delivered an important speech at the University of Naples on public law and human races, *Il diritto pubblico e le razze umane*. In light of Italy's defeat, Bovio's speech justified the use of violence and colonial conquest in the name of bettering other, non-Caucasian races. At the start of the lecture, Bovio invoked social Darwinism to state that just as there is no right to ignorance, there should be no right to barbarity. According to Bovio, by way of natural selection, the 'superior' race is tasked with the transformation of other, 'inferior' races through the process of civilization.⁵⁵ Bovio continued his speech by enmeshing the political with the ideological (i.e the process of civilizing); he stated that superior races of larger states (*Stati grandi*) have the responsibility to

⁵⁴ Alberto Alpozzi, "Analisi Del Dipinto 'La Battaglia Di Dogali' Di Michele Cammarano," L'ITALIA COLONIALE, April 6th, 2017.

⁵⁵ Giovanni Bovio, *Il Diritto Pubblico e le Razze Umane*, 5.

conquer states that do not expand and thus, surrender their right to conquer. In his view, the right to civilize justified the right to colonize. According to Bovio, the expansion of the larger state is the expansion of thought which justifies any means to the end. Thus, the use of force in the name of force is violence; but the use of force for civilization is right, *è ragione*.⁵⁶

In a journal article on anti-colonialist currents of the first three years of Francesco Crispi's government starting in 1887, scholar Raffaele Colapietra remarks on the importance of race in Giovanni Bovio's lecture. Colapietra notes how Bovio's correlation between race and civilization, *civiltà*, divides humanity into two and inevitably leads to the annihilation of the state that reacts to solicitations from the larger, "missionary" state.⁵⁷ Further, Colapietra offers an analysis of Bovio's political expression of colonialism and criticizes the intellectual's consideration of the proletariat and Italy's looming social question: Bovio stated that the larger states must create outlets for the urban proletariat, making reference to the growing peasant discontent, particularly in the South of Italy.⁵⁸ Colapietra argues Bovio's resolution embodied a weak, bourgeois response to an ever-worsening issue, as well as oversimplified the project of migration to conquered land.⁵⁹ Practically, Bovio's justifications for colonial expansion were not realistic.

Returning to the question of race, Bovio insisted that the superior races are tasked with the betterment of inferior ones. In delineating the characteristics of the inferior race, Bovio argued that the despotism of the Ethiopian Negus, referring to Emperor Yohannes IV who ruled from 1871 until his death in 1889, indicated a relationship between master and subjects, rather

⁵⁶ Bovio, *Il Diritto Pubblico e le Razze Umane*, 8.

⁵⁷ Raffaele Colapietra, "Correnti anticolonialiste nel primo triennio Crispino (1887-90)," *Belfagor* 9, no. 5 (1954): 527.

⁵⁸ "Gli stati grandi devono creare grandi sbocchi al proletariato urbano per disacerbare la questione sociale." Bovio, *Il Diritto Pubblico e le Razze Umane*, 6. Translation mine.

⁵⁹ Colapietra, "Correnti anticolonialiste nel primo triennio Crispino (1887-90)," 572.

than nation and state. According to Bovio's logic, were Ethiopia a nation, people would have individual rights and there would be public law. But, because the Negus ruled 'despotically', people were stripped of their rights and 'civility.'⁶⁰ As a result, Bovio tied race to nationhood in a similar manner as Mancini had almost twenty years before, but this time to defend colonial expansion. Olindo De Napoli examines Bovio's lecture in view of his thesis on the centrality of race to the building of empire. De Napoli posits Bovio's lecture as representative of racist justifications for colonial expansion: "The total lack of law in the black continent—that is, of the law as constructed through the long centuries of history in Western Europe—and of the nation, the subject creator of that law, was the foundation of the right to expansion of the 'better race.'"⁶¹ With Bovio's intervention, colonialism found a juridical basis in international law. This rested upon the negation of the individual rights and freedom of Ethiopians because of their supposed racial inferiority.

However, contrary to the colonialist tone throughout, Bovio's conclusion discouraged Italian expansion. At the end of the speech, Bovio emphasized the constant interference of the Church in state affairs, thereby inhibiting the complete formation of the Italian state. Adopting a much more anticlerical rather than colonialist tone, Bovio finished his lecture by stating that Italy cannot begin its colonial conquest because it is not yet a state, as was for example the Roman Empire at the time of its expansion.⁶² Ultimately, while Bovio provided the juridical basis for colonial expansion through racist rhetoric, he emphasized Italy's incapacity to begin exporting its civilization because its existence as a state was not fully achieved, and it wouldn't be until the Church was no longer active in state affairs.

⁶⁰ Bovio, *Il Diritto Pubblico e le Razze Umane*, 9.

⁶¹ De Napoli, "Race and Empire," 809.

⁶² Bovio, *Il Diritto Pubblico e le Razze Umane*, 12-13.

CONCLUSION

Near the end of July of 1887, Depretis died. His successor as prime minister, Francesco Crispi, inherited a diplomatically-entrenched colonial situation. Before dying, Depretis renewed Italy's Triple Alliance with Germany and the Austro-Hungarian empire, and later Spain too, in view of a potential war with France if they attacked Morocco, Tripolitania or Cyrenaica. Depretis also laid the foundations for an alliance with Britain which would give its support to Italy if, in the case the latter won the war with France, they requested colonial as well metropolitan territories—such as long desired Nice and Savoy.⁶³ As Mancini had posited, the conquest of Africa became increasingly important to the political stability of continental Europe. The argument for the necessity for Italy to continue its colonial politics culminated in a speech by Crispi, once anti-colonialist, to the lower house in May of 1888: “The colonies are a necessity of modern life. We can not remain inert [...], otherwise we will be guilty of a significant crime against our motherland: because we will forever close our products from the routes for ships and markets [...]. The strong nations need to affirm themselves in the various parts of the world, for the protection of commerce and for the triumphant crusade of civilization that we are obliged to take part in.”⁶⁴ While Crispi alluded to the commercial benefits lost if Italy did not engage in a colonial project in Africa, he also invoked the “triumphant crusade of civilization” as an “obligation” thereby recalling Bovio's theory on the duty of superior races to ‘civilize.’

Crispi's speech is a marker for the transformation of the ideology underpinning Italian colonialism. Intellectuals such as Mancini first noted the somewhat problematic nature of the

⁶³ Curato, “Aspetti Nazionalistici della Politica Estera Italiana dal 1870 al 1914,” 266.

⁶⁴ “Le colonie sono una necessità della vita moderna. Noi non possiamo rimanere inerti [...] altrimenti saremmo colpevoli di un gran delitto verso la patria nostra; imperocché chiuderemmo per sempre le vie alle nostre navi ed i mercati ai nostri prodotti [...]. Le grandi nazioni hanno bisogno di affermarsi nelle varie parti del mondo, per la protezione dei commerci e per l'esercizio di quella civiltà al trionfo della quale siamo obbligati di prender parte.” Citation from Federico Curato, “Aspetti Nazionalistici della Politica Estera Italiana dal 1870 al 1914,” 266-267. Translation mine.

colonialist project in terms of its violation of people's rights to their own nationality yet privileged its economic and commercial potential. Over time, ideology would cushion these more practical benefits to colonialism, finding ethnographic and racial tones as was the case in Catellani and Bovio's writings. These ideological justifications fell short of a complete endorsement of Italian colonialism as intellectuals considered difficulties in its successful imposition without violence, and Italy's limiting factors as a potential imperialist nation that still valued the Church in state affairs. Overall, alongside improvised, reactionary foreign policy, the practical advantages for conquering formed the foundations of justifications for colonialism. If Italy were to remain politically relevant in Europe, it needed to expand as well as create a veneer for a 'duty' to expand.

CHAPTER 2: THEORY INTO PRACTICE AND THE CREATION OF ERITREA (1890-1897)

The last decade of the nineteenth century saw an increasingly significant Italian presence in the interior and away from the Red Sea's coast. Following Prime Minister Crispi's invigorated speech to the lower house, he directed the Italian general Antonio Baldissera to further colonial expansion in the highlands towards Tigray bordering Ethiopia and forged an alliance with a local notable, Menelik II, who aspired to replace Emperor Yohannes IV.⁶⁵ With military aid from the Italians, ras Menelik II became Negus of the Ethiopian empire after Emperor Yohannes IV's death in 1889.⁶⁶ In exchange, the new emperor signed the Treaty of Wichale with Italy in 1889. In the Italian version, the treaty declared Ethiopia a protectorate of Italy and all occupied territories off the Red Sea to be part of the formal Italian colony of Eritrea.⁶⁷ The Amharic version accepted Italy's presence in the region, but not as a colonial authority with allegiance to the Ethiopian empire nor control over Eritrea. But, on January 1st, 1890, King Umberto I of Italy signed the royal decree which legally recognized the colony of Eritrea as a single political entity.⁶⁸

This chapter first analyzes the language of this royal decree to assess its scope and utility for effective colonial rule. In tandem with institutional formalities that tied Italy to its firstborn colony, colonial expansion continued on the ground with little legal precedent. I examine the military occupation of territory, seldom justified for demographic purposes and a chance for Italians to resettle outside Italy. I draw attention to the absence of ideological justifications for

⁶⁵ Federico Curato, "Aspetti Nazionalistici della Politica Estera Italiana dal 1870 al 1914," 267.

