

# **Comparative Relevance of the Ethiopian Federal System to other African Polities of the Horn: First Thoughts on the Possibility of “Exporting” Multi-ethnic Federalism\***

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Abstract

*Ethiopia has been experimenting with federalism for several years now. Its accent on ethno-linguistic criteria for state formation, its constitutional recognition of the right to secession, the unusual mode of constitutional adjudication through the House of Federation (a body that is analogous to an upper house of a bicameral legislature), the de facto asymmetry that persists in spite of the de jure symmetry, the lack of explicit textual recognition of federal supremacy and the consequent parallelism/dualism noted in federal practice, among other things, have attracted attention both in academic and non-academic circles. This article seeks to reflect upon whether the Ethiopian federal experiment can offer some lessons to other countries of the Horn of Africa who feel the similar burden of diversity, conflict, and insecurity. In other words, it inquires into the “exportability” of the Ethiopian brand of federalism. In so doing, it first seeks to descriptively situate federalism in Ethiopia’s past and present. Then it weighs the (ir)relevance of the Ethiopian federal experiment to the countries in the sub-region by looking into the significance of multi-ethnic federalism for internal peace and stability, for entrenchment of ethno-cultural justice and for governance of diversity, and for the prospect of regional integration. In the quest for a potential ‘market’ to export to, this piece reflects on the factors that facilitate the migration of law (e.g. success at home, prestige abroad, and the psychology of the countries of the sub-region which inevitably is informed by a history of chequered relations, etc). In this way, it seeks to examine the comparative relevance of the Ethiopian federal experiment to other countries with a common set of ailments to deal with.*

## **1. Introduction**

The consequences of the end of cold war in the East African sub-region includes the collapse of the State of Somalia<sup>1</sup>, the fall of Mengistu’s regime in

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Ethiopia<sup>2</sup>, the birth of Eritrea as an independent nation,<sup>3</sup> and the opportunity in Ethiopia for democratizing the government and restructuring the state.<sup>4</sup> One of the consequences of this series of dramatic events was Ethiopia's resolve on the federal option as the only way forward. Accordingly, Ethiopia became first an

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Trento/Paris) read the piece and gave me their comments for which I am immensely grateful. The continued encouragement of Professors Luisa Antonioli and Elena Ioriatti has always been a help, and I am very grateful to both of them. I am also grateful to the anonymous referees who, through their comments, contributed to the betterment of the article.

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<sup>1</sup> Somalia was ruled by Mohammed Siyad Barre for the large part of its independent existence until his country fell into anarchy in 1991 at the end of a sustained civil war mounted by forces from regional and clan groups.

<sup>2</sup> Colonel Mengistu Hailemariam of Ethiopia ruled from 1974 to 1991. He was toppled from power in May 1991 when, under the pressure of an armed liberationist struggles launched against his regime in different parts of the country but mainly in Eritrea and Tigray, had to abdicate power in favour of Lt General Tesfaye G. Kidan who, having signed a ceasefire, marked the end of the Derg era. In the cold war era, Mengistu was supported by the USSR, Cuba, North Korea, and East European Countries. Gorbachev's reform in the USSR and the consequent collapse of communism in the Eastern Bloc countries affected Mengistu's regime rather adversely and could not sustain the long and protracted war fought in Ethiopia since its takeover of power in 1974. See Andargachew Tiruneh, *The Ethiopian Revolution*. Cambridge: Cambridge University Press, 1993; Paul Brietzke, *Law, Revolution, and Development in Ethiopia*. New Brunswick, NJ: Bucknell University Press, 1982; Paul Henze, *Rebels and Separatists: Regional Resistance to a Marxist Regime*. Santa Monica, CA: Rand, 1985; John Markakis, *National and Class Conflict in the Horn of Africa*. Cambridge: Cambridge University Press, 1987; and others for the analysis of the flow of events in the times when the military regime was in power.

<sup>3</sup> Eritrea was declared independent immediately after the fall of Asmara, the Eritrean capital, into the hands of the Eritrean Peoples' Liberation Front (EPLF) in May 1991. The EPLF quickly organized a Provisional Government that oversaw the process of the popular referendum that led to the subsequent *de jure* independence. The government in Ethiopia agreed to the result of the referendum with no qualms.

