

The Four Faces of Ethiopian Federalism

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Abstract

Ethiopian federalism has been considered ethnic federalism both in domestic scholarly and policy discussions, as well as internationally in comparative federalism studies. I argue that Ethiopian federalism is so much more than “ethnic federalism” and even more than federalism itself. Ethiopian federalism has four faces, which are unitary, federal, confederal, and ethnocratic. While its unitary feature defers the federal promises, its confederal aspect overshadows the federal spirit. Similarly, its ethnocratic institutional arrangement not only creates “citizens” and “subjects,” but also displaces the national project of creating a federal democracy to the periphery. By taking the Ethiopian Constitution and the political theory that underpins it seriously, this article demonstrates how the four faces of Ethiopian federalism have made the practice of constitutional democracy difficult in the past and how they could presumably make it more arduous in the future.

Introduction

Federalism is a constitutional arrangement where at least two levels of government rule the same territory and people in a framework of shared rule and self-rule.¹ The question of why a political community forms a federal state rather than a unitary one has been the subject of normative federal theory. One reason why political communities opt for federalism is that it gives them “the best of both worlds: the advantages of being a relatively small, homogeneous polity, along with

¹ William H Riker, *Federalism: Origin, Operation, Significance* 11 (1964); Ronald Lampman Watts, *Comparing Federal Systems* 8 (3rd ed., 2008).

the advantages of being part of a stronger, more secure larger state; while at the same time avoiding some of the worst disadvantages of being either too small or too large.”² For example, while being part of a larger state could provide military security and economic prosperity, being part of a small one could enable effective democratic self-government. The “best of big, best of small” rationale explains the origin of federalism in the United States of America, which, in turn, has inspired many nations worldwide, including regional organizations such as the European Union, to follow a similar course or to incorporate some federalist principles and practices. With the emergence of new states after the Second World War (especially those associated with decolonization) and the Cold War, federalism has been used to accommodate ethnic, religious, linguistic, and racial diversity within states. Therefore, in addition to offering the “best of big, best of small” service to political communities, federalism has been mediating and managing diversity and pluralism within such societies.³

Ethiopia adopted federalism in 1995 primarily to hold together the ethnolinguistic groups it includes, of which there are more than 80. Although this was not the first time Ethiopia had resorted to federalism, the 1995 federal experiment is by far the most complex one, involving novel normative commitments and institutional configurations. The first Ethiopian experience with federalism was with Eritrea in the 1950s when the latter obtained its independence from Italy. After a decision by the United Nations General Assembly, a federation between Eritrea and Ethiopia was formed in 1952.⁴ From 1952-1962, Ethiopia was a federal state until the federation was dissolved to form a unitary one.⁵ The dissolution of this federation led to the Eritrean War of Liberation, which also inspired many other ethnic liberation movements, such as those of the Tigray, the Oromo, and the Somali. Beyond this formal experiment of federation, the empire of Ethiopia had

² Dimitrios Karmis and Wayne Norman, "The Revival of Federalism in Normative Political Theory" in Dimitrios Karmis and Wayne Norman (eds.), *Theories of Federalism: A Reader* 1, 8 (2005).

³ See Alfred C Stepan, *Federalism and Democracy: Beyond the U.S. Model*, 10 *Journal of Democracy* 19 (1999).

⁴ United Nations General Assembly Resolution 390-A(v) of 2 December 1950; See also Andargatchew Tiruneh, *Eritrea, Ethiopia, and Federation (1941-1952)*, 2/3 *Northeast African Studies* 99 (1980).

⁵ For details, see Tekeste Negash, *Eritrea and Ethiopia: The Federal Experience* (1997).

operated under a federal logic that recognizes that the provinces have substantial power.⁶ However, with a rationale of modernization, Emperor Haile Selassie I dismantled the pre-existing regional powers of the *Rases*, or the governors of the provinces, by reconstructing feudalism in a way that enhanced the political power of the monarchy and his direct descendants.⁷ As such, the turn to federalism in 1995 to regulate the ethnic diversity of the Ethiopian state was a logical and necessary step in the right direction.

The 1995 federal experiment, as David Turton has observed, is “both radical and pioneering.”⁸ It is radical because it restructured the Ethiopian state anew based on the principle of ethnic groups having self-determination. It is pioneering because “Ethiopia has gone further than any other African state, and further than ‘almost any other state worldwide’ in using ethnicity as its fundamental principle.”⁹ Ethiopia has established a federalism in line with ethnicity, dubbed ethnic federalism.”¹⁰

Ethiopia’s ethnic federalism is as contested today as it was when it was first established more than a quarter of a century ago. Ethiopian scholars, politicians, and the public hold different and sometimes contradictory views on the nature, operation, and usefulness of the federal system to the country.¹¹ On the one hand, proponents of the federal system—mostly ethnonational political groups—claim

⁶ Zemelak Ayele, *Local Government in Ethiopia: Still an Apparatus of Control?*, 15 *Law, Democracy & Development* 1, 2–6 (2011).

⁷ See Messay Kebede, *Survival and Modernization: Ethiopia’s Enigmatic Present: A Philosophical Discourse* (1999).

⁸ David Turton, Introduction to David Turton (ed.), *Ethnic Federalism: The Ethiopian Experience in Comparative Perspective* 1 (2006).

⁹ *Ibid.*

¹⁰ See Alemante G. Selassie, *Ethnic Federalism: Its Promise and Pitfalls for Africa*, 28 *Yale Journal of International Law* 51 (2003).

¹¹ For the different scholarly views on Ethiopian federalism, see Assefa Fiseha, *Federalism and the Accommodation of Diversity in Ethiopia: A Comparative Study* (2006); Yonatan Tesfaye Fessha, *Ethnic Diversity and Federalism: Constitution Making in South Africa and Ethiopia* (2013); Semahagn Gashu Abebe, *The Last Post-Cold War Socialist Federation: Ethnicity, Ideology and Democracy in Ethiopia* (2014); Yohannes Gedamu, *The Politics of Contemporary Ethiopia: Ethnic Federalism and Authoritarian Survival* (2021).

that if Ethiopia is to continue as a unified nation, it must maintain its current federal structure, which is undergirded by ethnicity and the corporate conception of group rights.¹² The argument states that the contemporary political problem in Ethiopia is not related to the ethnic character of the federal system but, instead, is connected to the lack of democracy and accountable government.¹³ For this group, what is needed is democratization and constitutionalism, not federal reform. On the other hand, opponents of the federal system—mostly pan-Ethiopian political groups—contend that if Ethiopia is to persist as a unified nation, it must change its ethnic-based federal system to a non-ethnic one that considers the individual the primary subject of the political order, as is the case in other liberal democratic states.¹⁴ For this group, ethnic federalism does not only intensify ethnic conflicts and tensions across the country, but it also erects some structural barriers to the practice of democracy and constitutionalism.¹⁵ Without federal reform, this group posits, it is difficult to establish and operate a democratic constitutional order in the country.

The ethnic character of this federal system has dominated political debate and scholarly discussion about federalism in the country from its establishment to the present. Indeed, this is justified, as the normative innovations and institutional setups of the 1995 Constitution were shaped by the quest to address the issue of ethnicity and ethnic diversity. From the preamble to the basic principles of the Constitution, including the bill of rights and the structural parts of the Constitution, all the elements emphasize the primacy of ethnicity. Ethnicity

¹² See Berihun Adugna Gebeye, *Toward Making a Proper Space for the Individual in the Ethiopian Constitution*, 18 Human Rights Review 439 (2017).

¹³ Assefa Fiseha, *Federalism, Development and the Changing Political Dynamics in Ethiopia*, 17 International Journal of Constitutional Law 151 (2019).

¹⁴ Semahagn Gashu Abebe, *supra* note 11.

¹⁵ See Assefa Mehretu, *Ethnic Federalism and Its Potential to Dismember the Ethiopian State*, 12 Progress in Development Studies 113 (2012); Asnake Kefale, *Federalism and Ethnic Conflict in Ethiopia: A Comparative Regional Study* (2013); Legesse Tigabu Mengie, *Ethnic Federalism and Conflict in Ethiopia: What Lessons Can Other Jurisdictions Draw?* 23 African Journal of International and Comparative Law 462 (2015); Semir Yusuf, *Drivers of Ethnic Conflict in Contemporary Ethiopia* (2019).

animates the very foundation of the constitutional order, and the ethnic federal arrangement is just one manifestation of it.¹⁶

The exclusive focus on the ethnic aspect of Ethiopian federalism, however, ignores its other important and interesting aspects, which should have been included in the discourse regarding federalism. In this article, I argue that ethnic federalism, or as I call it here, “Ethiopian federalism,” is so much more than “ethnic federalism” and even more than federalism itself. Ethiopian federalism has four main faces, and indeed, federalism may have many faces across federal states. For example, J. R. Mallory identifies the five faces of Canadian federalism—the quasi-federalism of the Macdonald era, the classic, emergency, and co-operative federalism types, and, finally, double-image federalism—all of which characterize the different forms of Canadian federalism across different time periods.¹⁷ Similarly, Byron Dailey reveals the five faces of federalism the United States Supreme Court Justices adhere to in deciding major federalism cases.¹⁸ These faces of federalism in Canada and the United States sit within its broader domain and largely arise in its application. But the four faces of Ethiopian federalism I expound in this article extend beyond the contours of federalism and are mainly found in the constitutional text.