⁶⁶ While it may seem that Italians drove war and conflict in the region, it is worth signalling how reading the historical record from the point of view of foreigners may suggest such a narrative. In actuality, pastoralists and religious sects were already in power struggles before the arrival of Europeans who became their arms and munition dealers. For more, see: Steven Serels, *The impoverishment of the African Red Sea Littoral 1640-1945* (Cham: Palgrave Macmillan, 2018).

⁶⁷ Gennaro Mondaini, *La Legislazione Coloniale Italiana nel suo sviluppo storico e nel suo stato attuale (1881-1941)* (Milano: Istituto per gli studi di politica internazionale, 1941).

⁶⁸ Tekeste Negash, *Italian Colonialism in Eritrea, 1882-1941*, 33.

expansion in the region in legislative acts during this period, thereafter replaced by the importance of Italian law in ‘curing’ Africans of their ‘uncivilized’ condition. At this time jurists began to postulate the practical framework for colonial law. In 1898, lawyer and parliamentarian Ranieri Falcone published a juridical manual which examined the existing tribunals in the region and their transformation under Italian rule. Thus, this chapter maps the transition between the theoretical justification for colonial law noted in the first chapter to its practical imposition.

LA COLONIA PRIMOGENITA: THE FIRSTBORN COLONY

The royal decree passed on January 1st 1890 sought to group all of Italy’s overseas territories in the Red Sea under a single colony, and establish a civil administration to replace the existing military one. The colony encompassed approximately 100,000 square kilometers squared and some 200,000 inhabitants, 16,000 of whom resided in Massawa.⁶⁹ Historian Angelo Del Boca frames the decree as Crispi’s project, his firstborn political baby. For Crispi, the decree served to legitimize and crown his achievements overseas. Moreover, Del Boca underscores Crispi’s ambition to transform the military governance overseas into a civil one as part of efforts to assure the Italian public that the era of costly military operations was over, and that they could begin to enjoy all the colony had to offer.⁷⁰

Article 1 of the decree clearly declared the creation of Eritrea as an Italian colony: “The Italian territories of the Red Seas constitute one single colony with the name Eritrea.”⁷¹ The name Eritrea was taken from the Latin and Greek name for the Red Sea, thereby recalling the Roman Empire, a historical precedent from which Italy justified its colonialism. Article 2 of the

⁶⁹ Del Boca, *Gli Italiani in Africa Orientale*, 359.

⁷⁰ Del Boca, *Gli Italiani in Africa Orientale*, 359.

⁷¹ “I possedimenti italiani del mar Rosso sono costituiti in una sola colonia col nome di Eritrea.” Royal Decree of 1 January 1890, n. 6592., ser. 3a., reproduced in Carlo Schanzer, ed., *L’acquisto delle colonie e il diritto pubblico Italiano* (Rome: Ermanno Loescher and Co., 1912), 133. Translation mine.

decree established the colony's financial and administrative autonomy from the motherland, and that it should be ruled over by a governor with civil and military powers. Article 3 and 4 demarcated the limitations of the governor's rule in both roles: the governor had jurisdiction over all land and sea troops in the Red Sea "that may be healing" after battle.⁷² For civil matters, the governor had to consult with the minister of foreign affairs and the minister of war and for naval concerns, with the minister of the marine.⁷³

In the wake of the Italian alliance with Menelik to defeat Emperor Yohannes in 1889 and the latter's death, Crispi ordered Italian troops led by general Baldissera to occupy more and more territory inland. This resulted in both human and material military costs which justified the governor's right to oversee "healing" troops.⁷⁴ But this type of governance over the troops stationed in the colony undermined Crispi's ambition for a civilian government because of the continued military presence. Four days after the enactment of the royal decree, the prominent journalist Edoardo Scarfoglio stated its primary defect was that allowed a military government to still exist in the colony. This was the case despite the appointment of three 'civil' advisors as a result of Article 5's stipulations for an interior advisor, a financial advisor and a commerce and agriculture advisor to the governor. The military character of the colony gave it only one, distinct function: to declare war.⁷⁵ According to Scarfoglio, the presence of all non-military personnel was useless and nonsensical, *un non senso*. Del Boca reaffirms Scarfoglio's skepticism when he explains that the colony remained the bridgehead for new conquest and that the military apparatus eventually absorbed the majority of the colony's expenditure.⁷⁶ Further, the duties of the three civil advisors who had incarnated a transformation from military-based governance to

⁷² Royal Decree of 1 January 1890, 133.

⁷³ Royal Decree of 1 January 1890, 133.

⁷⁴ Del Boca, *Gli Italiani in Africa Orientale*, 330.

⁷⁵ Citation from Del Boca, *Gli Italiani in Africa Orientale*, 360.

⁷⁶ Del Boca, *Gli Italiani in Africa Orientale*, 360.

the establishment of a civil administration were delegated to the governor after a royal decree passed in 1891 abolished their roles.⁷⁷ As a result, the first royal decree ruling on the state of the colony failed to establish a legitimate civil administration and instead relied on continued military power.

The decree's existence itself was a violation of constitutional law as Crispi did not submit the decree for formal authorization by parliament, bypassing Article 5 of the Constitution. Article 5 required Parliament's consent for all decrees that implied a financial burden on the State or changes to the territory of the State. Facing demands for a referendum from members of the extreme Left in parliament, Crispi defended his actions by arguing that the colonies were not *of* the State but rather *under* the State's domain.⁷⁸ Ultimately, not only did the emergence of the royal decree represent the somewhat dictatorial nature of the premier's ambitions, but as did the treatment of the colony as a subject to the State which would later inhibit consistent, thorough civil codes.

A SETTLEMENT COLONY?

In order to better understand the role of the military in the colony's early development, it is necessary to consider the commercial and agricultural aims of the colony. Before the abolishment of the 'civil advisors' to the governor in 1891, Article 10 of the 1890 royal decree specified the jurisdiction of the counselor for agriculture and commerce. This advisor ruled over all public property; encouraged and directed agriculture, industry and commerce; oversaw the movement of non-Italians ; and oversaw the relationship between the "indigenous" people and their leaders and confirmed their choice of local leaders and political tactics with Ethiopia.⁷⁹ By

⁷⁷ Del Boca, *Gli Italiani in Africa Orientale*, 360.

⁷⁸ Del Boca, *Gli Italiani in Africa Orientale*, 360.

⁷⁹ Royal Decree of 1 January 1890, 134.

allowing the commerce and agriculture advisor to rule over all public property, King Umberto I (at the request of Crispi) inextricably tied territory to capital to create private and public forms of property. The valorization of the colony's territory was a key aspect to the colony's formal establishment.

The historian Irma Taddia comments on the importance of this valorization of the territory to the juridical establishment of the colony as she argues agricultural colonization, *colonizzazione agricola*, rested on legislation which legitimized the economic valorization implemented by the State and private sector.⁸⁰ This project aimed to transform the State into a contractor that financed agricultural projects, invested in capital and created infrastructure for the economic development of the colony.⁸¹ Taddia explains this valorization differed according to the predominant economy in each region. The south of Eritrea, or *altopiano*—which was densely populated and more developed for fixed agriculture—was destined to become a settlement colony for emigrant Italian farming families. The north, which was less populated and relied more on a seminomadic, pastoral economy, would be developed and modernized using local labour and Italian capital.⁸² Ultimately, the mission of agricultural colonization was to transform Eritrea into a settler colony and export materials for Italian industry.

The office of *colonizzazione*, headed by an agricultural advisor to the governor, was tasked with seizing large swaths of land. Prime minister Crispi appointed Leopoldo Franchetti, an economist who believed in the government-planned, subsidized settlement of landless peasants in the south of Italy rather than concessionary grants, which siphoned off land to the highest bidder.⁸³ Despite the advice by a parliamentary commission in 1891 to adopt a settlement

⁸⁰ Irma Taddia, *L'Eritrea – Colonia: 1890-1952*, 214.

⁸¹ Taddia, *L'Eritrea – Colonia: 1890-1952*, 214.

⁸² Taddia, *L'Eritrea – Colonia: 1890-1952*, 215.

⁸³ Negash, *Italian Colonialism in Eritrea, 1882-1941*, 34.

policy regulated by supply and demand, *la colonizzazione libera*, Franchetti proceeded with his project and instructed Governor Oreste Baratieri to begin expropriating land for settlement. But, Italian functionaries had little and often misconstrued notions of the ownership of land in the region. Taddia notes Italians believed that the land was the property of the State, meaning that of the Negus or Islamic hierarchies in the north, which was then conceded to farmers.⁸⁴ Land ownership was much more complex and nuanced, and the State's authority was only nominal. In his survey of the systems of land tenure in Ethiopia, Richard Pankhurst gives an exposition of the two main types of tenure that had developed by the eighteenth century (known as *gult* and *resti*) which disproved claims that the Emperor was the land's ultimate owner.⁸⁵ With respect to *gult*, the Emperor waived his own rights to the land in favour of local rulers, members of the royal family, the nobility or priests who would collect dues otherwise allocated to the State. Commenting on systems of land tenure in Eritrea, the Italian academic and explorer Conti Rossini observed in the nineteenth century that the sovereign's claim to all of the land was allegorical, and "very far from expressing a juridical concept." Rossini noted these claims should not be taken literally.⁸⁶ Nonetheless, Governor Baratieri seized land as if it were state-owned; between 1893 to 1895, the Italian government expropriated more than 300,000 hectares in Eritrea's highlands for the purpose of Italian peasant resettlement.⁸⁷

This dispossession disrupted existing social structures as the land ceased to be divided between the *gebars* (the farmers who paid taxes to their dignitary).⁸⁸ In response to these large confiscations of lands, farmers rebelled. The best recorded revolt was that led by Batha Agos in

⁸⁴ Taddia, *L'Eritrea – Colonia*, 216.

