

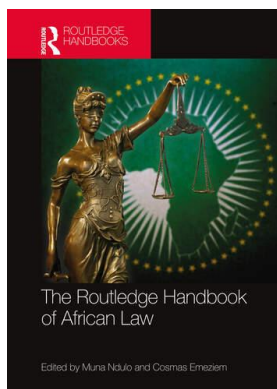
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CITIZENSHIP, RIGHTS, AND POLITICAL SUBJECTIVITY IN ERITREA

Kibrom Teweldebirhan and Luwam Dirar

Introduction

The British Sociologist T. H. Marshall, in his seminal work *Citizenship and Social Class*, argued that citizenship is invested with three constitutive elements: civil, political, and social rights.¹ Marshall's trilogy signified the coming of age of the archaic institution of citizenship.² His discourse likewise signified a discursive confluence of different political theories on how a polity ought to validate citizenship. Political theories embodying semantic plurality broadly converged within Marshall's definition of citizenship. Classical liberalism and socialism, for example, have evolved on the ethos of a political program that marries aspects of both social democracies, which eventually developed into different programmatic projects in the Western world.³ The synthesis of these debates resulted in political and legal consciousness, which resulted in significant transformation of economic and social order in industrial and postindustrial societies in the first half of the 20th century. Citizenship was transformed from a crude political category to an institution with social content.⁴ Postcolonial literature similarly conceptualizes how and why citizenship should be humanized in the global south.⁵ Common in these theoretical and programmatic discourses is the enduring relevance of the citizen and the dialect that political programs should uphold the constitutive elements of citizenship in their varied iterations.

This chapter is not a dialogue with the right and left of political theory in discourses of citizenship, however. Although the chapter converses broadly on these themes, it is a micro excursion into the East African state of Eritrea, which has been the focus of popular and academic attention. Eritrea's colonial experience, revolutionary history, and its experience as a nation-state provide an interesting opportunity and material to interrogate the Eritrean state—to define citizenship, rights, and subjectivity in those historical and political moments. This chapter engages political and legal processes unfolding in the modern Eritrean state to define and interrogate how the state defines citizenship and imagines political subjectivities.

Eritrea has been a subject of academic inquiry. Its trajectory as a sovereign state during the changing world order of early 1990s, the introduction of neoliberal governance systems in Africa, and the historical significance of its armed revolution for independence to the *longue durée* of the Ethiopian state, and to its own state-building project have been some of the common themes. Of late, its human rights record has generated much attention. Reports of rights violations in Eritrea, and continuous arrival of Eritrean migrants in neighboring countries and

beyond, have opened up Eritrea's contemporary situation to analysis and critique.⁶ In contemporary legal scholarship, Eritrea's situation is defined as a case where law and legality have not disciplined politics and personal power.⁷ We are sympathetic to these narratives. We, however, take a different approach. As serious and unsettling as the problem is, limiting Eritrea's contemporary situation to formalistic and descriptive narrative of legal analysis, we argue, obscures the contemporary status and leaves important paradigms undefined and uninterrogated.⁸ We, therefore, claim that Eritrea's contemporary circumstances must be engaged within the political and legal processes that define it, to develop a critique of the social and political relations that the processes both produce and reproduce. Without pretending to exhaust its complexity, we claim that there is causality between the form and exercise of state power and political imagination of subjectivities.

In this chapter, we examine how the Eritrean state defines citizenship and interrogate legal and political processes that mediate the discourse of citizenship. Our claim is that the normative space of citizenship has been a site of intensive ideological contest between the Eritrean state and the individual. The state constantly defines and redefines citizenship, and as such, articulates the subjectivity of the Eritrean person. These include the bureaucratization and domination of the political sphere, constant contingency of citizenship beyond blood and pedigree, and, in most cases, the usurpation of the individuals' individuality. The articulation of these legal and political discourses, we argue, results in the methodical reduction of the individual to an apolitical self, while the state amorphousness into a colossal entity maintains a dominant position in the political sphere. The Eritrean, the chapter observes, is therefore not necessarily a right-bearing subject, but one whose subjectivity is constantly tapped and transposed to that of the state. As we descriptively develop our claim, we intend to simultaneously conceptualize normative concepts of citizenship, rights, and subjectivity in post-conflict societies.

First, a few notes on the substantive and methodological concepts we use. The chapter uses citizenship in its political and juridical sense: citizenship as a "membership category" that defines inclusion and exclusion, and bonds the citizen "to the state as the guarantor of [her] rights" (Verdery 1998, 293).⁹ Our concern is thus to analyze how the state imagines the individual and validates citizenship. Furthermore, we present the discourse of citizenship as a struggle, a contest. Our description may raise a legitimate question of why a struggle or contest and not a discussion of domination, regulation, and so forth? This is a valid claim, especially as the state's domination and violence have been overt and quite striking, but we argue that the state's control and the citizens' resistance have consistently provoked the state to respond with increasing force—literally and figuratively.¹⁰

We ask if and how the Eritrean state validates the individual as a bearer of rights?¹¹ We analyze the theme at the level of generality, and do not not look at all aspects of the rights of the individual. This would be a formidable task, and we do not attempt to do it in a work of this size. Furthermore, we define normative processes broadly. In addition to formal processes, we attach normative value to informal processes that give meaning to citizenship. As much as this decision sounds unusual, discourses of citizenship, we claim, in the contemporary case of the Eritrean state cannot be complete without mapping a plethora of administrative orders and official rhetoric that define and shape normative discourses. Failing to include these informal processes is simply to miss the point. Furthermore, by zeroing in on rights, we do not intend to induct a singular discourse of citizenship. The versatility of rights, as an analytical category, is enticing. As its jurisprudence straddles public and private spheres, rights provide a fitting context in which to interrogate instances in which a state moves between the two spheres to define individual entitlement and the contours of its administrative power, respectively. Second, rights cut across different aspects and contexts of the state and the individual. As such, it helps

to present the state–individual discourse from a broader perspective, as opposed to other categories, which are limited by their own specificities.¹²

The chapter is divided into four parts. With this part as a background, the second section reconstructs historical and ideological debates preceding Eritrean independence and analyzes how competing political forces shaped discourses of citizenship. The chapter observes that the Eritrean Peoples' Liberation Front (EPLF) created a social order in which its militant constituency was subjected to a collectivist–egalitarian order, while the nonmilitant citizen was left in the traditional sphere. The independent Eritrean state, the chapter observes, although formally embracing the ethos of liberal philosophy, has had a far more complicated life than its rebel self.

The third section sketches the state–individual discourse. It describes the consolidation of state power by the executive and the subsequent bureaucratization of the public sphere. It then argues that citizenship has been a site of intense struggle between the state and the individual ever since the liberation of Eritrea. The struggle includes the systematic reduction by the state of the individual to a functional self by taking away the individual's agency and his or her individuality. The chapter then interrogates the instrumentality of law and its institutions in the discourse. The state, we argue, uses formal and informal processes to construct the subjectivity of the individual. In an uncertain legal and political order, the executive easily defines subjectivity of the Eritrean person using formal and informal processes that are often prone to the indulgences of the state.

The fourth section looks at the discussion of “social citizenship,” a state narrative that seemingly challenges the arguments of the chapter. After briefly situating the narrative in a broader conceptual scheme, the chapter critiques the discussion on two grounds: first, the narrative of social citizenship lacks structural coherence, as it embodies two contradictory regimes; and, second, we highlight the plurality of values in the narrative. We conclude in the final section.

The rebel state and ethos of egalitarianism

The Eritrean Liberation Front (ELF) and the the Eritrean Peoples' Liberation Front (EPLF)—the two contesting political forces during the Eritrean revolution for independence—had significant influence over areas under their control.¹³ The EPLF, which ultimately stood out as the sole protagonist in the armed revolution, adopted “a fusion of Afro-Marxist philosophy with secular nationalism,” as it set out to lead a militant constituency and civilian population that would swing between its control and that of the Ethiopian state, depending on realities of warfare.¹⁴ The EPLF led a militant citizenry with strong “collectivist and [...] a non-competitive ethos [...] that opposed an individualist cult of achievement.”¹⁵ Nevertheless, the state did not strictly pursue its egalitarian ideology beyond its ranks. If the EPLF subjected its ranks to a strict egalitarian discipline, the civilian constituency was largely left in its traditional setting (Connell 1993; Pool 2001). This was no more evident than in the policy on the ownership and use of land.¹⁶

In 1977, the EPLF ratified its National Democratic Program, a political program that outlined its policy on important national issues. The Program highlighted inequalities on land-holding and promised to carry out land reform without radically changing traditional land tenure systems (Pool 2001, 108). The Program's friendly gesture toward Indigenous systems illustrates the dual discourses of the EPLF: a non-individualistic attitude toward its militant constituency and a nonradical but reformist agenda toward the nonmilitant constituency.¹⁷

Despite the transformation among its ranks, the EPLF did not profoundly change the basis of the broader social order (Connell 1993; Pool 2001). This was motivated, perhaps, by a drive to build a broad-based society, deeply committed to Eritrean independence, and yet, largely

validated by tradition. In 1987, the EPLF shed its Marxist orientation and promised to embrace a liberal political order after Eritrea's independence (Connell 1993, 273).

The Eritrean state and the shadow of the neoliberal world

When the neoliberal world was celebrating the emergence of newly independent states and “tempting natural experiments” for its policies, the Eritrean state was experimenting with a liberal legal and political order (O’Kane and Hepner 2009, xv).¹⁸ A 1993 proclamation established a transitional government that would lead the transition to constitutional order, and a 1994 macro policy outlined the basics of a market economy.¹⁹ The adoption of these documents, their commitment to rights, and the subsequent set of legislative actions on investment and finance presented the state as a budding, market-minded polity committed to the ethos of the neoliberal world order in academic and policy circles.²⁰ These predications were far from simplistic. The Eritrean state, however, hardly had a gentle encounter with the liberal world (Pool 1993).²¹

The Eritrean state had difficulty reconciling the history, power, structure, and discipline of its rebel past with economic and legal rationality, market citizenship, and liberty that characterized the liberal order of the 1990s. As it set out to create a liberal regime, economic and legal discourses had to resonate with its history.²² This was, for example, the case as the state ventured to restore property nationalized by the colonial state to private citizens, to shed personnel in public service and state enterprises, and, more symbolically, as it faced constituencies who were not enthusiastic with its secular power.²³

Perhaps a notable break from the neoliberal order of the day, and significantly, a break from its own history was the 1994 land reform.²⁴ Under the reform, the state took over the customary land tenure regime by incorporating land under state ownership. By being a land proprietor, the state not only did it displace the institution of the customary tenure, but also to redefine the Eritrean social order. The land reform instantly drew criticism among academic and policy circles for, rather notably, first undermining the interest of Eritrean pastoralists whose way of life and ecological instincts, more than individual or corporate ownership, regulates access to resources, including land. The reform's basic premise, that sedentary communities would have use rights over land, as the critical literature notes, are at odds with pastoral lifestyle in which nomadic communities, especially in the Eritrean lowlands, live in wide and open commons.²⁵ The reform was likewise skeptically received for its politics, that it overshadows the normative relevance of the institution of the customary (Makki 1996), and by doing so, it decontextualizes the individual from the local to the densely political national sphere.²⁶ As we take it further later in this chapter, the incorporation of land and the instrumentality of its proprietorship served as a prelude to the state's strategies on access to wider forms and modes of proprietorship, and became a site of an intensive struggle between the state and the individual. We detail the struggle in the next section, after outlining the making of a bureaucratic state.

