

*The Law of the Somalis: A Stable Foundation for Economic Development in the Horn of Africa.* By Michael van Notten. Spencer Heath MacCallum, ed. Lawrenceville, N.J.: Red Sea Press, 2005.

IN HIS INTRODUCTION TO *The Law of the Somalis*, Michael van Notten himself may have written the best review of his part of the book. He writes:

This book tells the story of a nation organised on the basis of folk law, or custom. This is unusual, since most nations in the world today are based on statutory law, or legislation. Statutory law is designed by politicians, whereas customary law consists of the rules that judges discern in the customary behaviour of people.

For most of its existence, humankind lived by customary law. But in very recent centuries statutory law, consisting mainly of regulation imposed by domestic or foreign rulers, has become the norm. This happened in Somalia as it did elsewhere. In 1991, however, the Somalis returned to their customary law. The Somali nation is the first in modern history to do that.

Somalis are strongly attached to their customary law, and they cherish the judges who adjudicate and enforce it. Foreigners may regard this as stubborn chauvinism, but Somalis believe they have good reasons. In this book I shall analyse their reasons, first describing their law as it functions today and then evaluating it to see why it is that, despite a number of evident weaknesses, Somalis value it so highly. I shall then speculate in what direction the Somali nation might develop and the effects that could have on other African nations. Finally, I shall evaluate United Nations policy with respect to Somalia. (p. 10)

In his Preface to the book, Spencer MacCallum, who completed the work following Michael van Notten's death, characterizes the book in these words:

At first, this book might seem to straddle two horses: law and commerce. But each presupposes the other. Economic development presupposes law, and the growth and development of the law proceeds largely from the hustle bustle of economic activity. In a stateless setting, especially, these are two aspects of a single phenomenon. Hence the author's emphasis on economic development, in

which he envisions freeports playing an important catalysing role. Economic development will have the capability of stimulating the growth of the customary law into a full body of common law capable of meeting the complex needs of a developed society. Such growth is essential if, as seems likely, Somalia is to continue without a central government.

The question as to whether significant economic development is even an option in a region lacking a legislative authority is squarely addressed in this book. The last chapter contains innovative thinking on how, in the absence of a central government, freeports might be designed to operate in the world economy while being fully compatible with traditional Somali institutions. Such tradition-friendly development could enable Somalis to assume a respected place in the world by leaving aside their colonial legacy and building on their indigenous institutions.

Michael van Notten's work adds to a growing interest in "polycentric," decentralized, or non-monopolistic systems of law. While his incomplete draft material did not adequately reference his indebtedness to scholars in this field, the reader who is interested in investigating the subject will find an early but useful introduction and guide in Tom W. Bell (1991). Other writers include Randy E. Barnett (1998), Bruce L. Benson (1990, 1998), A.S. Diamond (1975), David D. Friedman (2000), and Bruno Leoni (1961). Van Notten is no less indebted to the great classical-liberal tradition of, among others, Frederick Bastiat, Milton Friedman, Friedrich Hayek, Spencer Heath, Ludwig von Mises, Leonard Read, Murray Rothbard, Adam Smith, Lysander Spooner, and Herbert Spencer. (p. 4)

Who should read this book? The following readers will find this book valuable:

#### SOMALIS

The book is addressed first and foremost to Somalis. Following a careful analysis of their traditional system of law, the book leads to an important conclusion: the idea of a Freeport Clan. This innovative idea can be understood as a forward step in their civilization, enabling Somalis to develop areas of international business in a manner entirely consistent with their traditional law.

Much has changed in a short time in Somalia. Economic hotspots are developing in many places. A further wave of prosperity will come with the return of expatriates, who already have been responsible for many improvements in the fields of communications, hospitals, and schools. But the full realization of Somalia's economic potential will require international cooperation. In the "Western" world we call this "venture capital." Specialized firms

assist entrepreneurs who, alone, could realize only a part of their potential. The earnings of venture capital firms come from raising the value of entrepreneurial companies. Of course every culture must find its own solutions. Van Notten and MacCallum believe the Freeport Clan could be such a solution in Somalia.

Coming as it does from foreigners, even though originally suggested by a Somali elder, the idea of the Freeport Clan may seem chancy. The reality is that Somalis themselves must take the initiative. Superficially, the challenge for Somalis might seem to be a political task. But the challenge is in no way political, nor is this book addressed to people who think in political terms. Must an idea, after all, be political in order to be exciting? This depends in part on the odds that it can be reduced to practice. The concept of the Freeport Clan will attract little interest if it cannot be tried, say for reasons of political intervention. But aside from the ever-present danger of intervention, a spirit of entrepreneurial freedom is called for. Is Somalia prepared for this? I hope so. But Somalis must answer this question themselves.