By taking the Ethiopian Constitution and the political theory that underpins it seriously, this article explores and examines the four faces of Ethiopian federalism, which have thus far been systematically and comprehensively understudied and have different implications for the operation of a federal and democratic state and government. First, when we consider Ethiopian federalism while viewing ethnic groups as corporate entities, it is a *federation of convenience*, a potentially destructible and divisible federal union. Second, when we examine it within the context of power allocation between the tiers of government or from the vantage

¹⁶ See also Jon Abbink, *Ethnic-Based Federalism and Ethnicity in Ethiopia: Reassessing the Experiment after 20 Years* 5 *Journal of Eastern African Studies* 596 (2011).

¹⁷ JR Mallory, "The Five Faces of Federalism" in Paul-Andre Crepeau and C.B. MacPherson (eds.), *The Future of Canadian Federalism* 6 (1965).

¹⁸ Byron Dailey, *The Five Faces of Federalism: A State-Power Quintet without a Theory*, 62 *Ohio State Law Journal* 1243 (2001).

point of regional states, Ethiopian federalism is a *centralized federation*—closer to a unitary state. Third, when we observe it from the perspective of citizenship or individuals, Ethiopian federalism is a *confederation*. Fourth and finally, when we analyze it by assessing ethnic relations as collective entities, Ethiopian federalism has institutionalized an *ethnocracy* rather than a democracy. These four faces of Ethiopian federalism have brought about a novel political and constitutional experiment in the form of a “new state system” that has unitary, federal, confederal, and ethnocratic elements. In this article, I develop these four faces of Ethiopian federalism in their order and explain how each of them may affect the experimentation with federal democracy in the country.

1. Ethiopian Federalism as a Federation of Convenience

In its etymology, federalism is a covenant or pact among individuals and groups promoting mutual recognition and unity among them within a polity.¹⁹ Whether a federal system is adopted out of consideration for security, liberty, economic prosperity, freedom, and democracy—as in many Western federal democracies—or as an accommodation mechanism for ethnic, religious, and linguistic diversity—as in numerous post-Second World War examples such as Belgium, Nigeria, or India—federalism constitutionally commits to the continuity and indivisibility of the federal union.²⁰ Consider, for example, Nigeria and the United States: while the constitution of the former proclaims that Nigeria is “one indivisible and indissoluble sovereign nation,” the constitution of the latter aspires to form “a more perfect union.”²¹ Federalism, then, is similar to a marriage vow, in that constituent units of the federation take each other “to have and to hold from this day forward ... until death do us part.” Here the claim is not that federations should be designed to survive forever or that the promise of

¹⁹ Daniel J Elazar, *Exploring Federalism* 5 (1987).

²⁰ Michael Burgess, *In Search of the Federal Spirit: New Comparative Empirical and Theoretical Perspectives* (2012).

²¹ See, for example, Herbert J Storing and Murray Dry, “The Constitutional Convention: Toward a More Perfect Union” in J. Frisch Morton and G. Stevens Richard (eds.), *American Political Thought* 17 (3rd ed, 2011, Routledge).

indivisibility alone would bring a perpetual union.²² Rather, as a matter of political theory and practice, democratic federations make a solemn commitment to their continuity during their founding moment. Whether such federations continue to exist is contingent upon several factors both within and beyond them. To use the marriage metaphor once again, we know that many marriages can end, and indeed do cease, in divorce, but the solemn vow to “take each other until death do us apart” is an essential part of the conclusion of marriage. It would be quite strange to both the spouses and the institution of marriage if the couple failed to take this solemn oath. Likewise, such a formal commitment to a federal union is also necessary for the establishment of democratic federal systems. But Ethiopian federalism has no such assurance.

Ethiopian federalism was established based on the principle of the right to self-determination, including ethnic groups’ right to secession. According to the Constitution, the various ethnic groups, using their right to self-determination, came together to form one political and economic community known as the Federal Democratic Republic of Ethiopia (FDRE) that would be based on the ideals of the rule of law, peace, and democracy.²³ The Constitution also recognized that the ethnic groups have “an unconditional right to self-determination including the right to secession.”²⁴ Unlike other polities, which built their federal systems on the notion of the *indivisibility of the state*, Ethiopia based its federalism on the notion of the *potential divisibility of the state* if it is ever needed.²⁵ Although the recognition of the right to secession is at odds with the very idea of federalism as a covenant towards “a more perfect union,” as in the United States, Germany, Nigeria, or India, Ethiopia opted to construct its federal system based on this normative commitment.²⁶ Consequently, the Ethiopian Constitution does not

²² See Sanford Levinson, *Perpetual Union, Free Love, and Secession: On the Limits to the Consent of the Governed*, 39 *Tulsa Law Review* 457 (2003).

²³ See the Constitution of Ethiopia 1995, Preamble and Article 1.

²⁴ *Ibid.*, Article 39.

²⁵ See also John M Cohen, “Ethnic Federalism” in *Ethiopia*, 2 *Northeast African Studies* 157 (1995).

²⁶ Alemante, *supra* note 11, 47–49; Cass R Sunstein, *Constitutionalism and Secession*, 58 *The University of Chicago Law Review* 633 (1991).

intend to provide for a “permanent framework of government” for the state, unlike many others worldwide.²⁷

From the perspective of the ethnic groups, then, Ethiopian federalism is a federation of convenience from which they can secede or break away at any time, without even providing any justification or rationale for doing so. As a matter of constitutional law, Ethiopian federalism has no solemn commitment to the continuity and territorial integrity of the Ethiopian state. To this extent, it is a federation of convenience in which the ethnic groups hold the sovereign power to make or unmake the Ethiopian state at any time, based on their own terms.

The reason Ethiopia chose to build this federation based on convenience for ethnic groups has a long and complicated political and historical context that dates from the Ethiopian Student Movement of the 1960s and 1970s, which is related to the so-called “question of nationalities.”²⁸ The question of nationalities concerned the nature of the Ethiopian state and the pre-existing ethnic relations in the country. A radical student group advanced the idea that Ethiopia was a “prison house of nationalities” like Tsarist Russia and that it marginalized many of its ethnic groups in its socio-economic, cultural, and political makeup. These students claimed that Ethiopia only represented the culture, religion, and psychological makeup of the “Amhara-Tigre” (Ethiopia’s two northern ethnic groups) while marginalizing its ethnolinguistic groups, of which there are more than 80, in the national imagination. The solution to the question of nationalities, they proposed, was the recognition of the right to self-determination, including the concept that each nationality or ethnic group would have the right to secession.

The removal of the military regime that ruled Ethiopia from 1974-1991 by ethnonational armed groups such as the Eritrean People’s Liberation Front (EPLF) and the Tigray People’s Liberation Front (TPLF), who shared similar views

²⁷ Martin Loughlin, *Against Constitutionalism* (Harvard University Press 2022) 4.