Changing faces of polity and of citizenship: From transition to uncertainty

The current discourse of citizenship and subjectivities in Eritrea is a product of legal and political processes, which took a clear pattern with what is described as the bureaucratization of the Eritrean state. Next, we describe the broader context and explain its dynamic.

Political transition to constitutional legal order failed to be realized in 1997, when the tenure of the Transitional Government of Eritrea expired. The legal status of a ratified constitution

remained in limbo as the state was immersed in armed conflict with Ethiopia over a border dispute. The government continued to function, nonetheless. After four years, in 2001, the state abruptly shed the transitional legislature, and the executive fully embodied state power.²⁷ The EPLF's successor, the Peoples Front for Democracy and Justice (PFDJ), became the sole political party in the country.²⁸ The executive, particularly, the president and a cabinet of ministers, has since been the conspicuous face of the state. The president and his office, however, exercise state power.²⁹ The executive dominates the political sphere and runs an intimately managed bureaucratic state (Ogbazghi 2011). Public issues are neither debated nor subjected to judicial or collegial scrutiny.

The executive "rules by decree," as a loose regime of laws govern aspects of the public and private sphere, while official rhetoric and the shadow of the PFDJ exert a strong influence on the bureaucratic infrastructure. In lieu of competing political structures, the executive has easily entrenched its power since 2001, effectively becoming the embodiment of sovereign power. A transitional legislature, as noted already, was set to a slow and unceremonious death, as it finalized draft laws on elections and political parties (Ogbazghi 2011).

The courts have survived, but they operate in limited juridical space (Dirar and Teweldebirhan 2014).³⁰ Courts do not share state power with the executive, as they have no jurisdiction, original or otherwise, on issues of policy or state power. The courts' removal from sharing and taming state power and their canalization into private domains, as we discuss in the next section, bespeaks a cautious use, on one hand, and marginality, on the other, of law and legality by the bureaucratic state.

The marginality of legality, however, does not mean that law has no agency in the bureaucratic state. However difficult it may be to characterize law and legality as particular pathologies or to reduce them to a system of their own, the state is not agnostic to law.³¹ The state uses law to mediate various discourses, including those of citizenship and subjectivities. In other words, the bureaucratic nature of the state does not involve absolute *abandonment of legality* in the public sphere. A loose set of proclamations and regulations give normative edifice to the power of the executive.³² Beyond the formal, informality has significant prowess. Official orders and rhetoric carry significant normative currency in the life of the state. We elaborate on these processes later; first, we analyze how a strange alchemy of formal and informal processes precipitate an interesting dynamic between the state and the individual.

Theorizing the subject: the citizen as a subject

Since Eritrea's independence in 1991, the Eritrean state has, to a varying degree, attempted to redefine the Eritrean social order and the subjectivity of the Eritrean individual in that order. If the 1994 land reform, as noted previously, had profound impact in bringing the individual to the political sphere, different legal regimes have had similar transformative effects. The national service scheme, the diaspora tax regime, and a plethora of administrative orders structure the basis of the social order and the nature of the relationship between the state and the individual.³³ The complex, yet elaborate, normative order, which these regimes create, defines the constitution of citizenship, and consequentially, the subjectivity of the individual citizen. Each legal regime, along with bureaucratic processes that are constantly engaged to mediate the relationship, has significant traction. The national service scheme has been the most comprehensive regime to induct a strong dynamic, not only in defining the imagination of the Eritrean state on discourses of citizenship, but also in populating a different register of subjectivities in the Eritrean social order.

The national service scheme has provided the state an intimate space to define discourses of citizenship of the Eritrean person. Adopted during the transitional political period, and originally for a definite period of time, the scheme has been a normative regime by which the state assumes physical agency of the individual and rationalizes its power to define identities and subjectivities. Narratives of war and developmentalism have buttered the scheme, prolonging its contextual significance in the discourse of citizenship and the state's physical and normative agency over the individual.³⁴ In addition to the national service regime, the state seeks continuous allegiance of the individual to the ethos of the bureaucratic state and officialdom. Breaking from the ranks is not mere defiance of officialdom, but one that redefines one's status in the social order. The importance of persistent deference to officialdom and to the state is nowhere more manifest than in the seldom but lengthy presidential interviews, in which the president asserts that access to citizenry enlistments is contingent upon service and deference to officialdom. The introduction of the diaspora tax extends the state's efforts to control its citizens to those in the diaspora.³⁵ In contexts where the state cannot encapsulate the individuality of the diaspora citizen, the tax regime allows the state to "de-territorialize" the struggle and take it beyond its immediate political frontiers.³⁶ Once competing narratives started to challenge the state's political and economic project, and with the immigration of the bereft and exhausted local, the diaspora citizen assumed a messianic role by tweaking the language of developmentalism and providing further voice to the new frontier of struggle (and the new register of subjectivity that emerges) (Bernal 2014). The normative schemes that the state uses to mediate the local and diaspora citizen defines not only the state-individual relationship but also the nature of the political terrain, the subjectivity of the Eritrean person, and the power of the state in the political sphere. This is the mantra of this chapter, and we address it in the following section.

The state's intensive engagement with the individual crystallizes two significant debates: first, the state assumes physical agency of the individual and it continues to want individuals' allegiance. Second, the assumption of physical agency of the individual and the state's domination over the legal and political spheres (along with systemic engagement with the international legal regime) allows the state to constantly draw the political economy of citizenship—often in terms of attendance in the national service scheme and loyalty to officialdom. The combination of these processes precipitates the following in the social order.

First, the national service scheme and demand for loyalty defines what constitutes citizenship and how citizenry entitlements might be enjoyed. These regimes, as the main features of the ideological contest, transcend citizenship beyond blood and pedigree, in contrast to similar contexts elsewhere.³⁷ Blood and pedigree are either inconsequential or, at most, rudimentary. What matters is not territorial or identity-based claims, but a highly political distinction between the included subject or the renegade individual who resides outside the social order. As it defines these subjectivities, the state easily manipulates the constituting regimes. This is the primary site where the state faces right-conscious individuals: either by the broadly constituted and liberal-minded civil society and the self-contained and interest-focused groups, such as religious, ethnic, and so forth, or the lone individual who would simply crave privacy.³⁸

More to belonging and its secularization, however, the contest redefines the individual's locus in the political sphere. Continuous practice of conscription (accompanied by firmly enforced mobility restriction) sets up a dramatic relationship between the individual and the state. By continuously flexing the national service scheme and other seasonal rhetoric, the state envelops individuals with different levels of definition—the conscript, the combatant, the civilian militia, the diaspora citizen, and so forth. Once subjectively defined, the individual

loses juridical personality and becomes part of the institution of the state. The state methodically transposes individuality from the individual to the persona of the state. Once in those various functional categories, not only does the individual lose those long forgone rights typical to the public sphere—civic and political—but also those of a private nature, which are limited by a systematic logic implanted into the very nature of the functional category to which the individual belongs.

As the state takes over physical and juridical agency of the individual, it maintains normative space between itself and the individual. Being part of an identity of the state, the individual hardly enjoys the joy and celebrity of a public figure. To the contrary, the intimacy with the state makes the individual vulnerable to its indulgences. Once an individual is categorized by the state, that individual finds themselves stripped of their juridical rights also. It freezes their political and the economic rights, and continues to define and redefine the political economy of the individual. Despite the intimacy, the state maintains a clear distinction between itself and the individual. And it “carefully evacuat[es] the intermediate space between itself and the singular individual of all other autonomous sources of authority” (Ruskola 2013, 210). The state morphs into colossal entity by constantly tapping the personality of the individual. As such, it stands as a hegemonic entity in the public sphere—dwarfing other entities that might contest state power or those who might try to assert their presence and identities in the same sphere.

As the state engages in this intensive project of defining and redefining subjectivities, it polemically reiterates the making of a just social order and a social citizen as one outcome of the project. The narrative of a socially just order, as we detail it in the next part, emphasizes a national project that attempts to advance, among others, the well-being of the individual. The rhetoric of welfare, thus, rationalizes the dominance of the state. Beyond the individual’s juridical importance, the individual is a valued subject—political avatar as it were—for the state as well. First, by framing the discourse on an individual basis, the state individualizes the struggle, as it defines citizenship and articulates subjectivities. By individualizing the contest, the state isolates the individual from their social context and destroys the struggle. The individual thus remains lone and timid while the struggle, despite its size and intensity, is inconsequential. Second, by removing the juridical agency of the individual, the state dominates the political sphere and legitimizes its sovereign power within and beyond its territorial sphere.³⁹

Before we analyze how the state constitutes the struggle, two points that have sociopolitical significance in the debate of citizenship are worth noting. The first point is the temporal and spatial dimensions of the debate. The temporal element is first territorial and later overflows beyond the political frontiers of the state. The constant definition and redefinition of registers of subjectivities represent the territorial-temporality of the discourse. The distinction between the subjectivity of the local and the displaced individual that we highlighted in the above normally represents the spatial dimension of the discourse. The migration of the local citizen beyond the borders of the state moves the debate and brings fresh dynamic to the struggle.⁴⁰ The spatial element of the discourse not only populates more registers of subjectivities but also adds intensity, not to mention complexity, as the state articulates and justifies the subjectivity of the Eritrean person beyond its political frontiers,⁴¹ to a rights-conscious diaspora, the bereft immigrant who slowly becomes aware, different rights groups who try to juridify the debate, and other political constituencies who would not hesitate to highlight the state’s discourse in the world of *realpolitik*.⁴²

Another note is the role of the party in the discourse. The party reproduces the state in the public and private spheres. The state uses the personality of the party to dominate both spheres. As the state unfurls from its political leash and swings into state-party mode, it exceeds

its own self and the individual whose agency it has assumed.⁴³ The party likewise maintains a fluid dichotomy, physical and operational, between the state and the market. The dichotomy not only allows the state to aggregate economic power in the market but to take the debate of citizenship as well. The instrumentality of the party or the economic prowess of the state is not a critique on the wisdom of states that have strong affinity toward the market. This is a different issue, and we engage in it in different work. Our claim is that the duality that the persona of the party creates allows the state to rule “on the state of exception” in the broader contours of the economic and the political.⁴⁴

Legislating inclusion and exclusion

Typical to a centralized political order, the law and law-making process is but an extension of the broader political imagination of the state. As we pointed out at the outset, the critical paradigm has been that law and legality hardly have the instinct to contemplate power and politics. This premise provides an interesting baseline and context to conceptualize law and legality in the modern Eritrean state. Leaving this theoretical task aside for the future, we analyze legal processes that the state uses to constitute the discourse of citizenship in this section.