#### INTERNATIONAL BUSINESSMEN

It may be difficult for a foreign enterprise, accustomed only to operating in a statutory environment, to establish itself in Somalia. Nevertheless, the successful businessman welcomes a challenge, and this book lays out guidelines. Somalia has prospered in the absence of a ruling elite, showing that prosperity comes not from the order of governments, but from the order of markets. Owners and managers of successful businesses understand this and are constantly seeking new opportunities to do business to enhance their shareholder value. Such people of vision will gain much from this book. The tourism, feedlot, and building industries, especially, not to mention more exotic industries from cyberspace to rocketry (for which Somalia is well located geographically), will find food for thought about opening new markets in an environment of rising prosperity in the long run as opposed to their known markets which, all too often, are on a slippery slope. This is nothing off the wall. A major firm already wants to create a second Dubai in Somalia.<sup>1</sup>

Nevertheless, the authors' suggestions should be taken with caution. The Van Notten book is a welcome resource for understanding the legal and political background. For empirical economic data, a

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<sup>1</sup>See HAFZA (Horn of Africa Free Zone Authority); online at: <http://www.hafza.com>.

valuable reference is Peter D. Little, *Somalia: Economy Without State* (2003).

#### STUDENTS OF LAW AND THE POLITICAL AND SOCIAL SCIENCES

This book offers the best available description of Somali customary law. It makes it clear how customary law, long the prevailing kind of law in the history of humankind, differs from the more recent statutory law and what have been the results of the latter. Appended to the book is a valuable outline, developed by the author, of natural law principles and their derivative rights and obligations. Spencer MacCallum, editor of the book and a close friend and colleague of the author, is a skilled social anthropologist who in his professional career has developed a reasoned theory of community organization and studied numerous attempts at stateless community building. It is gratifying to see his judgment of Michael van Notten's efforts.

#### LIBERTARIAN THINKERS AND ECONOMISTS

All of the above should be of great interest to libertarians as well as economists. As a northern Somali recently observed,

In the years after the fall of the Barre regime and sovereignty in 1991 the people of Somaliland, without any significant help from the outside world, have quietly rebuilt their homeland, while the world has poured billions to sort out the problems of Somalia proper. Homes have been roofed, schools have been rebuilt; even two new universities have sprung in a country which, under 30 years of Somalia rule, never had a university, and businesses have been restarted from scratch. Now Somaliland is the success story of the Horn of Africa that the world ignores. Its cities are booming; its airline companies link all the countries of the Horn of Africa; its telephone companies compete to provide cellular services to customers; its cities are so peaceful and stable that they put to shame the capital cities of many countries. (Source unknown)

On the other hand, contrary to the impression of some foreign observers, political events are not the only obstacles to freedom and wealth in Somalia. The author points to problems in the Somali customary law itself.

To remedy the shortcomings in the customary law, a Samaron Clan elder suggested the Freeport Clan as a novel structure for economic growth that could also help to accelerate needed changes in the law. This proposal, as subsequently developed and refined following the author's analysis of the system of law, is a highlight of the book. Of course, whether it can be applied is a question. If not, then this book, like so many others, will have little practical value. On the

other hand, it might be a pistol. The answer to the question, as I see it, lies in the economics of law. Besides this book, therefore, the reader may want to examine Bruce L. Benson's *The Enterprise of Law: Justice Without the State*.

All will be possible, provided the Somalis can fend off extortionist monopolizations of the law by those of themselves and others who have been educated to "Western" ways of political thinking and look upon the customary law system as, at best, a primitive relic and, at worst, a hindrance to the progress of Somalia. I have found in a recent review of the book a nice wording to underline this conclusion because it illustrates the two-edged sword:

The reason for the stiff-necked democracy mission in Somalia would be that a tax-free and kritarchic Somalia could give a teaching example to follow suit. Millions of politicians would have to search their jobs in the competition of the private sector, and they couldn't live anymore from their political returns! One may consider the outstanding pressure of the EU and the OECD performing to Liechtenstein and Switzerland since their bank law was better to save private financial assets and to undermine the tax-cartell. Now then visualize a bank center in Somalia where is not even a government which one could extort politically. (Kasper 2006, p. 6)

Norbert Lennartz  
Willich, Germany

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