²⁸ Bahru Zewde, *The Quest for Socialist Utopia: The Ethiopian Student Movement, c. 1960-1974*, 187-228 (2014) 187–228; Merera Gudina, “Contradictory Interpretations of Ethiopian History: The Need for a New Consensus” in David Turton (ed.), *Ethnic Federalism: The Ethiopian Experience in Comparative Perspective* 119 (2006).

with the radical Student Movement, made possible the restructuring of the Ethiopian state based on the principle of the right to self-determination, including the right to secession.²⁹ In 1993, Eritrea voted on independence from Ethiopia and became an independent state. After two years of a highly controlled constitution-making process, the Ethiopian People's Revolutionary Democratic Front (EPRDF)—a coalition of four ethnic-based parties, dominated by the TPLF, that ruled Ethiopia from 1991-2018—restructured the Ethiopian state along the lines of ethnic federalism, guaranteeing each ethnic group the right to secession in a brand new constitution.³⁰ To use Alexander Hamilton's expression in the *Federalist No. 1*, the Ethiopian choice for ethnic federalism was more a result of "accident and force" rather than the outcome of people's "reflection and choice," as in the case of the constitution of socialist Ethiopia after the collapse of the Monarchy in 1974 through revolution.³¹

Beyond this contested origin, the issue with this federation of convenience is not only that it is ethnic, but also that it has no constitutional commitment to the continuity of the Ethiopian state. Indeed, there are many studies that document the promises and pitfalls of ethnic federalism, and one prominent Ethiopian federalism scholar explains what he considers the "original sin of Ethiopian federalism."³² However, the absence of a constitutional commitment to the federal union and its divisibility is problematic whether the federal system is organized along ethnic or non-ethnic lines. The constitutional right of an ethnic group or a territorial unit to secession without any condition goes counter to the spirit of federalism, as it can render such a federalism one of convenience, which could

²⁹ E. Centime Zeleke, *Ethiopia in Theory: Revolution and Knowledge Production, 1964-2016*, 143-45 (2019).

³⁰ See Gedion T. Hessebon, *The Precarious Future of the Ethiopian Constitution*, 57 *Journal of African Law* 215 (2013); Minasse Haile, *The New Ethiopian Constitution: Its Impact upon Unity, Human Rights and Development*, 20 *Suffolk Transnational Law Review* 1 (1996).

³¹ See Andargachew Tiruneh, *The Ethiopian Revolution 1974-1987: A Transformation from an Aristocratic to a Totalitarian Autocracy* (1993).

³² Yonatan Tesfaye Fessha, *The Original Sin of Ethiopian Federalism*, 16 *Ethnopolitics* 232 (2017).

make a serious federal political action and practice extremely volatile and indeterminate in time and place.

There are at least two major problems associated with the constitutional recognition of secession in Ethiopian federalism. The first is that the constitutional design could create its own incentive structures for its enforcement and, in the case of the right to secession, this could challenge the stability and continuity of the federal constitutional order. This creates a collective action problem, which is the issue federalism primarily aims to address in the first place.³³ Consider, for example, that one of the ethnic groups, called X, wants to secede from Ethiopia. X thinks that it is in its best interest to form its own sovereign state as it has the population numbers, the economic resources, and the cultural attributes to be a viable and perhaps prosperous state. Another ethnic group called Y considers X's move towards secession very detrimental to its socio-economic, cultural, and political well-being. However, another ethnic group, Z, thinks that the secession of X is beneficial. Assume that the secession of X may also have some advantages for some ethnic groups and disadvantages for others (for example, the secession of Eritrea positioned the TPLF as the dominant actor in Ethiopian politics for three decades), regardless of how we define (dis)advantages. Within this scenario, X, following the constitutional procedure of Article 39(4)(a), approves its demand for secession by a two-thirds majority in its legislative council and asks the federal government to organize a referendum as required by Article 39(4)(b). If the federal government is loyal to the Constitution, it has no alternative but to organize a referendum that eventually will lead to the secession of X. The problem here is not primarily that X secedes, but that the federal government has no constitutional mechanism for resolving the disagreements between the other ethnic groups who support or oppose the secession. Here the *Quebec Secession Reference* judgement is instructive in the exercise of the right to secession as an empirical matter.³⁴ As the Supreme Court of Canada noted in this judgement, while Quebec does not have a unilateral right of secession under the Canadian

³³ See Robert D. Cooter and Neil S. Siegel, *Collective Action Federalism: A General Theory of Article I, Section 8*, 63 *Stanford Law Review* 72 (2010).

³⁴ See Peter Leslie, *Canada: The Supreme Court Sets Rules for the Secession of Quebec*, 29 *Publius Journal of Federalism* 135 (1999).

constitution or international law, the exercise of such a right imposes a “constitutional duty to negotiate” between Quebec, the federal government, and the provinces, considering the rights and interests of “all Canadians both within and outside of Quebec, and specifically the rights of minorities.”³⁵ But the Ethiopian Constitution does not even impose such a “constitutional duty to negotiate” in the exercise of the right to secession, as this right belongs to each ethnic group. Thus, the fact that secession, which is predominantly an extra-constitutional, political, and international relations issue,³⁶ is constitutionalized limits the capability of the federal government and the regional states to solve a fundamental collective action problem: an issue that no ethnic group or tier of government can resolve individually within the boundaries of constitutional law or politics.³⁷

Second, if the constitutional design cannot be implemented in practice, this could raise serious issues about the enforceability of the Constitution as a binding legal document that ultimately undermines the legitimacy of the Constitution and the political order it operates.³⁸ In fact, there are some who argue that Article 39 was included as a token assurance for the various ethnonational forces during the making of the Constitution,³⁹ and many others show how difficult it is to enforce this provision in part due to both its complicated procedure and the authoritarian political culture of the country.⁴⁰ The truth of the matter is that Article 39 is a binding law today, and if Ethiopia is to have a democratic government that respects the Constitution, some ethnic groups and political forces could resort to the peaceful option of using Article 39 for separation rather than raising arms. In

³⁵ *Reference Re Secession of Quebec*, [1998] 2 S.C.R. 217, para 92.

³⁶ Nicolás Brando and Sergi Morales-Gálvez, *The Right to Secession: Remedial or Primary?* 18 *Ethnopolitics* 107 (2019).

³⁷ Aziz Huq, *Does the Logic of Collective Action Explain Federalism Doctrine?*, 66 *Sandford Law Review* 1203 (2013).

³⁸ Stephen Gardbaum, “The Place of Constitutional Law in the Legal System” in Michel Rosenfeld and Andrés Sajó (eds.), *The Oxford Handbook of Comparative Constitutional Law*, 169 (2012).

³⁹ Alem Habtu, *Multiethnic Federalism in Ethiopia: A Study of the Secession Clause in the Constitution*, 35 *Publius* 313, 326-27 (2005).

⁴⁰ Daniel Abebe, “The Ethiopian Constitution and Ethnic Federalism” in Tom Ginsburg and Aziz Z. Huq (eds.), *From Parchment to Practice?*, 289 (2020, Cambridge University Press).

this regard, for instance, the Oromo Liberation Front (OLF) and the Ogaden National Liberation Front (ONLF) fought against the EPRDF-led Ethiopian government for more than two decades for the liberation of their respective ethnic groups. With the coming to power of Abiy Ahmed in 2018 and the demise of the EPRDF, however, both the OLF and the ONLF have become opposition political parties who struggle for their cause through the ballot box. If they can manage to win the necessary votes and assume government power, it will be completely constitutional for them to initiate the secession process of Article 39(4). If all the procedures of this article are met, the federal government has no option other than effectuating the secession process. Doing otherwise would be utterly unconstitutional and it may have a great potential to ignite conflict, chaos, or even civil war in the country. Viewed through these perspectives, the enforcement or non-enforcement of the constitutional right to secession will have an adverse impact on the constitutional order and the practice of federal democracy: doomed whether they do or do not.

2. Ethiopian Federalism as a Centralized Federation

This federation of convenience may give the impression and façade that Ethiopia has been transformed from “a prison house of nationalities” into “a freedom house of nationalities”—that ethnic groups now have the autonomy and freedom to decide on their own affairs in the territories they inhabit, i.e., practice self-rule, and participate in the governance of the country on an equitable basis at the federal level, i.e., engage in shared rule. However, the institutional arrangement of the federal system and the power allocation between the tiers of government reveal that this is far from the case. As many of the ethnic groups live in the regional states, the power allocation between the federal government and the regional ones, and their intergovernmental relations, affect their autonomy and freedom. Indeed, there are many types of federal systems, such as centralized versus decentralized, cooperative versus competitive, symmetric versus asymmetric, etc.⁴¹ The specific context of the states may necessitate the adoption of one or the

⁴¹ Nicholas Aroney, “Types of Federalism” in Rainer Grote, Frauke Lachenmann, & Rüdiger Wolfrum (eds.), *Max Planck Encyclopedia of Comparative Constitutional Law?* (2016).

other, or a combination of different types of federalism. It must be also stated that there is no one toolkit of federalism that works everywhere. However, it is reasonable to expect that a federal system that aims to create “a more perfect union”—like the United States or any other federal state—will presumably not recognize the right to secession in its constitution. Even if demands for secession could arise in these federal systems, as it did in Canada (Quebec) and the United States (Texas), their respective courts have ruled that the constituent units of the federation do not have a right to unilateral secession. In particular, the Supreme Court of the United States in *Texas v White* noted that the “Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States.”⁴² Likewise, it is also reasonable to expect that a federal system that stands on the principle of the right to self-determination, including the right to secession, will adopt a decentralized federal system that allocates more power to the subnational entities. This will also be reflected in the allocation of power between the tiers of government and their intergovernmental relations. However, the Ethiopian Constitution, on the one hand, promises a subnational autonomy that includes the formation of a new sovereign state, while on the other hand concentrating power at the center. From the perspective of power allocation between the tiers of government or from the vantage point of regional states, Ethiopian federalism is a centralized federation that grants a large amount of political and financial power to the federal government.