⁸⁵ Richard Pankhurst, *State and Land in Ethiopian History: Monographs in Ethiopian Land Tenure* (Los Angeles, CA: Tsehai Publishers & Distributors, 2006), 29.

⁸⁶ Citations from Pankhurst, *State and Land in Ethiopian History*, 30.

⁸⁷ Taddia, *L'Eritrea – Colonia*, 217.

⁸⁸ Taddia, *L'Eritrea – Colonia*, 217.

1894.⁸⁹ Batha Agos was a commander of troops in the region of Achele Guzai. Although initially cooperative with the colonial government, Agos led a revolt against Baratieri's policies: on the night of the insurrection he captured three Italians as prisoners and he stated that his motives for rebellion were the theft of the best lands and the condition of Eritrea as a land of slaves under Italian rule.⁹⁰ Although Agos's revolt ended in his death at the hands of Italian troops within a week, Del Boca stresses the insurrection's significance as symbolic of the profound unhappiness reigning in the colony. It also acted as a precursor for a war of liberation.⁹¹ Two years later, the revolt also led to Governor Baratieri's dismissal and, following the Italian defeat at the Battle of Adwa, a change in colonial land policy during Ferdinando Martini's rule beginning in 1897.⁹²

These early colonial agricultural policies required the peaceful cession of land by its existing inhabitants, and in turn required military assistance to handle resistance. Taddia argues early colonial land policy failed to achieve the goals of *la colonizzazione agricola* because at the root of this dependence on the military to implement policy was a fatal misunderstanding of the region and its people.⁹³ Other historians such as Tekeste Negash argue that the settlement policy under Franchetti failed less because of Ethiopian-led resistance, and rather because it was not a central aspect of Italian colonial expansion. Convinced by Antonio Gramsci's proposition about the mythical foundations of Italian expansion as a settler policy for Italian peasants, Negash presents Franchetti's project as a means of distraction from southern Italian discontent.⁹⁴

⁸⁹ Taddia, *L'Eritrea – Colonia: 1890-1952*, 219.

⁹⁰ Del Boca, *Gli Italiani in Africa Orientale*, 527.

⁹¹ The war here refers to the first Italo-Ethiopian war from 1895 to 1896 led by Negus Menelik against the Italians. Del Boca, *Gli Italiani in Africa Orientale*, 529.

⁹² Taddia, *L'Eritrea – Colonia*, 220.

⁹³ Taddia, *L'Eritrea – Colonia: 1890-1952*, 218.

⁹⁴ Negash, *Italian Colonialism in Eritrea, 1882-1941*, 37.

Contemporary historian Stephen Bruner presents a more compelling, nuanced argument which considers the perception of southern Italy as ‘barbaric’ and poor by northerners and which northerners projected onto conditions in Africa.⁹⁵ Bruner discusses how the core element of Franchetti’s plan was to attract *contadini* (peasants) from southern Italy to settle in the Eritrean highlands and offer them a chance at land-ownership on supposed owner-less land in the colony. He writes:

Franchetti understood that the indigenous people held land in common by families or through local chiefs, that they did not have a concept of individual private property equivalent to that of Europeans, and that they practised a ‘primitive’ and ‘semi-nomadic’ agriculture, but he believed that there was sufficient arable land in the Eritrean highlands to support both Italian settlement and the *indigeni*.⁹⁶

But, Bruner notes a contradiction in Franchetti’s political masterstroke. Franchetti believed the peasants lacked the knowledge or spirit to establish an agricultural settlement, and yet they were the ones who would be responsible for transforming the colony. This contradiction in the economic policy of the colony is consistent with a dissonance between the imposition of colonial policy, and its reality: i.e, what was proposed theoretically inherently contradicted the reality Italians experienced in Eritrea. This dissonance reappears with the concepts of differentialist law, the separation of legal systems in the name of a civilizing, juridical mission, and assimilationist law as discussed in the next section.

The importance of this fleeting period of settler colonialism in Eritrea is emblematic; shortly after the formal creation of Eritrea under Italian rule, the colony’s purpose was tied to its land rather than ideology and a ‘civilizing’ mission. The colony’s first appearance in legal

⁹⁵ Stephen Bruner, “Leopoldo Franchetti and Italian Settlement in Eritrea: Emigration, Welfare Colonialism and the Southern Question,” *European History Quarterly* 39, no. 1 (2009): 73.

⁹⁶ Bruner, “Leopoldo Franchetti and Italian Settlement in Eritrea: Emigration, Welfare Colonialism and the Southern Question,” 80.

documents is focused on establishing bureaucratic organs for the expropriation of land. Overall, we note how the institutionalization of the colony occurred in tandem with a misinformed colonial land policy, distinctly marking the codification of Italian colonial rule and its effectiveness.

JURIDICAL MANUALS

Early juridical manuals serve as evidence for the dissonant conceptions of law between the colonizer and colonized and help us better understand how Italian functionaries applied false knowledge to the colony's formal establishment. In 1898, the jurist Ranieri Falcone published a study on the tribunals established in Eritrea since colonization, and the existing legal systems. In 'The tribunals of the Colony of Eritrea', Falcone traced the origins of courts ruling on cases concerning locals, namely the courts of Asmara and Keren, and praises their ingenuity. Falcone notes that the courts and their 'customary law' established by the Italian colonial government managed to transform "old traditions" and "artifacts" into changing legal codes which "could conquer common consciousness."⁹⁷ In this recognition of the success of legal systems in the colony, Falcone associated existing conceptions of law with an immutable tradition that was not properly codified. This binary between the assumptions about the legal systems prior to colonization and Italian law continues in Falcone's study as he outlines how these new courts retained "a native imprint" consistent with "atavistic tendencies" in the region, in which severe punishment by force were indispensable forms of delivering justice.⁹⁸ Once again, the jurist

⁹⁷ "Io vorrei intessere un inno, caldo di amore e smagliante di entusiasmo, per quei tribunali e quelle leggi della consuetudine, che dal consenso spontaneo e convinto di tutti traggono la loro forza, e nelle vecchie tradizioni ritemperano il loro prestigio, trionfando degli artefatti codici mutevole, e conquistando la coscienza comune." Ranieri Falcone, *I Tribunali della Colonia Eritrea: Note dall'Avvocato Ranieri Falcone* (Napoli: Stabilimento Tipografico Michele Gambella, 1898), 38. Translation mine.

⁹⁸ "L'ordinamento di quei Tribunali, fra tribù primitive istituiti, ebbe il merito precipuo di serbare in essi, per quanto era possibile, la natia impronta, quella autentica, più consentanea alle tendenze ataviche dell'etiope, pel quale l'autorità severa della forza e la rapidità inflessibile del comando sono modi e forme indispensabili di giustizia." Falcone, *I Tribunali della Colonia Eritrea: Note dall'Avvocato Ranieri Falcone*, 39. Translation mine.

related preexisting legal systems to a “primitive” tradition which has not developed over time. Further, Falcone also characterized this law as inherently violent and sought strong forms of authority although he provides no examples or evidence for such an assertion. Falcone’s efforts to decipher local legal systems constructed a vision of ‘customary law’ that is tied to tradition and antiquity, but only by way of being in the parameters of colonized land. Hence, Falcone associated customary law with land for the sake of logic and Western notions of ‘law’ which diametrically opposed those in Eritrea.

Falcone continued by outlining the creation of the tribunals. In May 1890, the lieutenant colonel Piano formed the ‘indigenous court of Asmara’ which would rule cases between locals. Various chiefs sat as members of the court’s jury including the Italian and Abyssinian military commanders of the region, the head of the parish in Asmara, and the heads of different local “tribes” (*Capi-banda*). According to Falcone, this range of leaders allowed for further information and clarifications to create better criteria for more “conscious sentences.”⁹⁹ While Falcone commended the Italian effort to assimilate to the local rule of law and adjudicate based on local knowledge, his explanation of the court’s structure underlines a reliance on the military. For example, colonel Piano ordered that the court of Asmara sentence locals estranged from the region using the military penal code for crimes concerning spying, betrayal or armed robbery.¹⁰⁰ For all other criminal or civil cases, customary law would rule with modifications taken from the “law of the civilized.”¹⁰¹ Despite being treated as non-Italians by the law, Africans in the region were still expected to be loyal to the Italian government or face military grade punishment.

⁹⁹ Falcone, *I Tribunali della Colonia Eritrea: Note dall’Avvocato Ranieri Falcone*, 40.