The Eritrean state has drifted along without formal expression of state power.⁴⁵ A transition to constitutional legal order was promised.⁴⁶ It was stalled and was finally aborted as the state settled in a bureaucratic mode (Ogbazghi 2011). There is a dearth of scholarship and advocacy materials on the antecedents and implications of the project and we invite the reader to read them.⁴⁷ For the purposes of this chapter, it suffices to say that the absence of overarching legal framework provides ample space for the state to be unencumbered.⁴⁸

The formal inclusion requirements are defined by different legal regimes that mediate the discourse of citizenship. The national service scheme and the diaspora tax, for example, are part of corpus of laws issued by the state (Hepner 2009). More formally, however, is the prowess and intensity of informal processes that have come to dominate the Eritrean juridical space in the last decade. Presidential orders and rhetoric and a complicated web of bureaucratic processes equally mediate not only discourses of citizenship and subjectivities but other aspects of the social order as well. The president, carrying full agency for the lives that the state has encapsulated, easily wins Weberian rationality (Kennedy 2004). Once the president sets a tone in relation to a particular domain, the rest of the bureaucratic infrastructure makes routine deductive exercises and ensures consistency with the words and tone set by the president. The formal readily accommodates the political fluidity of the informal as well. Often, though, it is left undefined.⁴⁹

Official rhetoric has significant formative and deformative worth. Presidential orders and a continuous flow of orders and directives from the executive and the party map the ethos of daily life (Ogbazghi 2011). In a political landscape without a constitutive legal framework, these orders constitute and supplement formal regimes, including those that mediate the debate of citizenship.⁵⁰

The executive exercises sovereign power unmediated by law or public opinion. The indeterminacy of several components of the public sphere leaves space for administrative discretion. Administrative discretion is further leveraged by the relative weakness of the courts to mediate state power. The state has bureaucratized the courts by limiting their jurisdiction over civil and administrative issues. Courts hardly have power, contentious or otherwise, on issues of sovereign power or policy (see Kibreab 2009b; Riggan 2009; Hirt and Mohamed 2013). Narratives of tradition and expedition have further swamped the already bureaucratized courts—making them *piccolos* of the polity.⁵¹

Thus, different structures, such as the Special Court of the executive institutionally serve political discourses of power and subjectivities.⁵² The broad endowment of adjudicative power to the Special Court, for example, allows the state to adjudicate cases without political cost and, when relevant, as a bureaucratic extension, to mediate discussions of citizenship and subjectivities.⁵³ The political and juridical trajectory of the court and other similar structures are thus crucial in mediating discourses of citizenship and the articulation of subjectivities. The use of structures that reside within the body of the state thus demonstrates how much the state controls itself and the people. The absence of competing adjudicative structures, either in the traditional liberal sense or in other forms that are ideologically articulated and rationalized, evidences the executive's reluctance to share state power. In brief, if law and politics substantively constitute the state–citizen discourse, the executive and the party, not the courts, are its institutional bedrock. As much as it is condescending to the courts, the role of the legal professional, as a civic constituency, is likewise insignificant.⁵⁴ Demands for broader judicial space and privacy for the courts from the executive were not well received.⁵⁵ These demands were met with undue response and left a significant footprint as to how the state imagines the role of the courts in the political order (Beyene 2001). The state likewise carefully engages with other aspects of the legal profession. It has choked the supply side of the legal market by suspending admission to private practice while legal education is systematically undermined (Dirar and Teweldebirhan 2014).⁵⁶ The combined action has led to the erosion of the legal profession as civic constituency, with ideological suppression of legal scholarship, while the practicing professional is left numb and timid, only doing legal chores of the most elementary kind (Dirar and Teweldebirhan 2014).

The basic contention of this section is that a critical part of the normative regime that constitutes the struggle between the state and the individual occurs informally. The informal prowess of rhetoric and deductive processes that shadow the formal would not normally be captured in a formal academic analysis. And, as powerful as the processes are, the informally and deductively adopted norms have formative and de-formative powers. These include, for example: failure to follow-up on legislations that bear substance and enforcement of rights; violations of liberty for individuals or a group perceived to be challenging officialdom and the ethos of the bureaucratic state; the trimming of members of the diaspora who contest the modernity project; the expropriation and witnessed destruction of assets of those who break ranks; the systemic cannibalism of private ventures by state–party monopolies; and so forth (Kibreab 2009a).

Land as a political object

In this section, we look at the debate of citizenship by taking land as a political object and unit of analysis. Although we have attempted to provide a broad narrative, looking at the discourse from a particular perspective provides context and nuance to the theme of the chapter. Before we dive into substance, we offer a few words on methodological issues. Our choice of land triggers legitimate issues if land is a paradigmatic object to engage discourses of citizenship and subjectivity for the physical and normative relationship of land with the state. Being a central state issue, the state enjoys political and legal leverage (as demonstrated by laws on expropriation) over other political entities. Closer to home, land as an ontological object to define citizenship and identities may be problematic due to the emphasis on communal rather than individual entitlements.⁵⁷ As for the epistemological concern—the state's intimacy with land—we claim that the bond does not inhibit the interaction of the state and the individual. Both occur, generally, in two different normative spheres, and they can be objects of inquiry when one encounters the other. With regard to the specific question of the collective nature

of land and its analytic validity to individual-triggered debates, we suggest the following: first, our investigation does not necessarily eliminate either the collective or the individual. Second, important in the communal or collective is the individual's lot under the communal institution. The collective communal has strong managerial role without undermining the relevance of the individual (Traveski 1960; Favali and Pateman 2003; Gebremedhin 2004). Our main intention in this section, at any rate, is to analyze how the state uses land, both as a physical and normative object, to mediate the discourse of citizenship and its significance to the different registers of subjectivities that the discourse precipitates.

As previously noted, the politics of the 1994 land reform is its effect in delocalizing the individual from the local sphere and placing the individual in the national sphere. Related, but which the critical studies that came out after the reform did not clearly refine, and which goes beyond the geographic (highland/lowland/escapement) or sociocultural (peasant or pastoral) divide, is the effect of the state's proprietorship over access to land. If the immediate effect of land reform, as Makki (1996), Rock (2000), and others have correctly noted, had decontextualized the individual from the individual's traditional sphere, the state's approach has had far-reaching effects. Once a proprietor, the state easily mediates access to land as an entitlement. The state employs the use or usufruct regime to hold grips over the individual, and the system bonds the individual with the state. However weak it may be, the use system, politically, is a critical instrument. Using the usufruct system, the state mediates and negotiates citizenship, where loyalty is awarded while defiance is punished. Beyond the normative value of the use system in particular, and the reform in general, though, the state controls two components of the traditional: the institution and the market.

As far as the institutional aspect goes, the state dilutes the political aspects of the traditional land system and fundamentally alters the dynamics of the political and social basis of the traditional. By altering the political nature of the basis of the traditional, the state easily redefines citizenship and identity. Depoliticizing and replacing the traditional with the centralized power structure of the state is the first step. The state's power structure removes political and social powers from the traditional, and with it, the individual. Far and removed from the traditional, the individual faces the state as an atomized being. Once high up and alone in the national and political sphere, an individual might brave the strength of the state but is often prone to its indulgences.

The second effect, which is a function of the depoliticizing of the traditional, is the redefinition of the terms of belonging, inclusion, and its secularization (see, also, Tronvoll 1996, 473). For the traditional, access to land is largely a function of identity. As proprietor, the state fundamentally changes these attributes, and set secular terms—as we detailed in the previous section—submitting to legal regimes that constitute the discourse of citizenship and the status of the different subjectivities towards land. Furthermore, the state monopolizes the market. By market, we do not speak in a transactional sense, but in its broader sense of access, distribution, and redistribution, which give meaning to citizenship, though the state is able to reign beyond the traditional on transactions that occur either on the fringes of the traditional or in autonomous spheres beyond the traditional proper. Once in firm control of the market, the state controls and leverages access, distribution, and transfer of resources that would otherwise would have occurred beyond the sight of the state.⁵⁸

The dialect of social citizenship

The state maintains that it is in the midst of a social justice project, and the making of social citizenship is an archetype of the larger project. Social citizenship, in the state's narrative, signifies

a collective–egalitarian order.⁵⁹ Social citizenship (hereinafter, “the social”), the state claims, goes beyond ensuring formal equality by constructing a politically and economically invested citizen.⁶⁰ The social project, according to the state, is informed by motives to write off “colonial” legacies of inequality and redeem the egalitarian tradition of its revolutionary past. The project would thus include aggressive public expenditure on welfare projects and consolidation of political and bureaucratic powers and processes to galvanize the collective–egalitarian project.

The social, in context of rights, can be broadly related with narratives that contest the formal rights regime. The debate on the priority of rights, broadly speaking, is but one expression of the competing narrative.⁶¹ Related to the priority of rights argument are value-related arguments that critique rights as culturally essentialist and morally Eurocentric.⁶² Related to the latter is a critical narrative of the “formal,” “rigid,” and “bureaucratic” nature of rights regime. According to critics, the formal rights regime obscures the very problems that it aspires to overcome, and, at times, perpetuates privilege or a biased state of affairs and they suggest alternative debates or a serious revitalizing of the rights discussion and its priorities.⁶³ Broadly, these competing narratives echo either a value argument for a formal regime, as the priority debate in the rights regime, or question a dubious colonial, class, or gender backdrop to the formal regime.

Before we proceed, a few words on what we are doing here. Our intention is not to interrogate the wisdom of the social as a project, and we do not intend to draw a parallel with the critical analytical themes that we laid out in the last paragraph. Although part of our conversation might broadly overlap with some of these arguments, we are studying the social project on its own. Or, in other words, this is an internal critique, as we meet the state in its own terms. With this in mind, we engage the social in a limited scope: what the social project has claimed to be and how it has unfolded relative to citizenship and the subjectivity of the individual. The first section argues that the language of social citizenship runs two contradictory regimes at the same time. In the second section, the chapter shows the plurality of values in the state’s discourse and the disconnect to redeem those values.