Despite the laudable autonomy and freedom that can be noted from afar, ethnic federalism institutionalizes the centralizing impulses of the Ethiopian state in the design and operation of the federation.⁴³ This is because, first of all, important government functions and prerogatives remain the mandates of the federal government. In addition to the list of 21 broad items—such as national defense, foreign affairs, financial and monetary matters, transportation, health, education, science and technology, and land and natural resources—that are considered the exclusive legislative domain of the federal government, the Constitution

⁴² *Texas v White* 74 US 700 (1869) 725.

⁴³ See Berihun Adugna Gebeye, *A Theory of African Constitutionalism* 138-44 (2021) ; David Turton, Introduction to David Turton (ed.), *Ethnic Federalism: The Ethiopian Experience in Comparative Perspective* 1, 29 (2006).

empowers the federal government to formulate and implement the country's overall socio-economic and development policies, plans, and strategies.⁴⁴ This gives the federal government wider power in implementing uniform socioeconomic and development policies in the country and, consequently, shrinks the autonomy of the regional states in pursuing their own development policies. Even if states have residual powers and the Constitution specifically mentions the power of states to formulate and execute their own socioeconomic and development policies, these cannot contradict the policy framework of the federal government.⁴⁵ Moreover, states are only empowered to administer land—the key livelihood for more than 80% of the Ethiopian population—and other natural resources in accordance with federal laws.⁴⁶ Furthermore, the Constitution allows the federal government to “legislate on civil matters” based on the authorization of the House of Federation (HoF) whenever this is necessary for establishing and sustaining a single economic community.⁴⁷ Thus, the division of power between the two tiers of government is not consistent with the laudable affirmation and recognition of the right to self-determination, including secession. Furthermore, it is also important to remember that, beyond its ethnic diversity, Ethiopia is varied in its geography, climate, and mode of production, which may ultimately necessitate diverse and contextualized socioeconomic and political policies. Yet, since the 1960s, the Ethiopian state has been approaching the pastoral lowlands with a developmental mission driven by modernization and settlement, as well as the promotion of agrarian production as way of life, regardless of the imperial, military, and federal nature of its governments over the years.⁴⁸

⁴⁴ Constitution of the Federal Democratic Republic of Ethiopia, Federal Negarit Gazeta 1st Year No. 1, Proclamation No. 1/1995, Art. 51 and 51(1) (21 Aug. 1995) [“the Ethiopian Constitution”].

⁴⁵ *Ibid.*, Article 52(1) and 2(c).

⁴⁶ *Ibid.*, Article 52(2)(d).

⁴⁷ *Ibid.*, Article 55(6); see also Assefa Fiseha and Zemelak Ayele, “Concurrent Powers in the Ethiopian Federal System” in Nico Steytler (ed.), *Concurrent Powers in Federal Systems: Meaning, Making, Managing?*, 254 (2017).

⁴⁸ See Berihun Adugna Gebeye, *Unsustainable the sustainable: An evaluation of the legal and policy interventions for pastoral development in Ethiopia*, 6 *Pastoralism* 1 (2016).

Second, the power and autonomy of the regional states has been further diminished by the adoption of a unicameral legislative branch. The House of Peoples' Representatives (HPR), the lower house of parliament, is the sole legislative body of the federal government.⁴⁹ Unlike the case of federal legislatures elsewhere,⁵⁰ which usually adopt a bicameral legislative body composed of a Senate, representing the interests of the states, and a House of Representatives, acting for those of the general public, the Ethiopian Constitution does not confer a legislative mandate on the HoF, the upper house of parliament. The main function of the HoF is constitutional interpretation.⁵¹ As the people elect members of the HPR through direct and universal suffrage, its members are responsible to their constituencies.⁵² Although 20 out of 550 seats are allocated to minority nationalities,⁵³ regional states as such do not have any representation in the legislative process. As is the case in some unitary states, the federal government can enact, and has indeed authorized, laws that further reduce the autonomy of regional states.

Third, the control of the major revenue sources by the federal government limits the autonomy of the regional states in executing their constitutionally-allocated powers and responsibilities.⁵⁴ Furthermore, although the Constitution provides for a concurrent power of taxation,⁵⁵ this article was “unofficially” amended in

⁴⁹ Ethiopian Constitution, Article 55(1).

⁵⁰ See Meg Russell, *The Territorial Role of Second Chambers* 7 *The Journal of Legislative Studies* 105 (2001).

⁵¹ See Assefa Fiseha, *Constitutional Adjudication through Second Chamber in Ethiopia*, 16 *Ethnopolitics* 295 (2017); Adem Abebe, "Unique but Ineffective: Assessing the Constitutional Adjudication System in Ethiopia" in Charles Fombad (ed.), *Constitutional Adjudication in Africa* 181 (2017); Yonatan Tesfaye Fessha, *Judicial Review and Democracy: A Normative Discourse on the (Novel) Ethiopian Approach to Constitutional Review*, 14 *African Journal of International and Comparative Law* 53 (2006).

⁵² Ethiopian Constitution, Article 54(1) and (2).

⁵³ *Ibid.*, Article 54(3).

⁵⁴ See Yonatan Fessha and Coel Kirkby, *A Critical Survey of Subnational Autonomy in African States*, 38 *Publius: The Journal of Federalism* 248 (2008); Abu Girma Moges, *An Economic Analysis of Fiscal Federalism in Ethiopia*, 10 *Northeast African Studies* 111 (2003); Edmond J Keller, *Ethnic Federalism, Fiscal Reform, Development and Democracy in Ethiopia*, 7 *African Journal of Political Science / Revue Africaine de Science Politique* 21 (2002).

⁵⁵ Ethiopian Constitution, Article 98.

1997 to the effect that the federal government would levy the concurrent taxes and could solely determine the rate of these taxes and the amount that would go to the states.⁵⁶ Moreover, the major source of revenue for the regional states comes from low tax bases,⁵⁷ such as from state and private employees, individual farmers, and cooperatives, and thus, fiscal centralization makes regional states dependent on the federal government for their financial expenditures in operating their governments and administrations.⁵⁸

When the constitutional design is seen in the light of the prevailing constitutional practice, as law does not operate in a vacuum, the centralized nature of the federation becomes even more apparent.⁵⁹ The political ideologies and methods of the EPRDF had crippled the autonomy of the regional states even more in practice:⁶⁰ the ideology of revolutionary democracy,⁶¹ the principle of democratic centralism, and the ushering in of the developmental state⁶² had all changed the federal state structure into a de facto unitary state.⁶³ The EPRDF had been the primary producer of the country's socioeconomic and political development policies, and the regional states have to then implement them as centrally planned.⁶⁴ In this respect, the inauguration of a new Growth and Transformation Plan every five years is a fine example of how the autonomy of regional states to follow and implement their own development agendas is limited. The lack of

⁵⁶ See also Assefa Fiseha and Zemelak Ayele, *supra* note 47, 246.

⁵⁷ Ethiopian Constitution, Article 97.

⁵⁸ See Solomon Negussie, *Fiscal Federalism in the Ethiopian Ethnic-Based Federal System* (2006); Eshetu Chole, *Opening Pandora's Box: Preliminary Notes on Fiscal Decentralization in Contemporary Ethiopia*, 1 *Northeast African Studies* 7 (1994).

⁵⁹ See Abebe, *supra* note 11.

⁶⁰ See Abbink, *supra* note 16.

⁶¹ See Jean-Nicolas Bach, *Abyotawi Democracy: Neither Revolutionary nor Democratic, a Critical Review of EPRDF's Conception of Revolutionary Democracy in Post-1991 Ethiopia*, 5 *Journal of Eastern African Studies* 641 (2011).

⁶² See Christopher Clapham, *The Ethiopian Developmental State*, 39 *Third World Quarterly* 6, 1151-65 (2017).

⁶³ See Yonatan Fessha, "A Federation without Federal Credentials: The Story of Federalism in a Dominant Party State" in Charles M Fombad and Nico Steytler (eds.), *Decentralization and Constitutionalism in Africa* 133 (2019).