¹⁰⁰ Falcone, *I Tribunali della Colonia Eritrea: Note dall’Avvocato Ranieri Falcone*, 41.

¹⁰¹ “...e che per tutte le altre cause criminali e civili giudicasse colle leggi consuetudinarie del paese, modificando ed armonizzandole con le leggi della civiltà.” Falcone, *I Tribunali della Colonia Eritrea: Note dall’Avvocato Ranieri Falcone*, 41. Translation mine.

Italian judges deferred to Italian military law for the highest crimes suggesting an underlying reliance on the military to discipline and punish the colonized society.

While the pursuit of local law to regulate civil affairs favored a differentialist approach to colonial law, the separation of the law of the colonizer and colonized, legal historians such as Olindo De Napoli note the contradiction with the idea of a juridical ‘civilizing mission’ which sought the imposition of the former over the latter.¹⁰² Splitting legal systems to distinguish between the colonizer and colonized law was incompatible with efforts to incorporate ‘subjects’ into the Italian ‘modernized’ society in the colony. Remembering one of the first colonial laws regulating the territory of Assab undersecretary Mancini, which recognized two separate legal systems insofar as the ‘native system’ did not go against a ‘universal moral order’, we note a budding complexity in the foundation of colonial law which remains engrained throughout the colony’s consolidation.

In the final part of his manual, Falcone mapped the origins of African law and different foreign laws adopted. Falcone reiterated how “rare traces of law can be found in Africa, in the sense of norms imposed by public authority.”¹⁰³ For Falcone, law is a set of rules that derive from a figure of authority thereby creating a narrow entry point for the study of law in Africa and explains his declaration on the “rarity of law.” Where there are more substantial forms of law, Falcone notes they were either influenced by Islamic or Christian-European law. Falcone grounded most of his reflections on the ethnographic work of Doctor Albert Hermann Post, a German anthropologist of the late nineteenth century. Scholars have credited Post with proposing the study of legal relations between ‘indigenous’ people using a questionnaire distributed in the

¹⁰² De Napoli, “Race and Empire: The Legitimation of Italian Colonialism in Juridical Thought,” 816-817.

¹⁰³ “Rare tracce di leggi trovansi in Affrica, nel senso di norme emesse dall'autorità pubblica.” Falcone, *I Tribunali della Colonia Eritrea: Note dall'Avvocato Ranieri Falcone*, 44. Translation mine.

1890s in Cameroon, Mali, Western Sudan, Uganda, German East Africa and German South West Africa, Madagascar and the Solomon and Marshall Islands.¹⁰⁴ Per the request of a member of the Reichstag in 1885 to gather information on the legal systems and relations between people living under German colonial rule, Dr. Post, a former judge of a provincial court in Bremen, created the ‘Questionnaire on the Customary Law of Primitive and Half-civilized Peoples.’¹⁰⁵ Falcone praised Post’s work as a treasure of ethnographic and juridical investigation which revealed that, in many isolated cases, the progression of law derives from an ‘indigenous’ source (*fonte indigena*). Using the Asante as an example from Post’s questionnaire, Falcone considered how interpreters designated special powers to laws after their publication which privileged dignitaries in the community. Appropriating Post’s observations to the wider lens of ‘indigenous law’ in Africa, Falcone understood this law as an evolving process and subject to edits by figures of authority. In essence, he argued that there was no “proper law” which treated everyone as equals on the African continent. Despite Falcone’s acknowledgment of ‘customary law’ (*diritto consuetudinario*) which adopts a more standardized structure and ranks the penalties for any civil or criminal offense, Falcone maintained that wherever there existed despotic rule in Africa, the will of the King was the most powerful law which prevailed over fairness.¹⁰⁶ Finally, Falcone noted the influence of Islamic law in North and East Africa in questions of matrimony and succession, whereas Abyssinians followed the written codes of the Fetha Negast first compiled by the Christian Coptic church at the council of Nicea in the fourth century and then translated into Ge’ez (a pre-modern Ethiopian semitic language) from Arabic in the fifteenth century.¹⁰⁷ The Fetha Negast relied on biblical scripture to affirm the divine right of kings. In effect, the

¹⁰⁴ Andrew Lyall, “Early German Legal Anthropology: Albert Hermann Post and his Questionnaire,” *Journal of African Law* 52, no. 1 (2008): 114–138.

¹⁰⁵ Lyall, “Early German Legal Anthropology: Albert Hermann Post and his Questionnaire,” 116.

¹⁰⁶ Falcone, *I Tribunali della Colonia Eritrea: Note dall’Avvocato Ranieri Falcone*, 47.

¹⁰⁷ Falcone, *I Tribunali della Colonia Eritrea: Note dall’Avvocato Ranieri Falcone*, 49.

principle of the monarchy was firmly established in pre-modern Ethiopia and Eritrea, but did not necessarily imply complete deference to the Emperor. Scholar Richard Pankhurst maintains that rebellions in the sixteenth and seventeenth centuries against Emperors would claim to be fighting on behalf of a certain prince of the royal line.¹⁰⁸ Thus, Falcone's understanding of the King's absolute rule failed to consider the nuances of religious law which recognized the importance of the principle of the monarchy but not necessarily the King himself.

Falcone's emphasis on Post's findings served as evidence for his belief in the differentiation of law as the foundation of the colony's legal system. Falcone argued that a deeper understanding of local legislation could gradually lead to a fusion of the legal systems of the colonizer and the colonized, and the eventual superimposition of Italian law. He advocated for the creation of a 'Permanent Commission of Jurisprudence or Colonial Legislation' to conduct research.¹⁰⁹ De Napoli recognizes Falcone's instructions as an intervention in the contradiction between a juridical civilizing mission, and the differentialist choice of two separate legal systems. De Napoli writes "jurists could not avoid sensing a contradiction between the juridical civilizing mission, and the differentialist choice. They sought some sort of mediation between the two and, once again, found it in the evolutionist paradigm."¹¹⁰ In 1905, Ranieri Falcone along with jurist William Caffael presented their argument for a unification of metropolitan and 'indigenous law' for the juridical betterment of Africans at the Colonial Congress of Asmara. In their report 'Of Italian law and indigenous law in Italian Africa' (*Del diritto Italiano e del diritto indigeno nell'Affrica Italiana*), Falcone and Caffael elaborated models of colonial law that subscribed to a differentialist approach as opposed to the more

¹⁰⁸ Pankhurst, *State and Land in Ethiopian History: Monographs in Ethiopian Land Tenure*, 15.

¹⁰⁹ Falcone, *I Tribunali della Colonia Eritrea: Note dall'Avvocato Ranieri Falcone*, 51.

¹¹⁰ De Napoli, "Race and Empire: The Legitimation of Italian Colonialism in Juridical Thought," 817.

assimilationist method adopted in the British and French colonies.¹¹¹ This approach relied on the mediation of the colonial judiciaries between control and colonial governance, and local tradition and interests while simultaneously superimposing Italian law as the most ‘civilized’ and ‘correct’ form of law. Contemporary legal scholar Chiara Giorgi notes that the report favoured greater power for judges in the colony to subjugate the local population. The duty to adjudicate became political as judges would ensure public order and formally inscribe and legitimate the practice of domination, while also carrying out the goals of the civilizing mission. Therefore, an omnipotent judicial system would replace the role of the military. In fact, Falcone and Caffraël insisted on integration of the European penal code with African customs to create a new, mixed code and avoid a deferral to the military penal code as had happened in the past.¹¹²

CONCLUSION

On May 24, 1903, parliament passed an amended civil constitution (*Legge Organica*) which guaranteed the creation of civil codes in Eritrea within eighteen months of the law’s publication. In 1902, the minister of foreign affairs, Giulio Prinetti drafted and presented this new constitution to parliament where he reiterated that its primary function was to reflect the colony’s development in the twelve years since 1890. Along with repartitioning land into different commissariats, Prinetti expressed the need for an updated constitution in order to streamline bureaucratic procedures and increase the colony’s administrative efficiency.

Prinetti’s proposal demonstrates a shift in the colony’s governance from focusing on more territorial concerns to the restructuring of the colony’s internal structure. Whereas this chapter has explored the reliance on the military to govern the colony and ensure public order, the end of the nineteenth century and beginning of the twentieth saw a more concerted effort to rule the

¹¹¹ Chiara Giorgi, “Magistrati d’Oltremare,” *Studi Storici* 51, no. 4 (2010): 855.

¹¹² Giorgi, “Magistrati d’Oltremare,” 856.

colony in civil terms, pioneered by the appointment of the first governor of Eritrea, Ferdinando Martini. Martini became governor in 1897, the year the military jurisdiction over the colony was abolished and the capital was moved from Massawa to Asmara.¹¹³ Some historians have argued that Martini's pivot towards a more civil, conciliatory approach to governing the colony came following Governor Baratieri's land seizing campaign which angered locals who had once supported the Italians resisted.¹¹⁴

Nonetheless, the formal creation of Eritrea in 1890 lacked a comprehensive strategy to rule the colony beyond the use of military force. The constitution establishing the colony was born out of political ambition and cast as a necessary development in Italy's future as a great, imperial power. Rather than promoting the ideological reasoning for the establishment of the colony, its creation quickly became an economic project and thus returned to the more practical, commercial benefits defended by secretary Mancini. *La colonizzazione agricola* exemplifies early efforts to add value to the colony's land and bolster Italy's economy through exports. This was based on erroneous knowledge about local land use and its dedication, thus prompting resistance. Italians realized their insufficient knowledge about the area, resulting in ethnographically-based theories on the division of land through legal systems. Jurists postulated the creation of a strong colonial judiciary as a replacement to the ruling military autocracy. The bifurcated legal system would mediate local customs, traditions and procedures with Italian civil law, as well as engrain the 'civil' nature of Italian law over that of the locals. We conclude how the phenomenon of colonialism in the case of Eritrea seldom developed in view of an ideological master plan, but rather unfolded serendipitously with the time and responding to its circumstances.