Social citizenship—Structural inquiry

In this section, we interrogate the structural coherence of the language of social citizenship. We propose that the language is problematic, for two reasons: first, the individualization of the state–individual contest that characterizes the discourse on citizenship contradicts the existence of a collective, as a socio–juridical entity or an abstract ideal. Second, the formal and informal processes that we analyzed in this chapter establish a highly differentiated and individualistic regime—creating tension between an individualistic project and a collectivist ideal. We discuss both in the following.

The social dialect assumes the existence of a “collective” as a socio–juridical entity. We contest this assumption. We advance two arguments. First, the binary nature of the struggle excludes the existence of a “collective” as a socio–juridical entity. Second, the political structure of the state and how that constitutes the struggle hardly metamorphoses the “collective” entity.

We claim that the binary character of the discourse contradicts the existence or representation of other actors in the struggle. The discourse of citizenship that we have analyzed in this chapter distills the terrain of citizenship. As much as setting the terrain, the struggle similarly identifies the protagonists of the discourse: the state and the individual. The state, as we have demonstrated in this chapter, is in constant struggle with the individual. Not only are they alone, but they stand distinct and mutually differentiated. These processes, we argue, precipitate the state and the individual as the sole juridical entities in the political sphere—nothing exists in between or beyond. The state, in its bureaucratic form, poses as a colossal juridical

entity in constant struggle with the individual, while the individual is lone and vulnerable. As it takes agency, the state hardly creates or represents a “collective,” and it strikes an asymmetric relationship relative to the individual. The constitution of the individual, the positivity of the individual’s political being, is but a function of an intensively atomized and continuous struggle with the state. This is how the citizen is constituted to the exclusion of any other process or membership in localized spheres.

The state, as an embodiment of the “collective,” is a broad subject that stretches to fundamental issues of the nature of the state and the basis of the social contract. We cannot obviously address these issues in this chapter. We can, however, reflect on how the “social” or “collective” narrative fits within the political and legal structure, which constitutes the struggle in the context that we are interrogating. Our claim is that the structure of state power and how that power constitutes the struggle hardly metamorphoses into a collective. The monopoly of state power by the executive excludes other institutions that would either share state power or mediates the collectives’ interest as it interacts with the executive. The executive, as we have analyzed in the third part of this chapter, is the embodiment of state power. We have seen the state engaged, in various ways, in a struggle with the individual. By embodying state power, the executive assumes colossal power, which the state taps into by constantly un-subjecting the individuality of the citizen. The executive, as such, is but a site of residual power of the collective, while the individuality of each citizen in the collective is far and removed from each member of the social. The social, as such, hardly represents a distinct socio-juridical entity in the political sphere. As an aside, the courts—the other remaining structures of state power—are condescended, alienated, and exceptionally weak to be able to engage the executive at the behest of the social. Thus, without jurisdiction to define and tame power, the courts are irrelevant in the quest to locate the social.

Our second argument contradicts the coherence of the social dialect by arguing that the state’s formal and informal legal regime establishes a highly differential and individualistic regime—creating tension between an actual individualistic regime and a collectivist ideal. The state’s political and legal processes, as we have analyzed already, create different registers of subjectivity, each validated differently.⁶⁴ As diverse as these registers are, they create a regime where entitlements are awarded, how limited and mediocre they may be, depending on the individual subjectivity within the plural order. The individualization of entitlements, contingent upon functionality and loyalty, as opposed to ethos of collectivism, contradicts the existence or the making of a social citizenship, as the state wishes to advance.

We wish to pause here and ask if a contradiction of two approaches—a collectivist and individualist—is inherently defective? Or, can the state construct a sensible synthesis of these two approaches? These are interesting questions, especially in light of the claim that the social has a strong welfare basis.⁶⁵ Blending seemingly contradictory traditions, at least in the context that we are interrogating, seems hardly problematic. The chapter, however, argues that there is an unhealthy synthesis of traditions, as a structural matter, in the state’s discourse. The state’s social narrative is but an ambivalent dialectical exchange between social rhetoric and systematic mapping of subjectivities across the political, the economic, and the social.

The first aspect of the unhealthy synergy is the methodical reduction of the individual to a functional self—versus a systematic mapping of citizenship in a highly political fashion—thus, the contradiction. This dualistic and contradictory regime creates a social order in which the bulk of the citizenry is stripped of its juridical entity, while a political process produces a differential, yet individual regime. The effect of this contradiction over the collective has been the subject of lengthy conversation in the preceding paragraphs, and we wish to leave it there. If there is a point to be made here about the normative absence of the collective, despite the

state's rhetoric, it is that the social dialect runs as a contradictory parallel to a differential and individualistic regime. As noted previously, the individualist approach does not necessarily void the social. The political and legal processes in motion, however, do not precipitate a social, as they systematically create various registers of subjectivity to which atomized juridical persona of individuals reside.

Another anomaly that contradicts the social dialect is the element of coercion—in its symbolic and actual sense—that maintains the integrity of the state's approach. Continuous demand for labor and loyalty has precipitated a conditional logic to citizenship. Why, then, conditionality if the state's project is primarily collective? A formal, yet socially minded state could efficiently chart out civic responsibility without using coercion.⁶⁶ This could be done either through formal structures, such as fiscal or other redistributive mechanisms of different sorts.⁶⁷ The state seems, in fact, to be seriously challenged in devising noncoercive mechanisms, including deference to popular expectation, “upholding the mass line,” as it were, that politically conservative states would normally exhibit, as it engages with the individual (Ruskola 2013).

The value argument

The social, for the state, is a value-driven project. It is, according to the state, informed by egalitarian values that are dictated by historical reasons—commitment to tradition, social and revolutionary—and the necessity to arrest the socioeconomic gap created by colonial realities. As one can easily sense, this narrative embodies plurality of values, which as we analyze in the following also lacks coherence.

Without attempting to analyze the complexity of the values and their historical contexts at the same time, one can easily see the complexity that asserting these values creates in a particular context. If one confines the contextual analysis to the revolutionary history of the state, for example, despite its commitment to egalitarian values during the revolution, the rebel state's ideological stance was hardly monolithic, formally or otherwise (Connell 1993; Pool 2001). It tolerated the traditional order, thus, the dual order, and formally shifted ideologically during the closing years of the revolution. The shift was followed by formal turn to liberal order a few years into independence.⁶⁸ Beyond the ideological, the state's struggle with the individual and its toll on the individual's welfare has been, across the entire social spectrum, exemplified by a steady wave of emigration and enduring violation of liberty, as the state tries to tame a constituency that is continuously perplexed by the intensity of its political subjectivities. The case of the peasant is, for example, a typical example.⁶⁹

The experience of the peasant, as a social group, contributes to the complexity of the value argument, as the state rationalizes its social project. The peasant citizenry, despite popular expectations that it would wield important power and influence after Eritrea's independence, remains a patchwork of atomized households, struggling for subsistence.⁷⁰ The state has hollowed out peasant manpower by removing its fit and able into the national service scheme, many of whom make up the growing body of Eritrean migrants in Africa and beyond.⁷¹ The land use system, which has been subject of lengthy conversion in this chapter, likewise mediates access to local resources and submits the peasant citizenry to the densely political sphere. On top of the rapidly evolving circumstance of the peasant citizenry, the state had muted institutions early on that could have helped it to secure economic and political patronage in the modern state.⁷² A fair argument that one has to heed at this point is the fact that a collective order has to transcend group interests: for one, it can introduce group struggle that runs contrary to an egalitarian ideal; and two, social groups, such as the peasantry, can benefit from an egalitarian order as part of the collective, without necessarily existing in a structured social form. True,

ideally. The state's engagement, as we have attempted to conceptualize in this chapter, however, has been to engage the individual in an intensive contest, regardless of the social group to which the individual belongs. For the peasant citizenry, this has meant that each and every peasant household is but an isolated political unit whose validity is subject to the subjectivities that it belongs. Second, the continuous demand of labor, which animates a big part of the discourse on citizenship, erodes peasant manpower by removing it from rural areas. Third, the peasantry, and other social groups for that matter, lack agency in the sociopolitical structure of the state. One can easily imagine the overall negative impact that these conditions might bear on the social and economic relations of the peasantry and the rural areas for that matter. Subject to its empirical details, the closely mediated land use system and a gradual conversion of arable land in the highlands to residential concessions (including generations of diaspora who submit to the tax regime), and the potential effect of the growing military, state agricultural concessions, and growing urban centers in the Eritrean lowlands (exacerbated by the overflow of farmers and urbanites from the Eritrean highlands) will tax pastoral and subsistence livelihoods in the Eritrean lowlands.⁷³ These, along with the continuous immigration of the rural constituency, will irreversibly upset the agrarian economy and prevent the agrarian from aggregating economic and political consciousness in the economic and political order.⁷⁴

The third point in our thread of reflection on the value argument is the cultural basis of the social. For a polity, with high regard or deference to tradition, what is the basis of its social project? Although there is a measure of emphasis on the virtues of the collective, patriarchy, and filial duty, Eritrean tradition, across different communities, validates the membership of the individual in the social order regardless how virtuous one is to the social order. Thus, the traditional validates the individual as a virtuous self, with the means and resources for material growth and participation in the social order.⁷⁵

Our intention, in this section, is, generally, to highlight structural and logical coherence and to highlight plurality of values in the state's discourse. In both, we claim that the state and its political project lack enough instinct to transcend from its own self to the immediacy of the collective. Our observation is not necessarily premised on structural or value disparity of the state's narrative with existing political and legal projects—formal, informal, and so forth—but as a critical conversation with the annals of the state's own making. What, in fact, underlies the discourse, as it has been our major preoccupation in this chapter, is, the constant definition of citizenship and formation of subjectivities, as the state articulates who is and what it means to be Eritrean.

Conclusion

Our aim in this chapter has been twofold: methodological and substantive. Methodologically, we have attempted, one, to nudge formalistic and descriptive discourses on Eritrea's contemporary situation, and two, supplement these discourses with conceptual vocabulary to define and interrogate the same. We claim that in rising beyond overly formalistic discourses, one should step back and appreciate the nature, complexity, and malleability of law and legality, and their processes in defining Eritrea's contemporary. We understand the sense of urgency—particularly, for those who do not write merely for the sake of academic production—but one should not likewise be “perplexed” by the simplicity and mediocrity of law and legality.⁷⁶ Law in Eritrea is usually held in contempt for its inability to deal with Eritrea's problems. We agree. Yet, we claim that these approaches obscure the nature of the contemporary, as much they descriptively read it to broader audience. Sticking to formal analysis of what law or legality is or what it should be, for example, would leave a big part of the contemporary undefined

and unexplained. To capture the essence of the prevailing discourse in Eritrea requires recognition of the prowess of the political, the informal, and of rhetoric. The long debate on constitutions, constitutionalism, and constitutional processes, which has dominated the Eritrean public sphere—online and offline—in the last decade, for example, would have been of a second order if there was broader appreciation of political discourse of the state and how those discourses precipitate normativity, as a structure or simply as imagination.⁷⁷ It must simply be conceded that politics have been predominantly used, for better or for worse, for public and private ordering. Or that, as a matter of jurisprudential note, law and legality is not the only mode of ordering. One, as a matter of conceptual and critical inquiry, should thus transcend the mundanity of the present and focus on genealogical and structural inquiries of the discourses and their trajectory on broader themes of the past, the present, and the future.