⁶⁴ Assefa Fiseha, *supra* note 13.

appetite on the part of the EPRDF for different policy implementation, or even contextualization, coupled with the political cost to regional states (and their leaders) in pursuing their own policies makes the constitutional right to self-determination including secession a mockery.⁶⁵

While we have yet to witness how ethnic federalism will work under the premiership of Abiy Ahmed, we have already seen early signs of further centralization with the transformation of the EPRDF into the unitary Prosperity Party (PP) and the substitution of revolutionary democracy with **መደመር** (*madamare*)⁶⁶ as the guiding ideology of the governing party and—by extension—the Ethiopian state. The transformation of the EPRDF into the PP has dismantled (at least in principle) the decentralized EPRDF structure that had provided member parties of the coalition with the limited autonomy to channel their political ambitions (even if undemocratic) within their constituencies and the federation. Such political change within the ruling party has been accompanied by the militarization of the federation. The military has been tasked with the duty of enforcing what the federal government has described as “the rule of law” in the country. For instance, through this “rule of law” operation, the federal government, using the military, successfully removed the president of the Somali Regional State in 2018.⁶⁷ But a similar “rule of law” operation in Tigray in November 2020 engulfed the northern part of the country in a catastrophic civil war that has challenged and may continue to test the social fabric of the people and the continuity of the Ethiopian state as a unified entity. If revolutionary democracy helped the EPRDF to centralize and enforce the decision-making processes in the party and by extension in the country, the unitary party structure of the PP and “military federalism”⁶⁸ has assisted Abiy Ahmed in centralizing and

⁶⁵ Bach, *Supra* note 61; Theodore M. Vestal, *Ethiopia: A Post-Cold War African State* (1999).

⁶⁶ Literally, **መደመር** (*madamare*) means addition or working together in cooperation and unity. See **ባ.ዲ. አህመድ፣ መደመር** (Abiy Ahmed, *መደመር* (*madamare*) (2019).

⁶⁷ See also Yonatan Fessha, “Secessionism, Federalism and Constitutionalism in Ethiopia,” *Verfassungsblog*, (August 15, 2018), <https://verfassungsblog.de/secessionism-federalism-and-constitutionalism-in-ethiopia/>.

⁶⁸ For further insight on military federalism, consider the Nigerian federal experience. For details, see J. Isawa Elaigwu, *Nigerian Federalism Under Civilian and Military Regimes*, 18 *Publius: The Journal of Federalism* 173 (1988).

accumulating power that has significantly affected the power balance between the federal government and the regional states.

Ethiopian federalism thus presents a paradox that emanates from a constitutional commitment to the right to self-determination, including the ethnic groups' right to secession, and a subsequent subversion of their autonomy and freedom by limiting the power of the regional states in which these ethnic groups pursue their socioeconomic and political lives. This means that the centralizing impulse of the Ethiopian state, one that tends to promote the accumulation and concentration of power at the center, largely remains alive and active.⁶⁹ Despite the introduction of ethnic federalism, the centralized theory of government that has plagued Ethiopia, especially since Emperor Haile Selassie I, has not been genuinely and properly decentralized and tamed.

3. Ethiopian Federalism as a Confederation

If Ethiopian federalism is a federation of convenience from the viewpoint of the ethnic groups and a centralized one from that of the regional states, it is a confederation from the perspective of the citizens. This is because the Ethiopian Constitution generated two imagined political communities as sites of citizenship. The first includes the Nations, Nationalities, and Peoples (NNPs), a collective name for ethnic groups, while the second is the FDRE. The constituent power that inaugurated the Constitution did not rely on some reading of sovereignty or political authority which traditionally rests on the idea of the people in the singular.⁷⁰ Rather, it imagined a political community and claimed its constituent power as a derivative of that power through the right to self-determination.

The constituent power in the Constitution derives its authority from the sovereign powers of the NNPs. It is important to reiterate the preamble of the Constitution here: "We, the Nations, Nationalities and Peoples of Ethiopia ... Have therefore

⁶⁹ See also Yohannes Gedamu, *supra* note 11.

⁷⁰ See Joel Colon-Rios, *Constituent Power and the Law* (2020); Lucia Rubinelli, *Constituent Power: A History* (2020).

adopted ... this Constitution through representatives we have duly elected for this purpose as an instrument that binds us in a mutual commitment to fulfill the objectives and the principles set forth above.”⁷¹ Questions like who the NNPs are, how they exist, and how they empower themselves to establish a constitution for Ethiopia necessarily require an Andersonian imagination.⁷² Of course, what the NNPs represent are the events of the pre-constitutional period and evidence is not required to prove this. Nonetheless, the way the NNPs exist and ought to do so mandates an imagination without which the legitimacy of the constituent powers would be questionable. Hence, the innovation of a prior imagined political community (the transformation of ethnic groups to political communities—NNPs) becomes necessary to conceive the constituted political community (FDRE). In this course, the right to self-determination offered the necessary foundational basis and frame of reference for the imagination.⁷³

NNPs are imagined political communities because they are regarded as territorially limited, as sovereign, and as communities. They are territorially limited because NNPs are assumed to have a geographical base at either the regional state, zone (ልዩ ዞን—*leyu zone*), district (ልዩ ወረዳ—*leyu waradā*) or local (ልዩ ቀበሌ—*leyu qabalé*) levels.⁷⁴ They are perceived as sovereign states as they are bestowed with the right to self-determination up to secession.⁷⁵ They are viewed as communities because they are assumed, among other things, to share a common culture, language, identity, and psychological makeup.⁷⁶ As a matter of principle, the representatives of these NNPs can have the legitimate political authority and power to make a constitution for NNPs. Using their sovereign power, NNPs constituted the *nation states* of Tigray, Afar, Amhara, Oromia, Somalia, and Harari—and the *multination* states that includes the Southern

⁷¹ Ethiopian Constitution, Preamble.

⁷² Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* 5-7 (Revised ed., 2016).

⁷³ Andreas Eshete, “The Protagonists in Constitution Making in Ethiopia” in Goran Hydén (ed.), *Constitution-Making and Democratization in Africa* 69-78 (2001).

⁷⁴ Ethiopian Constitution, Article 39(5).

⁷⁵ *Ibid.*, Article 39(1).

⁷⁶ *Ibid.*, Article 39(5).

Nations, Nationalities, and Peoples, Benishangul/Gumuz and Gambella—within the contours of another imagined political community called the FDRE.⁷⁷

The other imagined political community is the FDRE. The FDRE is conceived to be territorially limited insofar as it, for instance, excludes Eritrea (unlike the pre-1991 era) and is expressed through the territorial limits of its member states. In this regard, the Constitution provides that: “The territorial jurisdiction of Ethiopia shall comprise the territory of the members of the Federation and its boundaries shall be as determined by international agreements.”⁷⁸ It is also envisaged as a sovereign state. Consider how the supremacy clause of the Constitution articulates this sovereignty: “All sovereign power resides in the Nations, Nationalities and Peoples of Ethiopia; This Constitution is an expression of their sovereignty; [and] [t]heir sovereignty shall be expressed through their representatives elected in accordance with this Constitution and through their direct democratic participation.”⁷⁹

As is self-evident, this sovereign imagination is framed through NNPs. Furthermore, the FDRE is imagined as a community, to be precise, as a community of NNPs. The preamble of the Constitution clearly spells out how the imagined community is a community of NNPs. For instance, the preamble reads,

Further convinced that by continuing to live with our rich and proud cultural legacies in territories we [NNPs] have long inhabited, have, through continuous interaction on various levels and forms of life, built up common interests and have also contributed to the emergence of a common outlook ... Fully cognizant that our common destiny can best be served by rectifying historically unjust relationships and by further promoting our shared interests ... Convinced that to live as one economic community is necessary in order to create sustainable and mutually supportive conditions for ensuring respect for our [NNPs]

⁷⁷ *Ibid.*, Articles 1 and 47.

⁷⁸ *Ibid.*, Article 2.

⁷⁹ *Ibid.*, Article 8.

rights and freedoms and for the *collective promotion of our interests* [emphasis added].⁸⁰

The phrase the “collective promotion of our interests” in the preamble refers to the collective interests of NNPs, not those of individuals. Therefore, the FDRE is imagined as a political community in its territorial, sovereign, and community elements that take the size, shape, and texture of NNPs.