¹¹³ Taddia, *L'Eritrea – Colonia: 1890-1952*, 65.

¹¹⁴ Del Boca, *Gli Italiani in Africa Orientale*, 360.

CHAPTER 3: INVENTING TRADITION AND COLONIAL LAWS OF THE TWENTIETH CENTURY (1897-1907)

In March 1896, Menelik's army defeated Italian troops led by Baratieri and secured Ethiopian independence until 1935. The battle of Adwa left in its aftermath a lingering image of Africa in the eyes of Italians as an even more dark and threatening land. Del Boca notes how such resentment would foster a new imperialism founded on myths about the region, and eventually allowed for fascism to devise its colonial projects.¹¹⁵ At the root of this bitterness, Italians continued to rule with suspicion and ignorance. Del Boca writes, "After eleven years since the landing in Eritrea, Italians only had vague understandings on their neighbor-enemies, most of which were wrong and filtered through a colonial literature oftentimes misinformed and crude."¹¹⁶ These distortions which characterized Italian colonial rule in Eritrea would continue into the twentieth century and riddle further efforts at institutionalization with contradictions.

This chapter follows the colony's formal developments within a legal framework under the rule of Ferdinando Martini, Eritrea's first civil governor. After examining the creation and language of the colony's amended civil constitution in 1903, this chapter analyzes the new, exploitative function of the colony rather than its existence as a settler colony. Along with new ideas about the colony's utility to the economic growth of Italy, I consider Martini's efforts to create a new, more informed legal system through the collection of information on existing legal systems, and 'traditional law.' Thus, through 'practical ethnography' as coined by the Italian anthropologist Gianni Dore, Italians convinced themselves they understood their colonized societies enough to try and create a set of norms which codified local practices and behavior, otherwise known as *i codici Eritrei*. Ultimately unsuccessful in their imposition, these Eritrean civil codes serve as evidence for Governor Martini's efforts to sway colonial rule towards being

¹¹⁵ Del Boca, *Gli Italiani in Africa Orientale*, 719.

¹¹⁶ Del Boca, *Gli Italiani in Africa Orientale*, 719.

more conscious, but ultimately relying on an unsound correlation which took a lack of knowledge about inhabitants to be an absence of one in their communities.

A CAPITALIST COLONY

In his *Oltremare*, Nicola Labanca distinguishes between three historical periods of Italian colonial rule: the first starting from 1869 with the purchase of Assab up until the formal establishment of the first Italian colony in 1890; the second spanning Italy's late age of imperialism and the third, starting from the end of the Battle of Adwa to the outbreak of the First World War in 1914. According to Labanca, in this final period, Italian colonial officials focused primarily on reorganizing the colonial administration and establishing stronger market economies tied to the motherland. Thus, the 'period of organization', or *tempo dell'organizzazione*, as Labanca names it.¹¹⁷ Spearheading efforts at internal reorganization was Ferdinando Martini, governor of Eritrea from 1896 to 1907. First under the government of Antonio Di Rudini and then that of Giuseppe Zanardelli, Martini was tasked with reducing the cost of the colony for the state, as well as developing a civil government vis-à-vis the existing military one. The primary objective was to avoid another violent confrontation at the border with Ethiopia.¹¹⁸

Italians from a range of ideological backgrounds appreciated Martini's efforts; anticolonialists supported his respect for the border with Ethiopia, while colonialists were pleased he resisted pleas to abandon the colony completely following their defeat at Adwa.¹¹⁹ Martini condemned the colony's long military stranglehold for impoverishing its inhabitants. In the diary he kept all ten years of his governance of Eritrea, Martini exclaimed, "Order, discipline,

¹¹⁷ Labanca, *Oltremare*, 100.

¹¹⁸ Del Boca, *Gli Italiani in Africa Orientale*, 750.

¹¹⁹ Labanca, *Oltremare*, 102.

justice, economy. Without these, the colony cannot be governed, nor saved.”¹²⁰ Among the most critical factors in Martini’s successful rule of Eritrea were his economic policies. The governor needed to orchestrate a colonial economy that would match the rapid industrialization and modernization occurring in Italy following the end of a long depression from 1873 to 1896.¹²¹ In so doing, Martini moved away from the model of agriculture colonization, *colonizzazione agricola*, once promoted by Franchetti to a more capitalist project. Del Boca highlights how Martini was disillusioned with the outcomes under Baratieri and Franchetti’s settlement colony and favoured a more paternalistic economic plan for the emigration of capital over that of labour.¹²² The idea for capitalist, colonial agriculture took the form of the establishment of large-scale plantations in the south-western highlands of Eritrea first theorized by Italian economists who visited the colony.

Among these economists was Gino Bartolommei-Gioli who was commissioned by Martini to develop a new economic model for the colony. In 1902, Bartolommei-Gioli delivered a memorandum to the academy of Georgofili, an academy in Florence, on the attitudes in the colony towards agriculture (*Le attitudini della colonia eritrea all'agricoltura*). In his speech, thereafter transcribed, Bartolommei-Gioli detailed his observations from his time in the colony, as well as proposed a move towards large-scale agricultural manufacturing. The economist reiterated the uncertain and volatile nature of the colony’s climate that only privileged certain types of crops: Bartolommei-Gioli stated, “It is my advice that the we need to incentivize the production of a grain-culture, *cerealicoltura*, in the more elevated regions, to create the

¹²⁰ “Ordine, disciplina, giustizia, economia. Senza di ciò la colonia né si governa, né si salva.” Ferdinando Martini, *Il diario Eritreo*, vol I (Firenze: Vallecchi 1947), 89. Translation mine.

¹²¹ Labanca, *Oltremare*, 100.

¹²² Del Boca, *Gli Italiani in Africa Orientale: Dall'Unità alla marcia su Roma*, 755.

foundations for colonial agriculture.”¹²³ Bartolommei-Gioli argued that grain’s low cost of production in the colony is a valuable attribute for any export to Italy: their lower prices would entail low tariffs upon entry to Italy.¹²⁴ Moreover, Bartolommei-Gioli explained that the inevitable surplus of grain could lead to profitable industries such as pasta factories and distilleries sourced from the production of durum wheat in the highlands, and sorghum in the less elevated regions.¹²⁵ The economist also extended the need for a greater crop yield to other legumes such as beans and chickpeas which can grow at different altitudes at temperate climates. Ultimately, Bartolommei-Gioli’s advice for the development of agriculture in Eritrea represents a shift at the beginning of the twentieth century towards a more capitalist, market-regulated colonial economy.

In his survey on the policies, praxis and impact of Italian colonialism in Eritrea, the historian Tekeste Negash notes that this shift of a capitalist colonial economy was geared towards encouraging private accumulation in the colony. Negash argues, “Without restructuring the basis of the indigenous system, colonial capital attempted to integrate the indigenous economic system to that of Italy and then to the world capitalist system...Capital was organized and distributed in such a manner that Eritreans were excluded from making full use of it.”¹²⁶ Consequently, the new colonial economy proposed by Bartolommei-Gioli sought to create a closed circuit whereby Eritreans were only employed to be exploited for their labour to produce Italian capital.

FROM SETTLEMENT TO EXTRACTION, AND BACK TO SETTLEMENT

¹²³ “E’ mio avviso che alla cerealicoltura si debba dare un grande impulso, costituendo da essa, in special modo nelle regioni elevate, il fondamento dell’agricoltura coloniale.” Gino Bartolommei-Gioli, *Le attitudini della colonia eritrea all'agricoltura* (Firenze: Tipografia di M. Ricci, 1902), 20. Translation mine.

¹²⁴ Gino Bartolommei-Gioli, *Le attitudini della colonia eritrea all'agricoltura*, 20.

¹²⁵ Gino Bartolommei-Gioli, *Le attitudini della colonia eritrea all'agricoltura*, 21.

¹²⁶ Negash, *Italian Colonialism in Eritrea, 1882-1941*, 47.