Our second methodological note is structural. Formalistic discourses limit the range of issues that can be debated, as they collapse the complexity of the contemporary into relational good and bad absolutes. We have attempted to broaden the range of issues that could be debated by drawing critical insight into the nuances and manifestations of state power in the form of law, politics, and coercion, as the state defines fundamental aspects of its relationship with its constituency. As the scope of debate on Eritrean's contemporary, especially on law and legality, is opened up in a broader paradigm, it will pose difficult questions and compel one to take difficult ethical and ideological positions. Whatever the answers to the difficult questions might be or what ethical position one has to take, Eritrea's contemporary should be opened up to a broader debate in scholarship beyond its current exigency.

On substance, the chapter has attempted to conceptualize citizenship and how the state validates the individual as citizen. Citizenship, we argue, has been a site of intensive struggle between the Eritrean state and the individual. The struggle is shaped by the state's continuous drive to draw the subjectivities—legal and political—of the individual. Leveraging the public power that it has progressively accumulated over time, the state, through the agency of the executive, has easily emboldened itself as a powerful political force in the Eritrean political landscape. Although the discourse of citizenship features differently in the political genealogy than we have skimmed, the state, in the contemporary, has had generally an uneasy relationship with the citizen.

The nature of political subjectivity, which we have detailed, provides critical insight about the political imagination of the state and how it defines the political subjectivity. Individual subjectivity does not arise from a political negotiation in which the individual submits political legitimacy to the state and the state validates the individual as a bearer of rights. In other words, the individual is not necessarily a metaphysical subject that automatically embodies rights out of membership in the political community but rather an entity that resides in an intensely contested ideological cosmos whose subjectivity is continuously defined and redefined. Citizenship, as such, becomes a site of power relations where subjectivities are defined and identities are articulated. Of similar importance are diverse processes that crystalize the subjectivities and identities. Formal law has not been the only expression of state power. Informality, rhetoric, and bureaucratic processes carry significant normative currency so that one may not be able to fully grasp the essence of Eritrea's contemporary, the positivity of the political being, for example, should they be overlooked. Our conversation with social citizenship, for example, has highlighted how which informality and rhetoric takes space in the state's discourse.

Social citizenship has been an oft-used narrative in Eritrea's political discourse so that it cannot be overlooked should one try to conceptualize rights and how the state validates citizenship. The narrative carries powerful rhetoric that the state that has used to rationalize state

power, law, economy, modernity, and so forth. Our conversation with the social is preliminary, leaving ample space for further conversation. Our pessimistic entry on the state's social justice project, for one, we expect will draw critical assessment of our analysis—as it is already the case that the Eritrean state celebrates its Millennium Development Goal (MDG) achievements while rights groups decry rights violation and the deterioration of Eritrea's economy.⁷⁸ Waiting for a healthy debate, one can, conceptually or otherwise, study the epistemological and ideological basis of the social project and empirically evaluate programmatic steps, if any, that the state may have taken, in contrast to its epistemic and ethical commitments. The different values that usually accompany state rhetoric similarly invite further research. One can, for example, evaluate how the different values cluster in an ideological spectrum and how they fare toward one other. A relevant issue is to examine how uniformly these values are used across sectors to see if there is a holistic, ethical approach of some kind, or whether different value systems justify, separately, the social, the economic, and the political.

Whatever the merit of these debates might be, our analysis in this chapter leaves us with enough material to reflect on the nature and structure of the Eritrean public sphere and how the nature and structure of the public sphere defines the individual who resides within its periphery. Through gradual appropriation of power and space in the public sphere, the state stands as a hegemonic entity and has ably transformed the public sphere into an asymmetric terrain that is kept intact through coercion and violence. The residue of coercion and violence in the public sphere, we claim, can give way to irreversible violence, where rather than a healthy and evolving discourse, the hard won political identity of the Eritrean person can be subjected to undue violence. As unsettling as these developments are, however, the hegemonic instincts of the state and its affinity to tax hard the individual should be studied further. How much of the current discourse is nostalgic for the stoic subjectivities of the revolutionary vanguard, the militant, and the martyr, in contrast to the reactionary, the traitor, and everyone in between, that has underlined how the social structure of the rebel state should be subjected to social theory and historiography (Connell 1993; Pool 2001). The outcome of these studies can help explain to what extent the state is challenged to transition from social and political structure of comrade and comradeship to citizen and citizenship.⁷⁹

As much as deeper engagement of these issues in history and in the contemporary is needed, we are similarly interested in provoking thought on what the Eritrean discourse might mean in the broader discourses of political and legal subjectivity. This is not to exaggerate the empirical significance of the Eritrean experience and attach undue conceptual and theoretical credit to it. The experience has so far been fluid and fairly isolated. Yet, the following seems to beg reflection: the complexity and the grandiosity of the state's clout over the individual disrupts the supposedly neat distinctions of the economic and the political, the former largely subjective and discretionary to a state while the later subject to multiple jurisdictions. The blurring of the economic and the political problematizes where domestic autonomy should end and where multiple jurisdictions should hold grip.⁸⁰ An ongoing, dialectical debate between the Eritrean state and other states and rights groups on the nature of the extended labor scheme either as a "national service" or "forced labor" is product of the complexity.⁸¹ A more dramatic reflection of the complexity is, however, manifest in the intense legal and political standoff between the Israeli government and thousands of Eritreans asylum seekers in Israel, on the one hand, and the Israeli government and the Israeli Supreme Court, on the other, on the legal status of the asylum seekers.⁸² Finally, it is important to engage underlying paradigms of what it seems to be uneasy relationship of African states in their different political registers.⁸³

Notes

- 1 Marshall (1950) explained the progressive evolution of citizenship rights from civil to political, and later, social rights.
- 2 Marshall's thesis studied socioeconomic transformation of British society and postindustrial societies elsewhere. His trajectory, however, captured legal and political consciousness and parallel transformation in social, economic, and political order in Western societies.
- 3 On the position of the major political theories on citizenship and rights, see, for example, Katherine Verdery:

Classical liberalism saw a tight connection among certain understanding of citizenship, property, and identity. Membership in the body of citizens was heavily dependent on having property—in particular, property *in one's person* ... In the socialist world, however, the predominance of *collective* property and the attempt to weaken possessive relations to individual selves precluded such forms of citizenship and identity.

Verdery 1998, 291–2

- See, also, William H. Simon (1992, 1335): “Social democracy retains the classical liberal notion of private property rights, but it both qualifies them by regulatory restrictions on their exercise and supplements them with welfare rights to minimal subsistence funded and administered through a tax-transfer system.”
- 4 For the emergence of social thinking as legal consciousness, see Kennedy (2006).
 - 5 Some representative scholarship includes: Nkrumah (1964), explaining his philosophical and ideological thoughts on economic and political transformation; Nyerere (1987), explaining Ujamaa—Nyerere's version of socialist philosophy that sought economic transformation on the basis of social solidarity; Perry (2008), a genealogical study of the origins of rights in Chinese philosophy and its evolution through different political phases; Shalakany (2001), a critical inquiry into distributive aspects of the Egyptian civil code by genealogically studying Abdel-Razzak al-Sanhuri's—an Egyptian jurist and drafter of the code—“will to Islamize” as a theo-ideological basis to promote social justice in Egypt; Kapur (2005), in a critique of postcolonial subjectivity of minority social groups in India; the casebook of Cornell and Muvangua (2012) that analyses the constitutional adjudication of rights, especially socioeconomic rights in South Africa, as vindication of *ubuntu* ethics); Dirar (2014), arguing for broader conceptualization of regional integration arrangements, not only trade regulatory and bureaucratic frameworks, but also as emancipatory projects in Southern African countries and beyond; and Rock (1993), discussing the radical socioeconomic and political transformation of Argentina under a right-leaning government.
 - 6 The Human Rights Council and various rights groups have documented serious rights violations by Eritrean authorities “against its own population and fellow citizens.” The United Nations High Commissioner for Refugees (UNHCR) similarly has identified Eritrea as one of the top sources of refugees, many losing their lives along a tragic migration trail (Keetharuth 2014); see, also, HRC (2014), listing human rights violations by the government of Eritrea and calling upon Eritrea to improve human rights conditions in Eritrea; Smith (2015), providing an oral report on human rights violations in Eritrea based on information gathered from victims of rights violation.
 - 7 Criticisms range from lack of rule of law and autocracy and rights violations of all sorts. Some of the emerging studies includes Mekonnen and van Reisen (2014), and Tronvoll and Mekonnen (2014), discussing, generally, judicial development, rule of rule law, democratic development, and providing a descriptive account of human rights violations in Eritrea. It is written in a descriptive and comparative law format, which nonetheless portrays, albeit limited, the social and political underpinnings of law and legal process in Favali and Pateman (2003).
 - 8 Our intention is not to undermine, in any way, the critical role that Eritrean and non-Eritrean scholars and activities have been playing in bringing the human rights situation in Eritrea into the spotlight. This chapter simply intends to provide conceptual vocabulary to the existing debate and open a new paradigm upon which broader conceptual issues of state, society, politics, development, modernity, and so forth, can be debated.
 - 9 Verdery uses Brubaker's (1992) definition of citizenship as “a membership category, a mechanism for allocating persons to states and thus as something that creates belonging.”
 - 10 The state-individual struggle and the reaction of both in the struggle is akin to Albert Hirschman's “exit, voice, and loyalty” analytic. See Hirschman (1970) on building a theoretical framework that

argues that individuals respond to deterioration in firms, organizations, and states either by exit, voice, or confirming loyalty. Despite the similarity, we do not use Hirschman's analytic in this chapter.