Precisely because of the innovation of two imagined political communities in a single constitutional space, the Constitution, as Fasil Nahum rightly observes, is a “constitution of a Nation of Nations.”⁸¹ To use Nahum’s words, “[t]his is not the constitution of the Ethiopian citizens simply lumped together as a people. [Instead, t]he Ethiopian citizens are first categorized in their different ethnolinguistic groupings and then these groups come together as authors of, and beneficiaries from, the Constitution.”⁸² The result is that individual membership of the FDRE requires prior membership to NNPs. In other words, an individual’s membership of the FDRE is no longer automatic, but conditional. If we take the Constitution seriously, one has to be, for instance, a Somali, Oromo, or Amhara *first* to be a member of the political community we call Ethiopia. Without a membership to or identification with one of the NNPs, it is impossible to be Ethiopian as a matter of *constitutional design*. Viewed through the prism of citizenship, the constitutional dispensation is more confederal than federal.⁸³ Like citizenship in a confederation, Ethiopian citizenship is conditional upon membership to one of the NNPs that established the federation. Even if Article 6 of the Constitution says “[a]ny person of either sex shall be an Ethiopian national where both or either parent is Ethiopian,” it does not say anything about how Ethiopian nationality is originally gained in the first place, i.e., how parents become Ethiopian nationals. As discussed above, being Ethiopian is essentially attached to and contingent upon being a member of one of the NNPs.

⁸⁰ Ethiopian Constitution, Preamble.

⁸¹ Fasil Nahum, *Constitution for a Nation of Nations: The Ethiopian Prospect* (1997).

⁸² *Ibid.*, 51.

⁸³ See also Cohen, *supra* note 25, 157-58.

However, as a matter of practice, not everyone neatly belongs to one of the NNPs, nor are those who do not belong to or do not want to identify themselves with one of the NNPs foreign nationals. This simply means that there is a mismatch between constitutional design and Ethiopian reality related to citizenship. As it stands now, the constitutional design of two imagined political communities seems to gain even more traction as multiple ethnic nationalisms emerge.⁸⁴ As these ethnic nationalisms build their political activities and mobilizations within the constitutional prism of two imagined political communities, individuals are practically expected or coerced to identify themselves with one of the NNPs to belong to the FDRE. These individuals include those who do not want to identify with NNPs as part of their personal freedom or choice, along with those of mixed ethnic origin, who cover a larger segment of the Ethiopian population. Thus, due to the engineering of two imagined political communities in the federal constitutional dispensation, membership to one imagined political community is a precedent for membership to the other. The implication of confederal citizenship is not only that ethnicity becomes a primary site of citizenship for accessing the rights and opportunities available within the FDRE on an equal basis (which has created a favorable environment for multiple and competing ethnic nationalisms that have structured conflict throughout the country),⁸⁵ but also that federal democracy requires both the democratization of the primary political community—that is, the NNPs—and of the second one—that is, the FDRE. Yet this project of federal democracy is further complicated by the Constitution's view of identity and geography, to which I now turn.

4. Ethiopian Federalism as an Ethnocracy

Despite its official promises, what ethnic federalism constitutes is not a democracy, but an ethnocracy. According to Oren Yiftachel, who first developed

⁸⁴ Tezera Tazebew, *Briefing: Amhara Nationalism: The Empire Strikes Back*, 120.479 *African Affairs* 297 (2021).

⁸⁵ For a detailed discussion see Berihun Adugna Gebeye, "Citizenship and Human Rights in the Ethiopian Federal Republic" in Adem Kassie Abebe and Amen Taye (eds.), *Reimagining Ethiopian Federalism* 9 (Ethiopian Constitutional and Public Law Series Vol. 10, 2019).

the concept, ethnocracy means government by a particular ethnic group(s), *rule by ethnos*, in contrast with government by the people in general, *rule by demos*.⁸⁶ In ethnocracies, the dominant ethnic group(s) “appropriates the state apparatus and attempts to structure the political system, public institutions, and state culture to further its control over the state and its territory.”⁸⁷ The Ethiopian Constitution largely sets out an ethnocratic system both at the national and subnational levels. This means that Ethiopian federalism does not genuinely and meaningfully address the demands of all ethnic groups for equal concern and treatment in the country. While it claims to address the “question of nationalities,” it only considers the demands of some ethnic groups in some places, not those of all ethnic groups in all places.⁸⁸ From the perspective of ethnic relations, Ethiopian federalism has created an ethnocratic system, rather than a democratic one.

The ethnocratic feature of the Ethiopian federation is more apparent at the subnational levels than at the national one in part due to constitutional non-enforcement (as revolutionary democracy was the “empirical constitution” of the country from 1995-2018) and in part due to a complicated constitutional architecture that hides such a feature. A good place to start decoding the ethnocratic feature of the federation at the national level is to investigate the institutional setup and composition of the federal government. The HPR is the highest authority of the federal government and is responsible to the people as a whole.⁸⁹ As noted above, the HPR is the sole legislative body of the federal government that makes laws on the 21 broad items assigned to the federal government. The HPR passes decisions by a majority vote.⁹⁰ As the Amhara and Oromo ethnic groups account for more than 64% of the Ethiopian population, according to the last national census in 2007, these two ethnic groups constitute more than half of the parliamentary seats, making all other ethnic groups perpetual minorities. Although members of the HPR, including Amhara and

⁸⁶ Oren Yiftachel, *Ethnocracy: Land and Identity Politics in Israel/Palestine* (2006).

⁸⁷ *Ibid.*; Oren Yiftachel, “Ethnocracy” and Its Discontents: Minorities, Protests, and the Israeli Polity, 26 *Critical Inquiry* 725, 731 (2000).

⁸⁸ See *supra* note 32..

⁸⁹ Ethiopian Constitution, Article 50(3).

⁹⁰ *Ibid.*, Article 59.

Oromo representatives, are governed by “the Constitution, the will of the people, and their conscience,” they may also act in the interest of their own ethnic group in ways that may jeopardize the interests of the others.⁹¹ One may also argue that members of the HPR are representatives of districts, not the entire ethnic group as such. But these districts are still ethnic districts located in different regional states structured along ethnic lines. Hence, the design of the HPR can make the Amhara and Oromo ethnic groups the main legislators of the federation.

Similarly, the House of Federation (HoF)—the upper house of parliament, which is tasked with constitutional interpretation—is also dominated by the Amhara and Oromo representatives as population is a key consideration in its composition.⁹² Like the HPR, decisions of the HoF are passed through a majority vote.⁹³ Here members of the HoF, unlike the HPR, are guardians of ethnic interests and are expected to place the interest of their respective ethnic groups at the forefront in the decisions of the HoF. As in the legislative process, the Amhara and Oromo ethnic groups can dominate the constitutional interpretation process. For example, even if the HPR can pass legislation in the interest of the Ethiopian people as a whole, the HoF can still strike down such legislation if it thinks that it does not advance the interests of the two ethnic groups enough. In addition, if the HPR passes legislation that largely benefits the two big ethnic groups at the expense of others, the HoF may find it constitutionally permissible. The crux of the argument here is that such an institutional arrangement of the law-making and the constitutional interpretation bodies at the national level protects, or appears to safeguard, the interests of larger ethnic groups rather than smaller ones. Because of this, Article 8 of the Constitution, which bestows sovereignty on all the ethnic groups, did not receive any meaningful expression in the architecture of the legislative and constitutional interpretation institutions. Against the central ethos of federalism, such an institutional arrangement can channel, and indeed has

⁹¹ *Ibid.*, Article 54(4).

⁹² *Ibid.*, Article 61(2).

⁹³ *Ibid.*, Article 64(1).

conveyed, as we shall see below, ethnic majority rule to both law-making and constitutional interpretation in the federation.

Additionally, the parliamentary system can further advance and entrench ethnocracy. The essential feature of a parliamentary system is that the executive branch of government derives its power from and is accountable to parliament.⁹⁴ The tenure of the Prime Minister and the Cabinet depends upon the confidence of the parliament, as also reflected in the Ethiopian Constitution.⁹⁵ In such systems, there is less separation of powers between the legislative and executive branches of government. The parliament and the political party system play a huge role in the operation of parliamentary governments.⁹⁶ Ultimately, the institutional design of parliament and the nature of the political party system drive the executive branch. As the Ethiopian Parliament is dominated by Amhara and Oromo ethnic groups and the political party system operates within the orbit of ethnicity, these two ethnic groups can constitute and run the executive branch of government as they wish: They can hire or dismiss any government in the federation. Like parliament, the executive administration can be an apparatus of ethnocracy.