Crucial to understanding the gradual introduction of industry and capital to the colony was the imaginary divisions of land according to its use. The idea to legally split land in the colony with respect to its function appears in parliamentary documents as early as 1902. On March 13th 1902, the minister of foreign affairs Giulio Prinetti, under the leftist government of Giuseppe Zanardelli, presented a proposal for a new civil colonial constitution to the lower house. In his speech to the deputies, Prinetti discussed the royal decree of 1890 in light of its limitations: while useful in establishing the colonial administration of Eritrea, the law created unnecessary precedents for government authorization for colonial affairs and did not reflect changes in colonial control over the intermediate twelve years from 1890 to 1902. In the law's preamble, Prinetti explained how the law of 1890 required the King's government to concur with the Council of State on all affairs, as well as annually refer to the parliament.¹²⁷ As an example of an affair requiring authorization from the central government, Prinetti distinguished a law which allows the government to freely grant up to ten thousand hectares of land for colonial agricultural use. There is, however, "an absolute silence", as Prinetti described it, surrounding land requested by the colonial government for commercial and industrial use. By expressing the need for a faster bureaucratic system to authorize colonial projects centered on land use, Prinetti calls for a reorganization of the colony's administration (in the period of the *tempo dell'organizzazione*) and implies a correlation between the development of the colony and the use of land beyond agriculture.

Article nine of Prinetti's parliamentary draft sought to firmly establish the right to colonize land for the extraction of resources and their manufacturing. In his speech to the

¹²⁷ *Disegno di Legge: Ordinamento della colonia Eritrea* N. 57, legislative act presented by Giulio Prinetti on 13 March 1902, Governo della Colonia Eritrea, inventory 46, box 16, Ferdinando Martini Papers, Archivio Centrale dello Stato, Rome, Italy, 1.

chamber of deputies, Prinetti explained Article nine is “necessary, as deemed by experience, for the administrative, economic and exploitative development of the colonial territories.”¹²⁸ The article is divided into six parts: the first three parts allow the expropriation of land for industrial use (*scopo edilizio*), as well as the concession of up to fifty hectares of land to private entities for agricultural colonization (*colonizzazione agricola*). Sections four, five and six of article nine outline the parameters for extraction and exploitation in the colony. While section four of the act gives legal precedent to the governor of the colony to contract private entities for the extraction of natural resources for up to fifteen years, section five gives the governor jurisdiction to impose taxes, tariffs and tributes as well as exemptions to ‘indigenous’ populations. These exemptions, however, cannot exceed more than a decade nor can they subtract more than 5,000 lire in costs as expressed in the last section of the act.

Article eleven of the act also promotes the capitalist development of the colony, but by means of a specific enterprise: mining. Subsection 1 of the article conceded new industries or ‘tentativi intesi’ to extract resources and natural riches from the colony, exemptions from competitive customs, immunity from taxes and tariffs for up to thirty years and a permit to build commercial enterprises valid for thirty years.¹²⁹ These significant financial incentives to develop industry in the colony indicate the extent to which Prinetti believed in the capitalist transformation of the colony. The second subsection of the article conceded mines, and the third, the concession of land with the scope of *colonizzazione*, settler colonialism, as long as it is less than 20,000 hectares and extends rights to the company (*Società*) for a maximum of fifty years.

¹²⁸ “L’articolo 9 attribuisce, oltre quelle ordinarie, al Governatore della Colonia alcune maggiori facoltà, che l’esperienza ha dimostrato essere necessario deferirgli, ove realmente s’intende provvedere in modo proficuo al retto e non inceppato andamento dell’amministrazione di questi nostri possedimenti e promuoverne in modo efficace lo sviluppo economico e lo sfruttamento.” *Disegno di Legge: Ordinamento della colonia Eritrea*, Ferdinando Martini Papers, 5. Translation mine.

¹²⁹ *Disegno di Legge: Ordinamento della colonia Eritrea*, Ferdinando Martini Papers, 5.

The last section of article four stipulated the right to build debt through mortgages provided that the burden on the balance of payments in the colony doesn't surpass two thirds of the local revenue.

Three months after this session, the lower house revisited Prinetti's proposal and a parliamentary commission presented their edits to the bill. In the introduction to the commission's revisions, the speaker Leopoldo Franchetti acknowledged the necessity for legislation which impeded the efficient use of the colony's productive capacity, both through quicker bureaucratic processes and a redistribution of land for large-scale industry. Franchetti referenced article 9 and 11 of Prinetti's proposal in view of the economic incentives they provide for the colony's economic development.¹³⁰ But, he argued the ministerial proposal did not go far enough: it did not account for the maintenance or distribution of public goods in the colony nor did it redistribute enough power from the King of Italy to the colony's governor. Franchetti understood the proposal's incompleteness as a symptom of the lack of information on: "the land's productiveness; on the indigenous rights and customs with respect to land; on the expansion of land necessary for agriculture and indigenous herding; on the existence and legal condition of public property."¹³¹ However, now, three months after the ministerial proposal, Franchetti asserted there was more than sufficient knowledge on each of these points to formulate comprehensive colonial legislation. Once again, we note a tension between knowledge on the region and its inhabitants and the construction of comprehensive colonial law. Most importantly, policy makers began to use the accumulation of new knowledge as an incentive for

¹³⁰ *Relazione della commissione*, revision to legislative act presented on 7 June 1902, N. 57-A, Governo della Colonia Eritrea, inventory 46, box 16, Ferdinando Martini Papers, Archivio Centrale dello Stato, Rome, Italy, 5.

¹³¹ "Ma allora l'astensione era giustificata dalla mancanza di informazioni sulla produttività del suolo della colonia, sul diritto e sulla consuetudine indigena riguardo al suolo; sulla estensione di territorio occorrente all'agricoltura e alla pastorizia indigena; sulla esistenza, l'entità e la condizione giuridica del demanio pubblico." *Relazione della commissione*, Ferdinando Martini Papers, 5. Translation mine.

new legislation so that in the colonial context of Eritrea, more knowledge translated to a better system of control.

The commission's revision of Prinetti's draft claimed to fill gaps in the government's information on the region, but in view of an evident objective to promote Italian emigration to the colony. Franchetti argued that Italians have paid enough blood and fatalities for just compensation in the form of resettlement and seizing the land's productive output, both of which can only occur once there is a concession of public goods (i.e. sanitation and access to water) and land arrangements concerning rights to property.¹³² Most of the revised draft focused on building infrastructure to promote Italian settler colonialism in the highlands bordering Ethiopia. According to Franchetti, because of shattered illusions on the highland's fertility which once provided a reason to emigrate for economic prosperity—Franchetti recalls Gino Bartolommei-Gioli's memorandum—the settlement process needed to be quick and accessible as an alternative motive for moving. As a result, with respect to article 9 of Prinetti's draft, the commission proposed that within eighteen months of the law's publication, the King's government should arrange all State land in relation to its desired function, including that for mining, with the scope of facilitating Italian emigration.¹³³ Similarly, for article 11, the commission proposed a complete direct tax exemption for all industry and enterprise in their first decade. Ultimately, the commission's revision privileged a fiscal system which exempted nascent industry to stimulate Italian migration and capital. We note that while Prinetti's draft focused more on the details of growing colonial industry and enterprise such as mining, the commission sought to refocus on settlement, once pioneered by Franchetti himself. These parliamentary debates on colonial legislation provide a window into the conflicting nature of Italian colonial

¹³² *Relazione della commissione*, Ferdinando Martini Papers, 5.

¹³³ *Relazione della commissione*, Ferdinando Martini Papers, 15.

politics (in this case, the debate centered on the colony's economic purpose) which shifted with time and new discoveries.

Prinetti's intentions for the colony were somewhat realized: in March of 1903, parliament passed *La Legge Organica* of Eritrea which unified the colony's territory from a legal perspective and formalized different judicial organs for cases between Italians, and those between locals. The law conserved 'traditional' legal systems to rule over civil cases, and designated significant administrative power to the Italian functionary, or *il Residente*, who would transcribe disputes between locals and act as a judicial authority along with the head of the certain community, *capi-villaggio*. It wasn't until 1909 that parliament passed legislation detailing specific land arrangements for the colony. The law, *l'ordinamento fondiario*, divided land between 'indigenous' property (*demanio indigeno*) and available property (*demanio disponibile*). Article 2 codified respect for 'traditional rights' of the land inhabited by locals: "The rights of indigenous population will be respected on their land in accordance with ancient, local customs."¹³⁴ It is important to note the emphasis on the correlation between local tradition with something archaic which opposes the more 'modern', colonial notions of private and public property and helps to construct a colonialist binary used for colonial rule. Article 5 of the law identifies what consists of available property land that once belonged to "tribes" or "factions" now extinct, abandoned villages, forests and woodlands, mines and queries, land traveled by pastoralist communities, and *gult* land. Irma Taddia notes the effect of this article, namely the inclusion of *gult* land as available to Italians and considered feudal as it figured into a larger

¹³⁴ "Saranno rispettati i diritti delle popolazioni indigene sulle terre da esse godute conformemente alle antiche consuetudini locali." "Art. 2," Regio Decreto del 31 Gennaio 1909 n. 378, Normativa: Il Portale delle Legge Vigente, accessed February, 18th 2023, <https://www.normattiva.it/atto/caricaDettaglioAtto?atto.dataPubblicazioneGazzetta=1909-07-29&atto.codiceRedazionale=009U0378&tipoDettaglio=originario&qId=&tabID=0.09183293435162132&title=Atto%20originario&bloccoAggiornamentoBreadCrumb=true>. Translation mine.

social hierarchy, and the exclusion of *resti* land, or land tied to kinship.¹³⁵ But, *gult* land did not represent a specific form of property: the land it encompassed could often fall under the category of *resti*, with the exception of the imposition of an ulterior tax by the *gultegna* (the political figure appointed by the King and in charge of the land). A recognition of *gult* land represented a certain political domain rather than a division of property. Hence, the colonial reorganization of local land tenure systems which separated these two concepts was virtually impossible without alienating cultivation by local farmers all together.¹³⁶ In a similar way to how Governor Baratieri misunderstood the land belonging to the King as that belonging to the State in 1891, the land arrangements of 1909 failed to recognize the inseparability of the *gult* land from *resti*, based on a misunderstanding of the agriculture system in the highlands.¹³⁷ Moreover, the limitations placed on local farming supports Negash's observations on the construction of Italian capital for Italians, rather than for Africans.