- 11 We use the word "right" advisedly. The use of rights or using rights discourse might puzzle one, if we are contradicting ourselves by trying to give substance to a context where the application of rights, at least in liberal sense, is highly contested. Our intention in this chapter is a quest to analyze the application of rights in discourses of citizenship, and we make it clear how and when rights become or fail to become part of the discourse. Likewise, we are aware of the long debate on the deontology of rights among different theoretical traditions. See, for example, Dworkin, explaining the moral basis of rights by challenging claims advanced by legal positivists; Hart (1955), articulating the moral right of all men to be free; Singer (1982, 979), analyzing Hohfeld's critique to "liberal ideal of a legal system based on reasoning from rights." Our intention in this chapter is not to reproduce these conceptual debates in the Eritrean context. At this stage, we are simply interested in conceptualizing the application of rights as citizenship, validating norms in Eritrea without necessarily engaging in a normative debate of how rights should be conceptualized.
- 12 Another methodological point that we wish to clarify is why we approach the state-individual discourse, largely, from a domestic perspective. In popular and a few academic quarters, it is claimed that patterns unfolding in Eritrea have their lot external to the state. We do not claim that the life of a 21st century polity, more so of a polity in the global periphery, is all about what happens within its political space. We likewise are skeptical of discourses, academic or otherwise, that claim the "foreign" as the sole vector that drives the domestic.
- 13 For a detailed account of Eritrean revolution for independence, see Iyob (1995), detailing the history of Eritrea's struggle and mapping the ideological and political transformation of the of the revolution; Connell (1993), detailing the historical evolution of the EPLF, its structure, ideological orientation, military strategy, and social and political interaction within and beyond its ranks; Cliffe and Davidson's (1988) collection of essays on different aspects of Eritrea's history and its then ongoing armed revolution for independence; Pool (2001) on the EPLF; and Markakis (1988), examining the sociopolitical antecedents to the Eritrean revolution for independence and the history and internal dynamic of the revolution.
- 14 Iyob (1995, 129), arguing that "the fusion of Afro-Marxist philosophy with secular nationalists aspirations characterized the EPLF's method of constructing a cohesive front."
- 15 Makki (1996, 477), arguing: "There was an attempt to transcend the conventional distinction between intellectuals and ordinary people by educating rank and file members into a more ambitious sense of their own political capabilities. See, also, Pool (2001), claiming that a socialist society was to be created by the revolutionary forces—the EPLF—leading the class struggle of workers, peasants, revolutionary intellectuals and other oppressed masses. The major alliance was between the workers, the poor peasantry and the revolutionary intellectuals."
- 16 See Trevaski (1960), explaining the history, social, and economic conditions of Eritrean society, among others; Tronvoll (1996), analyzing the importance of land based on an anthropological study of a village in the Eritrean highlands; Favali and Pateman (2003), examining, among others, the significance of land as an economic and political commodity in the Eritrean society.
- 17 For discussion on the policies of successive colonial governments on the issue of land, see Gebremedhin (2004).
- 18 Neoliberal policies had swept across the global south since the 1970s. Much of Africa embraced neoliberal policies in the late 1980s through early 1990s.
- 19 The Government of the State of Eritrea, Macro-Policy (1994), Proclamation 37/1993 (Proclamation to Determine the Structure, Powers, and Responsibilities of the Government of Eritrea, as amended by Proclamation 52/1994 (Proclamation to Amend Proclamation 37/1993). See, also, Proclamation 37/1994, Art. 4. Proclamation No. 55/1994 (Proclamation to Provide for the Establishment of the Constitutional Commission). Article 4, para. 1 of the proclamation entrusts the Commission "to draft a constitution on the basis of which a democratic order would be established, and which, as the basic law, shall be the ultimate point of reference of all the laws of the country, and the final arbiter of all basic issues in dispute."
- 20 See Negash (1999), who analyzed legal and institutional measures that the Eritrean government has taken to promote private investment after independence. Negash (1999, 377) noted: "Efforts are being made to create the legal and institutional framework to encourage the development of a market-oriented economy in Eritrea ... These measures mark significant steps towards the establishment of a

- legal framework necessary for the economic development of Eritrea.” See, also, Proclamation 19/911, Investment Proclamation.
- 21 See, also, O’Kane and Hepner (2009), discussing the experience and challenges of the independent Eritrean state.
 - 22 Proclamation 16/1991, Proclamation to Establish a Commission to Ascertain the Ownership of Property Nationalized and Non-Nationalized by the Ethiopian Government and Issue Certificate of Ownership. See also Proclamation 17/1991, Proclamation to Determine the Payment of Rehabilitation Tax. See also Pool (1993, 397), citing the EPLF’s decision to return houses nationalized by the Ethiopian Government to its owners in its second congress. See, also, Reid (2005, 467), explaining what he describes as an imaginary gap between the revolutionary generation (epitomizing the imagination of the state) and the young generation in Eritrea and demonstrating the manifestations and effect of the gap in different social, economic, and political contexts. On the challenges of post-independent African countries in embracing broad constituency, see Englund (2004, 9): “... post-colonial governments in Africa have had great difficulties in acknowledging and accommodating difference. A rhetoric of unity dominated public discourse during the first decades of independence ... the despotic leaders and one-party states that emerged were often highly selective in their choice of national symbols and political allies, feeding covert discontent.”
 - 23 See Proclamation 16/1991, A Proclamation to Establish a Commission to Ascertain the Ownership of Nationalized and Non-Nationalized Movable and Immovable Property by the Ethiopian Government and Issue Certificate of Ownership; Proclamation 21/1992, Eritrean Nationality Proclamation; Proclamation 28/1992, Proclamation to Terminate Employment of State Employees Improperly Hired by the Ethiopian Government, to Adjust Salary of High Ranking Officials of State Enterprises and Prohibit Collective Agreement in State Owned Enterprises; Legal Notice 13/1993, A Regulation to Restore *dominane* Land of Halhale Improperly Allotted by the Derg Government. On religious rights, see Mekonnen and Kidane (2014). See, also, Makki (1996, 485), stating, “the Jehovah’s Witnesses refused to vote in the independence referendum and have continued to abstain from the political life of the nation. More recently, they have declined to participate in the National Service, and the State has responded by stripping many of them of their citizenship rights.”
 - 24 Proclamation 58/1994, A Proclamation to Change the Eritrean Land Tenure System, to Determine Land Use, Land Expropriation for National Development and Reconstruction and to Determine the Powers and Duties of the Land Commission), Legal Notice 31/1997, Regulation to Determine the Administration and Distribution of Land). See, also, Tesfagiorgis (1993) on remarks by then Secretary General of the Provisional Government of Eritrea, Issaias Afwerki, that the government should own land, among others.
 - 25 See Joireman (1996), explaining how the Eritrean Land Proclamation overlooks the rights of Eritrean pastoralists and proposes ways by which the rights of pastoralists may be guaranteed; Wilson (1999), critiquing the land tenure reform by highlighting the plight of Eritrean pastoralists as the Proclamation’s land tenure regime envisages a settled agrarian lifestyle, which is not always the case among the Eritrean pastoralists; Rock (2000). For general discussion on the challenges of constitutionalism, legal reform, and land tenure, see Boone (2007).
 - 26 Joireman (1996, 273) noted Alem Seged Tesfai, one of the drafters of the Proclamation and subsequently chairman of a commission established to oversee the implementation of it, informed her that there were discussions on alternative regulatory regimes. On top of the existing literature on the land reform one may also analyze the political economy of the reform, if, among other things, for example, the reform is a product of the state’s corporate affinity.
 - 27 See Ogbazghi (2011), analyzing the consolidation of personal political power by President Isaias Afewerki and sustained glorification of his personal rule, as his personal rule is progressively wearing thin among Eritreans.
 - 28 The EPLF, in its third congress in 1994, transformed itself into the People’s Front for Democracy and Justice. A Charter adopted at the congress, the National Charter for Eritrea: For a Democratic, Just and Prosperous Future, included constitutional political order; see National Charter for Eritrea: For a Democratic, Just and Prosperous Future (PDFJ 1994). See, also, Markakis (1995), examining the contents of the Charter and what it means to Eritrea’s political process. See, also, Pool (2001, 163–5).
 - 29 See Ogbazghi (2011), analyzing the consolidation of personal political power by President Isaias Afewerki and the sustained glorification of his personal rule, as his personal rule progressively has worn thin among Eritreans. See, also, Connell (2009).

- 30 The jurisdiction of Eritrean courts is limited to civil and administrative issues. The jurisdiction of the High Court, the highest court in the state, is limited to original and appellate jurisdiction of private law cases, including cases involving branches of the central and local governments. See Proclamation 25/1992, art. 2; Proclamation 167/2012, art. 2. See, also, Favali and Pateman (2003).
- 31 The executive issues laws regulating various regulatory regimes. The government has issued around 200 proclamations and legal notices so far. It should be noted that the public sphere is not juridified. See Proclamation 9/1991, Proclamation to Establish the Gazette of Eritrean Laws.
- 32 For general information on law and legal resources, see Rosen (2001), narrating the process of drafting criminal law and the executive's role in the process; and French (1998), providing a bibliography of laws and secondary legal resources.
- 33 See Proclamation 82/1995, National Service Proclamation.
- 34 See Kibreab (2009b) for a critical appraisal of the indefinite national service; the author argues why national service should be considered to be forced labor. Riggan (2009) analyzed the progressive militarization of the Eritrean educational system. See, also, Hirt and Mohammed (2013) who analyzed the social and economic impact of the indefinite service program on the Eritrean society.
- 35 See Proclamation 67/1995, Proclamation to Determine the Payment of Tax by Eritreans in Diaspora. Bernal (2014) analyzed diaspora citizenship, its modality of validation by the Eritrean state, and the resurgence of online debate as a public sphere where politics and identity are debated.
- 36 UN (2014, Annex 2, para. 8–9):

The Rehabilitation and Recovery Tax [RRT] was envisaged as a time-bound provision which would wind up at some time in the near future as the economy of the new country grows and the social responsibility and burdens eases. This was underlined during the discussions at the Eritrean National Assembly, although it was not articulated in the form of a definitive *sunset clause* at the time of its proclamation. However, subsequent developments, and notably the border war ... have made revision of the RRT Proclamation practically impossible ...

[The RRT] represents a symbolic burden sharing by the Eritreans in Diaspora with the people inside the country. In this sense, its historical, moral, humanitarian and *patriotic* contents and values are more significant and profound than its material dividend. [emphasis added]

- 37 Bronwen Manby has examined the intricacy of citizenship laws in Africa. Some of her work includes: Manby (2009, 2010).
- 38 For general discussion on civil society and its challenges, see Bereketiab (2009), analyzing the development of civil society in Eritrea and relationship with political discourses of the Eritrean state.
- 39 See Hepner (2009), explaining the different subjectivity of the Eritrean individual by the Eritrean state.
- 40 See Müller (2012), highlighting, among other things, the diversity of opinions that Eritreans held on the possibility of national development by the Eritrean Government. Müller's research provides helpful insight on the contested discourses of citizenship and national development and what Müller described as "hybridity" of opinions and perceptions and their temporal fluidity. Müller notes:

The Eritrean youth I encountered in Tel Aviv are deeply loyal to the Eritrean state consolidation project and committed to contributing their share to its success. What they reject are government policies, exemplified in the PFDJ securitisation agenda, the militarisation of society and the demands that spring from it. In particular they object to there being no time limits on service obligations ... combined with a complete disregard for their own aspirations.