If this is what the Constitution provides, one might ask why the Amhara and Oromo ethnic groups did not then play a major role at the national level for almost a quarter of a century, i.e., from 1995-2018. The answer is simple. The Constitution was not practiced as it was designed.⁹⁷ This is primarily because, with a minority democratic base, the full implementation of the Constitution would have displaced the TPLF at the national level immediately after the Constitution came into force in 1995. The path the TPLF/EPRDF government chose was what the Kenyan legal scholar Okoth-Ogendo called “constitutions without

⁹⁴ Anthony W. Bradley and Cesare Pinelli, “Parliamentarism” in Michel Rosenfeld and András Sajó (eds.), *The Oxford Handbook of Comparative Constitutional Law* 652 (2012).

⁹⁵ Ethiopian Constitution, Chapter 8.

⁹⁶ Wolfgang C. Müller, *Political Parties in Parliamentary Democracies: Making Delegation and Accountability Work*, 37 *European Journal of Political Research* 309 (2000).

⁹⁷ Gedion T. Hessebon, *supra* note 30, 223-27.

constitutionalism”.⁹⁸ In a system of constitutions without constitutionalism, the governing elite is committed to the idea of the constitution as a source of legitimacy for the state and its governance, but it also equally rejects the practice of constitutionalism, or the enforcement of constitutional rules and values in reality. The TPLF/EPRDF government, rather than considering the Constitution as something to be implemented as a law, reduced it to a mere tool of legitimation and justification for its politics.⁹⁹

The demise of the TPLF/EPRDF has shown how the Constitution positions the two large ethnic groups, Amhara and Oromo, as superpowers in the country and it may be instructive of what may come next. Although the TPLF/EPRDF regime stood on the tensions, historical disagreements, and rivalries between Amhara and Oromo political elites,¹⁰⁰ the ethnic constitutional and political party system has also made their cooperation possible. This is because, first, the alliance of these two ethnic groups both at the level of political elites within the EPRDF and at the grassroots level in the popular protest movements helped to displace the TPLF from its dominant position within the EPRDF. It is largely the alliance of these two ethnic groups, dubbed “Oromara,” that brought Abiy Ahmed of the then Oromo People’s Democratic Organization (OPDO) to the premiership in April 2018. Second, it is the Oromo- and Amhara-dominated HoF that rendered the September 2020 Tigray regional election unconstitutional and void. Third and finally, it was predominantly the Oromo- and Amhara-led federal government that removed the TPLF from its home region of Tigray under a “rule of law operation,” although it has since regained control again.¹⁰¹ While we have to wait and see how the relationship between Oromo and Amhara political elites unfolds

⁹⁸ H.W.O. Okoth-Ogendo, “Constitutions without Constitutionalism: Reflections on an African Political Paradox” in Douglass Greenberg et al. (eds.), *Constitutionalism and Democracy: Transitions in the Contemporary World* 65-80 (1993).

⁹⁹ See Abbink *supra* note 60; Abebe *supra* note 11; Gedamu *supra* note 11.

¹⁰⁰ Merera Gudina, *Ethiopia: Competing Ethnic Nationalisms and the Quest for Democracy, 1960–2000* (2003).

¹⁰¹ The immediate cause for the “rule of law operation” was the TPLF’s pre-emptive attack on the Northern Command of the Ethiopian National Defense Force on November 4, 2020, the ultimate aim of which was either to remove Abiy Ahmed from power or to take the upper hand in the “national dialogue” this specific context would have brought about.

in the future, the Constitution gives them a large amount of power and authority at the national level that emanates from their huge population numbers and vast territory, both of which are a creation of the Constitution itself.

Table 1. Intra-regional ethnic diversity in Ethiopia

Region	Ethnic groups (% of population)						
Amhara	Amhara (91%), Agew (5%), Oromo (3%), Other (2%)						
Oromia	Oromo (87%), Amhara (7%), Gurage (1%), Somali (1%), Other (4%)						
Tigray	Tigrawi (96.55%), Kunama (0.7%), Irob/Saho (0.71%), Other (2.4%)						
SNNPR	Surma (0.17%)	Zeyise (0.10)	Gidecho (0.03%)	Arbore (0.04%)	Geleb	Kore (1.01%)	Gedeo (4.92%)
	Gurage (7.52%)	Hamer (0.31%)	Gewada (0.43%)	Basketo (0.52%)	Burji (0.37%)	Alba (1.35%)	Bena (0.17%)
	Kembata (3.81%)	Shinasha (0.01%)	Dawro (3%)	Bumi	Dime	Tembaro (0.64%)	Shekicho (0.44%)
	Kafficho (5.43%)	Wolaita (10.71%)	Gacho	Nao (0.05%)	Tsemay (0.13%)	Hadyia (8.02%)	Alba (1.35%)
	Qebena (0.29%)	Gamo (6.96%)	Derashe (0.19%)	Bench (2.33%)	Yem (0.5%)	Konta (0.54%)	Amhara (2.79%)
	Konso (1.46%)	Sidama (19%)	Me'enite (1%)	Mareko (0.38%)	Oida (0.05%)	Ari (1.89%)	
	Gofa (2.39%)	Oromo (1.57%)	Silte (5%)	Desenech (0.32%)	Surma (0.11%)		
Afar	Afar (90.3%), Amhara (5.22%), Argoba (1.5%), Other (2.98%)						
Gambella	Anyawaa (21.17%), Nuer (46.65%), Mejenger (4%), Amhara (8.42%), Oromo (4.33%), Other (18%)						
Benishangul-Gumuz	Berta (25.90%), Gumuz (21.11%), Shinasha (7.5%), Mao (2%), Koma (1%), Agew (5%), Amhara (21.25%), Oromo (13.32%), Other (2.92%)						
Harari	Harari (8.65%), Oromo (56%), Amhara (22%), Somali (3.87%), Gurage (4%), Other (2.92%)						
Somali	Somali (97%), Other (3%)						

Source: FDRE Population Census Commission (2008).¹⁰² NB: This is the most recent official data available as Ethiopia has not conducted a national census since 2007.

¹⁰² Zemelak Ayitenew Ayele, *Local Government in Ethiopia: Advancing Development and Accommodating Ethnic Minorities* 122 (2014).

Ethnocracy is more apparent and practiced, even, at the subnational levels. Although Ethiopia includes more than 80 ethnolinguistic groups, they were originally supposed to live within nine regional states. This means that not every ethnic group has received its own regional state status. Indeed, many of the ethnic groups (around 56 of them) were lumped together under the Southern Nations, Nationalities and Peoples Region (SNNPR), and other regional states also host many ethnic groups together.

The recent secession of the Sidama and the Southwest Ethiopian People's Regional State from the SNNPR increased the number of member states to 11. In particular, seven of the regional states (the states of Tigray, Afar, Amhara, Oromia, Somalia, Harari, and Sidama) out of 11 are named after a major ethnic group. The notable exception in this regard is the state of Harari, named after the minority Harari ethnic group, which constitutes 8.65% of the population of the Harari state. The constitutions of these regional states have created a socioeconomic, cultural, and political order for the ethnic group after which they are named despite the presence of different ethnic groups in all these states, as the above table shows. In practice, in these states, the dominant ethnic group considers their respective states to be their own "ethnic homeland" that primarily belongs to them and them alone. As the plethora of scholarship on this issue attests, minority ethnic groups in different regional states have been rendered "second-class citizens at best and unwelcome aliens at worst" and have been subjected to an ethnicized "local tyranny."¹⁰³ These regional ethnic minorities have become "foreigners" in their own country with almost no place in the socioeconomic, cultural, and political order of the states in which they reside: From exclusions and discriminations in political life and civil society, to severe restrictions in access to economic opportunities and social services, to forceful expulsion and the destruction of their

¹⁰³ Solomon A. Dersso, *Taking Ethno-Cultural Diversity Seriously in Constitutional Design: A Theory of Minority Rights for Addressing Africa's Multi-Ethnic Challenge* 215 (2012); Assefa Fiseha, "Theory versus Practice in the Implementation of Ethiopia's Ethnic Federalism" in David Turton (ed.), *Ethnic Federalism: The Ethiopian Experience in Comparative Perspective* 136 (2006, James Currey).

property, to even their massacre and ethnic cleansing.¹⁰⁴ Here, almost every ethnic group is a victim if they live in a different region or do not have a region of their own, which is predominantly the case in the country.