I CODICI ERITREI

In order to understand the extent to which inaccurate Italian knowledge played a role in the construction of colonial law in Eritrea, it is worth signaling the attempts at ethnography by Italian functionaries at the start of the century. In 1904, Martini sent out a memo to the Italian residents of Eritrea requesting information on the way locals cultivated and organized their land. This data would be the basis for the Eritrean civil codes, a set of norms taken from the Kingdom of Italy and then adapted for the colonial situation. According to the *Legge Organica* passed in

¹³⁵ In the highlands, agricultural work was deemed the noblest work so farmers had the most social prestige. The privilege of land, however, was hereditary forming a concentric system of power upheld by an aristocratic class. This elite not only upheld social power, but also political; the *cicca-scium* or *capo-villaggio* who was the main authoritative figure of the society was chosen based on their prestigious relationship with the land. The leader overlooked all agricultural works including plowing, tending and cultivating grain harvest, namely teff and orzo. Taddia, *L'Eritrea – Colonia*, 91.

¹³⁶ Taddia, *L'Eritrea – Colonia*, 221

¹³⁷ Taddia, *L'Eritrea – Colonia*, 227.

1903, Italian laws needed to be published and applied in the colonial territory until the creation of formal civil codes for ‘Eritreans’, expected eighteen months after the law’s publication.

From the responses to Martini’s memo, two central conclusions emerge. The first centers on the transformation of government functionaries into ethnographers in the colony. Writing in 1905, the resident T. Marazzani Visconti Terzi outlined the use of land and agricultural practices of communities in the Sewasew region in the north-east bordering Sudan—another colonial construction when Italians arbitrarily divided Eritrea. At the start of his response, Terzi claimed that with respect to the possession and appropriate use of the land, few elements can be observed as aiding a fruitful harvest, as would be the case in the southern regions of Eritrea.¹³⁸ Terzi continued by stating that of the pastoralist communities in the Sewasew, only the Rashaida and Ad Témaryam had special customs relating to land. Terzi then gives a brief historical explanation for the lack of agriculture practices among some “tribes” in the region, based on “too sparse oral tradition.”¹³⁹ According to Terzi, the Habab stopped cultivating land nearly 250 years earlier, and had not restarted in full vigor despite the great increase in population density of the region. Terzi claimed, “Properly said: there is no cultivation of any merit, which wouldn’t even maintain ancient traditions of harvest from farmers descended from Asgade” (a legendary ancestor from the sixteenth century) but which needed restart if the community was to survive.¹⁴⁰

Terzi asserted the merit of agriculture not only based on his knowledge of past agricultural practices compared to his current observations in the region, but also because of his

¹³⁸ Residente T. Marazzani Visconti Terzi, “Regime delle terre per le tribù del Sahel,” copia di rapporto n.38 in data 23 gennaio 1905 in risposta alla circolare N. III07 del 20 ottobre 1904, Governo della Colonia Eritrea, inventory 46, box 16, Ferdinando Martini Papers, Archivio Centrale dello Stato, Rome, Italy.

¹³⁹ Residente T. Marazzani Visconti Terzi, “Regime delle terre per le tribù del Sahel,” Ferdinando Martini Papers, 1.

¹⁴⁰ “Propriamente detto: coltivazioni certo di nessun conto e che non valsero neppure a mantenere per esse in uso le antiche tradizioni dei coltivatori discendenti da Asghedè.” Residente T. Marazzani Visconti Terzi, “Regime delle terre per le tribù del Sahel,” Ferdinando Martini Papers, 1. Translation mine.

insistence that the Habab cultivate the land according to Italian government regulations. In fact, Terzi's account reveals a commitment on the part of the Italian government to assert their dominance among the different communities in the region, communities which had retained bargaining power over the Italians when they started to expand inland in the late nineteenth century during a period of conflict. Largely a consequence of the Mahdist Rebellion in neighboring Central Sudan against the British empire in 1881, the conflict in the Red Sea spread rapidly. Britain forced Egypt to withdraw from Sudan, leaving a power vacuum into which Italy, France and Britain entered. This fighting eventually disrupted pastoralist economic strategies as trade stopped and pastures became battlefields.

Participating in the conflict became a strategy for rebel pastoralist groups to make claims on international resources.¹⁴¹ Serels argues that following the withdrawal of the Turko-Egyptian administration from Sudan, “non-aligned pastoralists sought out material support from the British, French and Italian officials who were trying to establish imperial claims to the greater SRSR” (Southern Red Sea Region).¹⁴² In so doing, European powers began making claims over the region through alliances and exchanges, rather than immediate warfare and the ‘subjugation’ of locals. Reading Terzi's memo written a decade later, we note how the consolidation of colonial rule meant erasing any sense of equal negotiating power between different authorities in the region. Concerning the different groups inhabiting the Sewasew, Terzi wrote, “They have all been alerted that the land belongs to the government (*Governo*) insofar as it is solely the government who can assign land to those who request it, and that this concession is temporary,

¹⁴¹ Serels, *The impoverishment of the African Red Sea Littoral 1640-1945*, 82.

¹⁴² Serels, *The impoverishment of the African Red Sea Littoral 1640-1945*, 83.

and by no means guarantees property rights to the first farmer.”¹⁴³ Terzi reinforced the presence of the government in an effort to insert and superimpose Italian rule over questions of land. Terzi asserted that land concessions were “temporary” and subject to sequestration from the government at any moment so that there was no guarantee of property rights. Further, because of their dual role as both colonial functionaries and ethnographers, residents maintained a degree of institutional power through their knowledge about the region and so shaped what information was relayed to lawmakers in Rome.

The second conclusion from these colonial monographs draws from the power the residents held to represent the regions. In *Amministrare l'esotico: l'etnografia pratica dei funzionari e dei missionari nell'Eritrea colonia*, the Italian anthropologist Gianni Dore uses colonial monographs and ethnographies of Eritrea to parse out an important feature of Italian colonial politics which relied on the knowledge of the institution, il *sapere dell'istituzione*.¹⁴⁴ Dore deploys the research produced at this time by Italian functionaries and scholars as a system of control: the knowledge of the dominated population served as a field for the colonial government to exercise its rule. As evidence for his argument, Dore relies mostly on the monographs from Alberto Pollera, an Italian functionary who lived in the Western lowlands of Eritrea for nearly seven years. Dore's philological, deconstructive analysis of Pollera's research reveals a tendency to emphasize the Kunama society's homogeneity, rather than their variations. In another one of his papers, Dore succinctly phrases his main argument: “The practical ethnography of early twentieth-century officials is essentially allochronic; it is committed to

¹⁴³ “Tutti furono avvertiti che il terreno è del Governo e che come tale, al Governo solo spetta di assegnarlo a chi ne fa domanda e che tale concessione è temporanea e non crea diritti di proprietà al primo coltivatore.” Residente T. Marazzani Visconti Terzi, “Regime delle terre per le tribù del Sahel,” Ferdinando Martini Papers, 2. Translation mine.

¹⁴⁴ Gianni Dore, *Administrare l'esotico: l'etnografia pratica dei funzionari e dei missionari nell'Eritrea colonia*. (Padova: Coop. Libreria Editrice Università di Padova, 2017), 18.

locating in different periods the civilizations of the peoples of any area, and it generally tends to classify them by creating discrete units and typologies, and by ascribing different psychological profiles to different groups of people, in order to govern them.”¹⁴⁵ The first few sentences of Pollera’s response to Martini’s 1904 memo affirm Dore’s observations on the generalizing nature of colonial monographs. Reporting on the Barka region in the south-western region of Eritrea, Pollera wrote in 1904: “The livelihood of the majority of the population in this region depends almost exclusively on herding, and the livelihood of the nucleus of these people, the Beni-Amer, treat questions of property and land with little to no importance.”¹⁴⁶ Pollera used all-encompassing descriptors such as “majority” and “exclusively” to facilitate simpler, generalizing observations about the residents of the region. Another example of the oversimplification of Pollera’s response is his observations about the use of land by inhabitants in the Eritrean highlands, along the Tekezé and Mareb rivers. Pollera acknowledges the difference in the possession of property between the Nara and the Kunama societies: the former relied less on the gestation of land through patrimonial ties than the latter. Pollera doesn’t explore this difference beyond surface-level but maintains the absence of “serious ties” linking these communities except for a force of inertia.¹⁴⁷ Not only do Pollera’s comments demonstrate efforts at using ethnography to reinforce the supposed inferiority of the colonized, but also exemplify how Italians relied on the ethnographic present, that is taking the moment of ethnography and projecting it backwards unto the unchanging past.