Müller 2012, 454

- 41 See Riggan (2013), discussing the celebration of the diaspora citizen and the perception that it creates about emigration, its effect on national identity and national duty from the perspective of young Eritrean students, and the nature of the relationship that the spatiality of the discourse adds to the complexity of the struggle producing "hybridity" of opinions and loyalties. Tanja R. Müller's (2012) empirical survey on Eritrean refugees in Israel and Jennifer Riggan's (2013) account of a debate by young Eritrean students on migration and conscription aptly capture the "hybridity."
- 42 See also Bernal (2014, 42–7), discussing the process and modality of ascertaining diaspora citizenship by monetary contribution and the activity of the diaspora citizen in cyber debate on nation building and national identity.
- 43 See Kibreab (2009a), who detailed the manner and extent to which the PFDJ dominates the economy. The party has, in particular, been proactive in political and economic fronts. Its political wing has been streaming the politics of the bureaucratic state while its economic side has been a dominant entity

in Eritrea's modest economy. Party businesses that bridge the state-party gap take up a lot of space in major sectors of the existing market. Since 2010, the state has formally incorporated some state companies as shareholding companies. See Proclamation 29/1993, Proclamation to Establish Red Sea Trading Corporation, Proclamation 172/2012; Proclamation to Repeal Proclamation Establishing the Eritrean Telecommunication Services Corporation and Facilitate its Conversion into Share Company and Proclamation 171/2012; and Proclamation to Establish National Agency to Promote the Participation of Eritreans in the Ownership of Public Enterprises.

- 44 See, generally, Agamben (2005) on the political exercise of power by the sovereign entity beyond the rule of law, as developed by the German legal theorist, Carl Schmitt.
- 45 See Bernal (2014).
- 46 The PFDJ's National Charter for Eritrea has been a shadow document, seldom appearing in official discourse to legitimize the exercise of state power or state policies. In addition to the occasional reference to the Charter and plethora of editorials and bulletins by the state and the party, which give vague context to the party's power, the party has not been effective, in contrast to similar contexts elsewhere, in articulating its control of sovereign power. In contrast to the ideological and military ferocity within which it fought for independence, the EPLF/PFDJ has remained ideologically and intellectually inept from articulating why it has to exercise state power and in the way it does so. See Ogbazghi (2011).
- 47 See Selassie (2002), explaining the constitution-making process, its political context, and reality afterwards; Rosen (1999), discussing the constitutional process that led to the making of the 1997 Eritrean constitution; Weldehaimanot and Mekonnen (2009), critiquing the law-making process in Eritrea; and Weldehaimanot (2008), discussing the process and status of the 1997 Constitution and competing narratives on the same.
- 48 What may be considered as emblematic of the fluidity of law and legality in Eritrea is the state of the 1997 Eritrean Constitution since May 2014. Although ratified by a constituent assembly in 1997, the 1997 Constitution did not go into effect, and its status had been a point of intensive debate. On May 24, 2014, President Isaias Afwerki declared that the government would start the process to draft a new constitution, which provoked further online questions as to the status of the 1997 Constitution. Subsequently, President Isaias, in interview with state media, stated, "everyone knows the Constitution does not exist [in Eritrea]." (*Haddas Eritrea* interview with President Isaias Afwerki, January 2, 2015, 5.) The president's statement is in sharp contrast to the Eritrean government presenting the 1997 Constitution as an effective legal document, in Universal Periodic Review (UPR) and in reports to UN treaty bodies, for example.
- 49 Informality manifests in various forms. Continuous recitation of development schemes—along with seasonal rhetoric of the zealous participation of the individual in these schemes—validates citizenship. Participation in these schemes is not only mandatory but shows commitment and zeal toward the collective polity. The power of informality often eclipses formal structures, which is the case, for example, on matters of nationality, land use, and national service, among others. Informality and rhetoric likewise orient political discourse as well. The now defunct Warsay-Yekalo development program is typical example of this. A supposedly comprehensive national development plan but with no formal existence, either in terms of structure or substance, was used to define political discourse for quite some time.
- 50 Noncompliance with the diaspora tax regime for example entails the following:

... those who do not wish to pay the 2% RRT, in accordance with the provisions of a national law, must naturally shoulder the explicit consequences spelled out in relevant regulations of enforcement. In this particular case, Eritrean citizens who opt out of the tax, forfeit entitlements such as access to urban land, power of attorney to process inheritance etc.

Eritrea 2014a, 5

See, also, Statement by Mr. Lambros Kyriakakos, Acting Chairperson of the Coalition of Eritrean Canadian Communities and Organizations at Subcommittee on International Human Rights House of Commons, explaining how Canada's prohibition of the payment of 2% rehabilitation tax affects Canadian Eritreans who have businesses in Eritrea or those who wish to claim inheritance (TesaNews 2014). As a note to the significance of informality, for example, Proclamation 67/1995 (which imposed the diaspora tax) provide these limitations. Speaking of the diaspora tax, there is an ongoing, dialectical debate between the Eritrean state and Western countries (particularly, Western European countries

- and Canada) on the territorial extent of the political subjectivity of the diaspora citizen, as the Eritrean state insists upon its sovereign prerogative to enforce the diaspora tax beyond its political borders.
- 51 Beyene (2001), explaining the challenges of the judiciary, including interference and undermining tendencies from the government and the party. See also Proclamation 167/2012 (Proclamation to Amend Jurisdiction of Eritrean courts). See, also, Proclamation 85/1996, Proclamation to Establish Special Court; Proclamation 122/2003; and Proclamation to Establish Community Courts. See, also, Ginsburg and Moustafa (2008), examining the different roles that courts play under authoritarian governments; and Peerenboom (2009), examining different themes of law and legal processes in China under the Chinese one-party political system.
- 52 Proclamation 85/1996, Proclamation to Establish Special Court. The Special Court has jurisdiction over offenses, such as corruption, embezzlement, abuse of power, theft, etc. In addition to its structural affiliation to the executive, the Court has broad discretion on procedure as well. The Court's constituting legislation empowers it to use standards, substantive and procedural, that it deems fit. The Court has been the target of strong criticism of Eritrean scholars and other critics for removing the separation of legal and political power and for using procedural standards, which have sunk to their jurisprudential nadir. We do not contest the validity—factual or otherwise—of these assertions (as we have made similar remarks before). Yet, it remains relevant to point out that it is equally important to understand the politics of courts' structures and the responsibilities they are assigned to do to appreciate the essence of issues that we set out to critique conceptually.
- 53 Proclamation 85/1996, Proclamation to Establish Special Court.
- 54 See Weldehaimanot (2012), examining the state and challenges of the legal profession in Eritrea. See, also, Dirar and Tesfagabir (2014).
- 55 See Ogbazghi (2011, 10), recounting the opposition of university students to summer survey research for the World Bank and the subsequent arrest of the students. Although the causal relationship remains contested, the University of Asmara stopped admitting new students two years after the student protest. The former university remains closed to this date, while a patchwork of small colleges located in different parts of Eritrea has taken over the responsibility of providing tertiary education in Eritrea. See, also, Müller (2009); Riggan (2009) on the militarization of Eritrea's education.
- 56 See, also, Proclamation 88/1996, Advocates Proclamation.
- 57 See, generally, Peters (2004), who examined the underlying political, economic, and social change that the marketization of land is creating in Africa.
- 58 The following have been some of the results of the struggle: defining and constantly changing terms of access and use; bureaucratic processes as filtering mechanisms for access and redistribution; and physical squandering and expropriation of property, with overt exhibition of state force as a fate for those who break ranks and as a demonstration to those who might do likewise in the future. Generally, the land reform has not progressed to the extent it was intended to reach. This is not to say that the reform has not affected communities or that the source of state–individual contest has been limited over access and use of land. The agrarian status quo and the state–rural dynamic, more broadly, have defied most predictions made around circles of Eritrean studies. Most predicted that the highland peasant would continue his subsistence lifestyle, losing tenure and political security over land while its social structure would remain fluid, and all the odds would be against the lowland pastoralist. The most conspicuous result, and what we think will have an enduring impact on the social and economic structure of the rural areas, since the land reform has so far been the breaking of bonds of the rural population, first in the form of conscription, and then migration. The enforcement of the contest has been a cause for exodus from other sections of the society as well. Ethiopia, Sudan, and the Middle East, all traditional places of refuge for Eritreans since the 1960s, have become modern-day shelters for Eritreans. Eritrean businesses, small and large, now reside in African capitals. Eritreans fill the cracks of, and in some cases, are investors in sub-Saharan African countries. From Johannesburg to Juba, Eritreans have acquired assets, run small shops, stores, restaurants, hostels, and hotels in buzzing cities of equatorial Africa. Others aim to seize the opportunity and liberty of the Western world. Informal trade, which is invisible to the state, has become the order of the day inside Eritrea, eroding the sense of order. Corruption has become rampant, and law enforcement personnel have few incentives to enforce laws and regulations. Additionally, contraband, human smuggling, and facilitating payment of remittance and ransom have become a booming underground economy, the lucrative turnover and lifestyle of its facilitators masking excessive poverty. The majority of the population is worn down due to enduring anxiety, desperation, and fear from the violence of the state. See Ammar (1992), explaining the historical and political reasons of Eritrean migration between 1961–91; Makki (1996, 482), claiming that

colonialism and economic decline led to “a steady outflow of workers to Middle East.” According to Müller (2012):

... it has resulted in making Eritrea a more unequal place, and a sharp increase in inequality can be observed at different levels ... More visibly, there is a significant group of young people in the streets of Asmara, who are well heeled and spending money freely and in no apparent danger of being sent to Sawa. Their income derives from diaspora remittances and smuggling activities ... Others are rumoured to be part of the networks that engage in facilitating escape to Sudan or Ethiopia, networks that are certain to include members of the Eritrean military.

Müller 2012, 457–8

See, also, Kibreab (2000), analyzing the phenomena of migration of Eritreans in the Sudan and national identity formation after settlement, for a discussion on the challenging circumstances of refugees, including Eritrean refugees in jurisdictions with weak or nonexistent socioeconomic support to refugees. It should be noted that the lives and experiences of Eritreans in sub-Saharan African countries—many of whom have taken their entrepreneurial skills elsewhere, while maintaining measured distance with the Eritrean state for concerns of personal safety—provide interesting socioeconomic research, which, to our knowledge, is yet to be carried out.