The four remaining regional states that are not named after a single ethnic group are also ethnocratic. For example, the Benishangul-Gumuz regional state constitution identifies five ethnic groups as sole owners of the regional state, although there are many ethnic groups who live there in large numbers, as can be seen from the table above.¹⁰⁵ Ethnic groups other than “the sole owners of the region” have been pushed to the periphery in the socioeconomic and political life of the region at best, and the subject of ethnic cleansing, displacement, and massacre at worst.¹⁰⁶ While the Southwestern Ethiopian People’s Region and the SNNPR are multiethnic at the regional level, the various zones that constitute the regions each predominantly belong to one ethnic group and consequently exclude other ethnic groups from political life and civil society, as in other regional states.¹⁰⁷

Therefore, from the perspective of ethnic relations, the Ethiopian federation is an ethnocratic system that serves or claims to serve the interests of some ethnic groups at both the national and subnational levels. As noted at the beginning, while ethnic federalism claims to address the “question of nationalities,” it simply considers the demands of a few ethnic groups in some areas, not those of all ethnic groups in every place. Additionally, ethnic identity and geography determine what sorts of rights and duties one has as a citizen. For example, an Amhara, Oromo,

¹⁰⁴ See Dersso, *supra* note 103, 216; Takele Bulto, *Wolf in sheep’s clothing? The Interpretation and Application of the Equality Guarantee under the Ethiopian Constitution*, 26 *Afrika Focus* 1, 11–35, 2013; *supra* note 102.

¹⁰⁵ Benishangul-Gumuz Constitution, 2003, Article 2.

¹⁰⁶ See Aweke Amare Kenaw, *One Country–Two Citizenships: The Status of Settlers in Benishangul-Gumuz Regional States (BGRS) of Ethiopia*, 0 *African Identities* 1 (2020). United Nations, “Ethiopia Humanitarian Country Team Visits Metekel Zone of Benishangul Region to See Humanitarian Situation, Response,” United Nations, (23 April 2022), <https://ethiopia.un.org/en/179072-ethiopia-humanitarian-country-team-visits-metekel-zone-benishangul-region-see-humanitarian>.

¹⁰⁷ Christophe Van der Beken, *Federalism in a Context of Extreme Ethnic Pluralism: The Case of Ethiopia’s Southern Nations, Nationalities and Peoples Region*, 46 *VRÜ Verfassung und Recht in Übersee* 3 (2013).

or Somali can be a *citizen* in his/her own regional state, but a *subject* in a different one. The decentralized ethnocracy has created *ethnic groups that could be citizens* and *ethnic groups that could be subjects*, somehow akin to what Mahmood Mamdani called the “decentralized despotism” that characterizes the legacy of colonialism in much of Africa.¹⁰⁸

Conclusion

This article has shown that Ethiopian federalism is so much more than ethnic federalism, and even more than federalism itself. It has revealed the four faces of Ethiopian federalism, the unitary, federal, confederal, and ethnocratic, that have brought about a novel constitutional experiment in a “new state system.” The experiment with such a federal system for more than a quarter of a century did not bring democracy, nor did it address the concerns over treatment of both ethnic groups and individuals throughout the country. It also failed to resolve the “issue of peace and war,” the overarching goal of the 1995 Constitution according to its chief architect, the late Ethiopian Prime Minister Meles Zenawi.¹⁰⁹ Twenty-five years after the adoption of the Constitution, Ethiopia is at war with itself, again in Tigray, the epicenter of conflict some three decades ago. Pursuing constitutionalism within such a federal arrangement could further entrench an ethnocracy, not a democracy, at both the national and subnational levels. While the legitimacy deficit associated with the Constitution may be a sufficient reason to undertake a constitutional reform,¹¹⁰ its unitary, confederal, and ethnocratic features could be even stronger reasons to revise and rethink some of its normative assumptions and institutional features. With this federal structure, it is difficult, if not impossible, to operate a democratic state and government within a competitive multiparty system that equally respects and protects the rights of all individuals and all ethnic groups at both the national and subnational levels. Thus,

¹⁰⁸ Mahmood Mamdani, *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism* (1996).

¹⁰⁹ Meles Zenawi as quoted in Lovise Aalen, *Ethnic Federalism in a Dominant Party State: The Ethiopian Experience 1991-2000*, R 2002:2 CMI Report 40 (2002).

¹¹⁰ Hessebon *supra* note 30.

it may be advisable to reform the federal system to ensure peace and practice democracy in one political and economic community. If constitutional reform is pursued, then it should seriously consider and engage with the four faces of Ethiopian federalism this article has expounded.

DISCUSSIONS

Dr. Solomon Nigussie — Discussant

Thank you Berihun for your clear presentation and succinct framing of the most important issues. By agreeing with you on most points, I will focus on the most important issues which I think should be discussed.

One issue is, there are people who argue that the Ethiopian federation guarantees the rights of cultural and religious groups and that this is its main feature. The other point is, whether we call it multicultural federalism or some other type of federalism, where do we go from here after this experiment of three decades? I think we have reached the extreme; by practicing this federalism the county is on the verge of collapse. So, “where do we go from here?” is a question I ask. We have to make fundamental decisions regarding the organization of the Ethiopian State. Debating on constitutional democratic culture has no point; we really do not have the right form to address this issue.

The other issue is the question of citizenship. If we see the situation of citizens in confederations, they know their rights and limitations in other member states of the confederation. But in the case of Ethiopia the Constitution doesn't guarantee the individual right of someone outside their home regional state and we have to address this issue.

You have emphasized the constitutional provisions pertaining to the economic aspects. But what aspect of it can be strengthened? Let us look at the land rights

issue in the politics of this country. I think the politics and economy of this country is choked by the land issue: whose right is it to own land? The political class fully controls land and through land manipulates the oppressed, be it in rural or urban areas. The land issue is very serious and needs to be addressed seriously. It lacks clarity in the practice of federal democracy and separate research is needed on this issue in our country.

The other point which you raised is that of federalism as convenience rather than constitutional principle, and you preferred to use the U.S. constitution as a model to forge a perfect union. Can we think of making it indigenous by using local concepts like ubuntu in the South African constitutional practice (aspiring to ensure an equal living standard for their children)? Can we think similar provision in Ethiopian constitution?

Another argument you made is that Ethiopian federalism centralizes much of the power by denying regional states financial and political power. Yes, it does so, in fact; but is this done in terms of constitutional provisions? I think it is more a problem of practice. But I do see two contradictory aspects of the centralization tendency. One, had it not been for the centralized approach—having constitutional provisions which you referred to as “a federation of convenience,” wherein it assures the secession power to the constituent units—how would the federation have survived? Secondly, for example, states are arguing for up to 90% of the concurrent tax to be given to them. What does this mean? How can the federal government discharge its responsibilities under Article 51 of the Constitution?

Dr. Mulugeta Mengist

On your idea of having a serious federation more than having a federation of convenience you raise the issue of self-determination. I do not have a problem with self-determination in general. But the right to secession renders the whole federation a federation of convenience. I would like to raise the practical problems which arise from having a secession clause in the Constitution. From my experience in the Prime Minister's office for five years, I would like to mention

that the right to secession squanders capital. If we read the Constitution, the whole purpose of the coming together is to create a single political and economic community and the creation of it is essential to have a lasting peace and to sustain democracy and rapid economic progress. Yet the existing approach squanders capital. If you look at how the federal government allocates its limited capital budget, the formula is simple, entailing one industrial park for every region and one university for every region, and that is due to the pressure coming from the regions. In principle there is no problem if we establish our industrial parks in Afar or Oromia, closer to port of Djibouti. But in practice there is the problem of mistrust arising from the recognition of the right to secession.

The second problem with secession is, it weakens resistance to abuse of governance. The whole philosophy of federal arrangement is that separately we will be too weak to resist bad governance or dictatorship. The whole purpose of coming together is responding to abuse in common. The Constitution premises on the common struggle of the Ethiopian people against oppressors to create a lasting peace and democracy together. Ironically, the Constitution very much lowers the exit threshold from the covenant. Some of the actors in the federation may choose to leave the federation whenever they think staying in the federation is not in their best interest, rather than working together to address the problem in the federation. Berihun, it would be good to reflect on this effect of the right to secession.

Dr. Yonatan Fessha

In your paper you attributed the centralization of power to the design of the Constitution. I am not sure the centralization comes from the constitutional design. If you look at the division of power in the Constitution, it gives explicit power to the federal government and gives residual power to the states. This is an indication that the federation favors the subnational units. The other indicator is that, yes there are broad powers given to the federal government, but on closer reading the broad powers given to the federal government are mostly limited to setting national standards and basic policy criteria. There is little or no concurrency in the Constitution and I also fail to see why you did not consider

other factors like the national interest and national uniformity, which often allows the central government in federations to interfere in state affairs. Yes, there is a clause in the Constitution that allows the federal government to enact on matters of civil law but even in that case it is with the permission of the HoF, which is supposed to be the house of the constituent units; so, in this regard even the regional states are participating in the law-making process.

Dr. Adem Kassie Abebe

What are the parameters by which one can say a federation is centralized or not?