CONCLUSION

¹⁴⁵ Gianni Dore, “Identity and Contemporary Representations: The Heritage of Alberto Pollera’s Monograph, “I Baria e i Kunama,”” 73.

¹⁴⁶ Residente Alberto Pollera, “Regime delle terre nel Barca,” copia di rapporto n.I699 in data 20 dicembre 1904 in risposta alla circolare N. III07 del 20 ottobre 1904, Governo della Colonia Eritrea, inventory 46, box 16, Ferdinando Martini Papers, Archivio Centrale dello Stato, Rome, Italy.

¹⁴⁷ Residente Alberto Pollera, “Regime delle terre nel Barca,” Ferdinando Martini Papers, 3.

Martini's Eritrean codes never fully came to fruition. As Taddia notes, the elaboration of this new Italo-Eritrean law stopped on paper. Their publication kept getting rescinded until 1909. Of the five codes created from a parliamentary commission, only one was eventually applied: the penal code. But, the law was only transcribed in Italian and so couldn't be applied until translation into Arabic and Amharic. Finally, two successive laws in 1912 and 1926 introduced modifications, but which weren't comprehensive enough with respect to the preceding situation.¹⁴⁸

The attempts to formulate Eritrean civil codes are emblematic of a defining tool used by Italian colonialists to centralize power: using knowledge to construct concepts for civil governance. We first noted this in the efforts to create a capitalist agricultural economy after economists studied the region and advised the large-scale industry of certain crops (namely Gino Bartolommei-Gioli). Subsequent rounds of colonial legislation to formally create different regions meant inventing borders to regulate agriculture and industry. Tracing the evolution of these acts through drafts, revisions and eventual enactments provides a glimpse into the difficulty of passing colonial law because of internal debates and ideological differences, a common theme throughout Italy's early colonial period. Lastly, tied to these disagreements was the changing knowledge Italians had about the region. Given the creation of the Italian colonial functionary as both a figure of authority and an ethnographer, the colonial state relied on theories about local land use and tenure based on superficial observations, but which were often overly simplistic and generalizing because they did not reflect an authentic interest in the well-being of local population and their environment, but rather served a specific objective: imperial domination through a more subtle type of governance.

¹⁴⁸ Taddia, *Italian Colonialism in Eritrea, 1882-1941*, 67.

CONCLUSION

By the end of his time as governor of Eritrea, Ferdinando Martini would spend increasingly longer periods of time away from the colony. Martini lamented the lack of resources and support from the metropole which made governing the colony ever more difficult. When Martini departed from his post as governor in 1907, the Italian government had already settled a pattern of colonial rule which relied on the bureaucratization of the colony.

Eventually, the rule of the State came to replace the rule of law in the colony. Nicola Labanca notes how during the period of the rise of fascism in Italy, parliamentarians in Rome sought to enlarge the power of the State in the colony by building a greater administrative and bureaucratic apparatus. In so doing, specific institutional bodies in the metropole each wanted to create their own colonial arm. This institutionalization anticipated the principle of the State's prominence over the whole of society, a defining characteristic of fascist rule in Italy.¹⁴⁹

This project has traced the formation of colonial land laws in Eritrea at the start of its institutionalization. The first chapter examined the ideological framework for Italian colonialism in East Africa. The writings and lectures given by Italian intellectuals and parliamentarians just after Italy's first action of conquest with its commercial acquisition of the port of Assab in 1869 demonstrates public engagement with colonial politics. While justifications for colonialism incorporated notions of racial supremacy and a 'civilizing mission', attempts to formalize Italian colonial rule of Eritrea came from practical concerns about the colony's economic and political potential. In 1890, parliament passed the first colonial law formally recognizing Eritrea, but largely as a consequence of prime minister Francesco Crispi's attempts to legitimize his political success, as well as rescue any ounce of political relevance among the concert of European

¹⁴⁹ Labanca, *Oltremare*, 344.

colonial powers. An ideological framework to Italian colonial conquest in Eritrea is not absent from this history, although its relevance in the eventual development of colonial policies results less significant than diplomatic strategy, especially considering the apparent contradictions highlighted by intellectuals—such as the necessity for violence in the project of pacification, or the inability for a complete colonial control because of clerical influence in state affairs. This current would eventually shift with the rise of fascism and the introduction of racial laws in the colony which codified theories about the hierarchy of races.

In considering other defining factors for the gradual occupation of Eritrea and subsequent colonial laws, the second chapter analyzes the role of the military in governing the colony. The first royal decree concerning the colony focused on centralizing power in the hands of the military governor, who also ruled over civil, administrative affairs. In fact, dependency on the military was apparent from institutional changes in Rome: while the ministry of foreign affairs measured the diplomatic gains from their colony, the ministry of war was charged with training colonial officers and functionaries sent to Eritrea starting from 1887, and formally with the royal decree of 1890.¹⁵⁰

In this period, the military also played an important role in seizing territory for the project of settler colonialism, or *colonizzazione agricola*, led by Leopoldo Franchetti. While Franchetti sought to expand Italy's control over land to allow for the emigration of poor Italian peasants in southern Italy, other colonial officials such as the military commander Oreste Baratieri used this economic model for the purpose of conquering land and territorially enlarging Italy's colony. Local resistance ensued, and Italian government officials were forced to reconsider their policies,

¹⁵⁰ Labanca, *Oltremare*, 341.

particularly after Italy's defeat at the Battle of Adwa. Part of this reconsideration included a more studied effort at ordering the colony through law, rather than by force. Juridical manuals appeared at this time, proposing models for the differentiation of legal systems, rather than their assimilation, and based on observation of local judiciaries and past ethnographic research on other regions in Africa. In effect, Italians interested in the colony and advising models for governance approached Eritrea as part of the larger African monolith; an attitude which will later emerge as a pattern as Italians attempted to formulate local civil codes. Furthermore, examining Italian studies on the colony and its intended legal development shines a light on the binary used to frame colonial rule: while Italians followed 'civil', 'modern' law, Africans were used to 'ancient', 'traditional' customs that never changed.

The final chapter of this project seeks to better elucidate this distinction, framing the evolution of Italian colonial law in Eritrea with respect to the first civil government led by Ferdinando Martini. As a useful point of entry for understanding how new information and data collected by Italian functionaries altered the colony's governance, the shift towards a more exploitative and capitalist economy serves as cohesive evidence. Italian economists advised for the establishment and promotion of industry in the colony in the hopes of securing a greater flow of capital to the metropole. Examining the effects of this market-regulated economic theory on the creation of parliamentary acts as another example of how, in absence of a firm, ideological masterplan, new ideas and concepts for the colony transformed into legal action. As a result, one piece of colonial legislation underwent many phases and was subject to parliamentary debate, demonstrating the internal contradictions which riddled Italian colonial rule throughout. Moreover, the emphasis on dividing land according to its purpose coincides with colonial inventions occurring at this time to designate social and political order. The most pertinent

example of colonial inventions to formulate order were the ethnographies compiled by Italian residents in the colony who became crucial to the colonial state's apparatus. In simplifying their observations about the communities inhabiting different regions of the colony, *il Residente* reinforced the binary between the colonizer and colonized in response to the intended creation of Eritrean civil codes.

This research has mapped the importance of land in the construction of colonial laws in Eritrea. Against the backdrop of early ideological justifications for colonial conquest in Africa by Italian intellectuals and parliamentarians, I place a greater emphasis on concerns for territorial occupation and later, the establishment of a potential export economy in explaining Italy's continued engagement in a costly colonial project. Revisiting colonial archives and outlining this trend largely fits into the acknowledged historical narrative which posits the origins of Italian colonialism as mythical: the Kingdom aspired for a return to the days of the Roman empire but struggled to consider strong, logistical praxis. More importantly, my research demonstrates how the existence of a solid groundwork for colonialism was impossible considering the innate contradictions found within the imposition of the colonizer's society over the colonized which rested on subjugation of the latter by the former. The colonial project could not propagate a duty to civilize while not treating 'colonial subjects' in a civil manner.

While this project identified patterns of institutional control through the collection of colonial ethnographies, further research should seek to understand the relationship between laws of the land with personhood laws, including citizenship, civil and penal codes. Historians such as Giulia Barrera have analyzed the effects of laws policing the body of colonized persons in Eritrea, but a correlation with the laws of land ownership and claims would elucidate the ways in

which ideology did figure into the lives of Eritreans living in the colony.¹⁵¹ On a final note, Italian colonial archives are rich in source material, but only became available to the public in the second half of the eighties.¹⁵² Scholars examining these archives for any research greatly contribute to a deeper, more comprehensive record of the country's colonial past and help reconstruct a crucial historical memory for Italians.

¹⁵¹ See Giulia Barrera, "Sex, Citizenship and the State: The construction of Public and Private Spheres in Eritrea," in *Gender, Family and Sexuality: The Private Sphere in Italy 1860-1945*, ed. by Perry Wilson.

¹⁵² For more, see: Silvana Palma, "Colonial Archives, Memory and Political Culture in Italy," *Rassegna di Studi Etiopici* 2, no. 49 (December 12, 2017): 23-40.

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