- 59 One can see a pattern of emphasis on socioeconomic rights in Eritrea’s Universal Periodic Review (UPR) Report. In Eritrea’s first UPR cycle, the national report lists the following areas: right to life, liberty, and security of the person; right to social security and to an adequate standard of living; right to education and to participate in the cultural life of the community; right to health; right to work and to just and favorable conditions of work; rights of women; rights of the child; persons with disabilities; administration of justice and the rule of law; right to privacy, marriage and family life; freedom of religion or belief, expression, association, and peaceful assembly; and right to participate in public and political life, see UN (2009, Sec. III.A).
- 60 Reference to social justice, as a broader ideal, goes back to the revolutionary period, and it was adopted as one of the ideals of the PFDJ in its charter, and later, in the 1997 Constitution. Once the executive and the party took full control of the political sphere, however, social justice has become an ideal that would rationalize state power and its manifestations across different sectors of the social, the political, and the economic.
- 61 For general discussion on priority of rights, see Rhoda Howard (1983), explaining the debate on priority rights and highlighting that civil and political rights as means to end and as goals in themselves.
- 62 See, generally, Mutua (1996, 592), examining the ideological basis of human rights by arguing that “human rights and western liberal democracy are virtually tautological”; Mutua (1995, 344), arguing: “The African language of duty ... offers a different meaning for individual/state-society relations: while people had rights, they also bore duties.”; Cobbah (1987, 310), critiquing cultural insensitivity of human rights and arguing that debates on human rights should be sensible to cultural contexts. As such, “African communitarianism has ingredients that should aid the formulation of cross-cultural human rights norms”; Engle (2000, 293), analyzing the trajectory of culture in human rights and arguing that “the assertion of culture ... is a *means* for contesting a certain type of hegemony, while maybe promoting another type”; Davis (1998, 110), critiquing the Asian values debate by asserting that “the proponents of the Asian values argument ... fail to appreciate the rich values discourse of the East Asian region; and ... that the cultural relativist theories of the academy are tautological and overly deterministic...”.
- 63 This is, generally, the conceptual premise of study that critique the cultural relativism of rights on a more conceptual point that the premise of human rights is formal and not substantive. The cultural and conceptual arguments have been made in the African context in the works of Makau-wa Mutua (1996). Mamdani (1996) gives sociohistorical context to part of the broader critical discourse by arguing that the colonial project structured race-based civil society that came to depend on the language of rights to perpetuate its racial privilege over the Native. Race, civil society, and rights clashed in what Mamdani (1996, 21) describes as the “fourth moment in the history of ... civil society.” In Mamdani’s words:

Racial privilege not only receded into civil society, but defended itself in the language of civil rights, of individual rights and institutional autonomy. To victims of racism the vocabulary of rights rang hallow, a lullaby of perpetuating racial privilege. Their demands were formulated in the language of nationalism and social justice. The result was a breach between the discourse

of rights on the one on justice, with the language of rights appearing as a fig leaf over privilege and power appearing as the guarantor of social justice and redress.

Mamdani, 1996, 20–21

- 64 See fn. 43 and the accompanying text.
- 65 These inquiries echo broadly liberal–communitarian debates on the relative position of the individual vis-à-vis collective interests in political and economic projects and the means to realize the interests. See Sandel (1994, 1767): the problem with communitarianism “is not the relative weight of individual and communal claims, but the terms of relation between the right and the good”; Seppänen (2016, 149) further noted: “Communitarianism do not insist on the primacy of communal rights ... but argue that the liberal project to establish formal procedural rights to arbitrate the selection of social goods ... must fail”; Mulhall and Swift (1992), examining the liberal–communitarian debate; Bell (1993), discussing the liberal–communitarian debate and explaining what communitarianism is.
- 66 See Sen (1999), analyzing the freedom–development nexus and arguing that individual freedom should be viewed as “social commitment.”
- 67 See Everingham and Janneck (2006), assessing the restoration of communal land rights in post-apartheid South Africa in the exercise of democratic citizenship.
- 68 See fn. 25.
- 69 This is not only in terms of the direct peasant participation in the liberation war, but also the fact that the protracted war was mostly fought in rural areas, that successive colonial governments left the agrarian to its own device. On the history of Eritrean peasants, colonialism, and the struggle for liberation, see Gebre-Medhin (1989), who examined the social and political transformation of Eritrean peasants in the Eritrean revolution for independence; see, also, Connell (1993).
- 70 Pool (1993): “The peasant base of the EPLF is likely to act as a pressure on policy formulation, particularly in areas involving the allocation of resources between the urban and rural sectors.” See, also, Poole (2009), analyzing the socioeconomic impact of conscription and migration from rural areas; Howard (1983).
- 71 See Gebremedhin (1996), who argued, among others, that agricultural development and economic growth depend on the political will of the Eritrean Government to develop the agricultural sector. See, also, Killion (1998, 448–9), noting that Gebremedhin “falls prey to the nationalist syndrome of overemphasizing Eritrea’s resource potential” and for failing to “integrate the overarching theory with the real social conditions of contemporary Eritrea.” For agricultural policies of African governments, see Bates (2005), who argued that the basis of agricultural policy in Africa is based on the interest of politicians to advance political, not agricultural, interest. Reflecting on the historical and revolutionary disposition of the peasantry, Mamdani (1996, 211) noted: “The contradictory potential of peasant political action is most sharply illustrated by the fact that even though it is a vehicle of popular protest, it has not been very difficult to incorporate peasant initiative into broader state strategies, turning it into a force for order and stability rather than transformation.” And reflecting on Gebre-Medhin’s (1989) work on peasants and revolution in Eritrea, Mamdani reflected:

Through experience, sectors of the intelligentsia came to realize that peasants could be expected to defend only a social order signified by social reforms of meaning to them; a political struggle, in other words, had to go hand in hand with social reforms ... The relationship between the struggle against external domination and internal agrarian reform became a contentious issue leading to a political split between intellectuals of different persuasions. The effect of a step-by-step agrarian transformation advocated by radical intellectuals was to transform the organizational capacity of different strata of the peasantry ... [in] changing internal relations within the peasantry, the reforms shaped a peasant community of a different type.

Mamdani 1996, 213

- 72 There were two peasant associations before Eritrea’s independence: the General Union of Eritrean Peasants under the Eritrean Liberation Front (ELF) and the National Union of Eritrean Peasants (NUEP) under the EPLF. NUEP survived Eritrea’s independence, but it was soon dismantled, and according to Connell and Killion:

... its resources handed over to local village councils, as the new government focused its attention away from small-plot farming in favor of larger-scale agricultural schemes within a development paradigm that viewed peasant farmers, like pastoralists, as economic anachronisms whose self-organization could lead to political problems if left intact. Instead, ... the [PFDG]

gave the National Confederation of Eritrean Workers (NVEW) ... responsibility for organizing former NUPEP members into cooperatives as part of a broader effort to modernize the agricultural sector.

Connell and Killion 2011, 416–7

Furthermore, our reflection on the structural relationship of the peasantry, as a social group with the state and the party, opens up an interesting debate on the structural relationship of other social groups with the state. It would be important to study the nature of the relationship, the kind of institutions that mediate the relationship, and their mutation and permutations across temporal phases of the relationship.

- 73 The impact of rural land distribution to individuals whose livelihoods do not depend on subsistence on arable land might seem marginal at this time. But we believe that it will have serious impact on agricultural production and development of the rural areas if the distribution continues in the current scale.
- 74 As a side note, our structural analysis of the collective and how it embodies social groups is not necessarily limited to the peasantry. One can make the same analysis on the disposition of other social groups. See, for example, Mehreteab (2004), who explained problems of socioeconomic integration and rehabilitation members of the Eritrean revolution, and in some cases, challenging egalitarian values developed during the revolution; Müller (2004), examined the success of the Eritrean revolution in ascertaining gender equality and the challenges of maintaining this equality after independence.
- 75 See fn. 7. Although it may appear that customs are chiefly a function of identity or a patriarchal institution, property rights, for example, is a defining element in the traditional institution as well. Evident across the institution of customs is access to resources. This is manifest, for example, in the system that defines entitlement to additional resources or the recirculation and/or redistribution of existing resources, dependent on property holding, and notwithstanding how virtuous one is. For new members, their recent acquisition gives access, besides entrenching inclusion and belonging, to additional resources and participation in the political, social, and economic institutions of the traditional.
- 76 See Clarke (2003): “For a Western-trained lawyer encountering Chinese law for the first time, a reaction other than perplexity is a bad sign—it means that one has not really grasped the depth of the problem of understanding.” See, also, Seppänen (2014), discussing what he calls China’s “avant-grade scholars” and the challenges of rising beyond ideological and political hegemony of the Chinese state and the Chinese Communist Party.
- 77 Clarke (2014, 105): “The notion of the constitution as a National Declaration of the victorious political line explains why China keeps running into the problem of social practice outstripping the constitution.”
- 78 See, for example, the 2014 Eritrean health MDG report, highlighting the positive achievements that Eritrea has achieved in the health sector (Eritrea 2014b). Human Rights Watch (2013, 4) noted “the neglect and marginalization of human rights in the MDGs and in many development programs and strategies has had harmful consequences” and cited the case of forced labor in a mining plant in Eritrea. The United Nations Development Programme in Eritrea (UNDP 2015)’s “People-Centred Development,” noted the positive gains that Eritrea has registered in MDGs. Wrong (2015) noted that Eritrea “... may well offer its citizens excellent medical care. Claims that it knows how to protect its people from East Africa’s frequent droughts ... may even be true. But the government has failed dramatically to deliver on a range of less quantifiable needs that hold the key to human fulfillment.”
- 79 On the appearance and significance of the martyr in Eritrea’s citizenship discourse, see Bernal (2014, 33–42). For discussion on experience of revolutionary and post-revolutionary societies in defining identities and subjectivities, see Goldman (2005), examining the realities and challenges of social transformation in China.
- 80 Beyond its importance to debates on human rights and citizenship, the complexity of the economic and political structures is also important to public and private distinction that liberal political theory articulates: the public, as an arena of the state and its politics, while the private remains of private individuals and is apolitical. For a general discussion on public/private distinction, see Horwitz (1982), who examined the historical development of public/private distinction in modern political and legal thought. See, also, Weintraub and Kumar (1997), explaining the different contextual meaning and application of public and private distinction; and Kennedy (1982), explaining the stages and forms of the decline of public/private distinction.
- 81 See fn. 6.

- 82 Paz (2011) detailed the humanitarian and legal challenges of African refugees, most of them Eritrean, in Israel.
- 83 Mbembe (2001) theorized forms and manifestations of violence, subjectivity, power, and so forth, in the African post-colony—including those that are violent, trivial, and comic.

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