<sup>4</sup> See, for example, Merera Gudina, *Ethiopia: Competing Ethnic Nationalisms and the Prospect for Democracy, 1960-2000*. Addis Ababa: Shaker, 2002 on this.

intensely decentralized polity with self-governing ethnic groups from 1991 to 1995<sup>5</sup> and subsequently a constitutional multi-national federal polity since 1995. The latter was made possible by virtue of the adoption of its federal constitution.<sup>6</sup> The federal experiment is an ongoing one to date. Recent efforts at state reconstruction in post-conflict contexts in the neighboring countries of Somalia, Southern Sudan, The Sudan Republic, Kenya, and Eritrea have led to consideration of the Ethiopian experiment as a possible model *for peace-building, for governance of diversity, and entrenchment of inter-ethnic accommodation*.<sup>7</sup> This interest in the Ethiopian federal arrangement and its

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<sup>5</sup> See the *Transitional Charter of Ethiopia* and Proc No. 7/1992 for the details of how the seeds of federalism were already put in place in the days of the Transitional Charter, the then interim constitution.

<sup>6</sup> The federal constitution was adopted on the 8<sup>th</sup> of December 1994. It came into “full force and effect” as of the 21<sup>st</sup> of August 1995. (See the Proclamations [issued] to Pronounce the Coming into Effect of the Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No. 1/ 1995, *Federal Negarit Gazeta*, Year 1, No.1. for this.) Jon Abbink makes an interesting observation that “[t]he Constitution was published on 12 December 1996, with the imprint ‘21 August 1995’ (the date of inauguration of the FDRE)” although “the reason for the delay is not known.” Jon Abbink, “Ethnicity and Constitutionalism in Ethiopia” *Journal of African Law*, Vol. 41(1997), p. 166, FN 24.

<sup>7</sup> Somalia made a reference to Ethiopia as it sought to draft the constitution of/for the Transitional Federal Government. In Kenya, a country that normally finds it inglorious to borrow anything from Ethiopia, Ethiopia’s federalism has been on the table already. Southern Sudan is considering the Ethiopian model seriously in its attempt to prepare a constitution for the anticipated post-referendum country as well as for the wider Sudan from which they demand a federal arrangement that guarantees them self-rule. Note also the fact that the Comprehensive Peace Agreement (CPA), by allowing self-rule to the South, seems to embrace the federal idea albeit in its incipient forms. In current practice, the Post-CPA Southern Sudan has already organized itself into a federal-type arrangement in which *states* form part of Southern Sudan as constituent units. In the ‘greater’ Horn, in Uganda, for instance, there is an active interest in federalism as can be seen from the website <http://www.federo.com>. Tanzania operates on a federal-like arrangement in its relation with Zanzibar. The call for uniting Rwanda and Burundi with Tanzania through a federation has long been made by a prominent Africanist, Ali Mazrui, in 1998. See his, “The US Must Sell Federalism as Part of its Liberal Legacy,” *The Nation*, February 22, 1998, now available at: <http://www.federo.com/index.php?id=251>.

constitution gives rise to the question of the comparative relevance of the Ethiopian federalism for neighbouring countries with similar trajectories.<sup>8</sup>

This piece seeks to explore the question of how far Ethiopia's federalism can be "exported." It therefore aims at exploring the potentials and the limits of the Ethiopian federal experiment (which hardly lacks in unique features) to serve as a worthy model to consider in the context of other multi-ethnic African countries. In particular, I seek to, first, outline the Ethiopian federal system in a historical context (past and present) and descriptively present its distinctive features. I will also try to outline its relevance to other polities by focusing on its potential for internal peace and stability (alias 'peace in the short term'), for greater accommodation of inter-ethnic diversity (a just

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<sup>8</sup> There are a number of attempts to weigh the viability of the federal option for the horn of Africa, especially for the countries that are often referred to as 'the Horn proper' namely Ethiopia, Eritrea, Djibouti, and Somalia. See Martin Dent and Asfa Wossen Asserate, "A New Beginning in Ethiopia and Eritrea: Guidelines to the Healing of the Land through a Federal Structure" and Paul B. Henze, "The Economic Dimension of Federalism in the Horn of Africa" in *Conflict and Peace in the Horn of Africa: Federalism and its Alternatives* (Peter Woodward and Murray Forsyth, eds). Aldershot: Dartmouth Publishing Co, 1994, pp.41-51 and 124-130 respectively; and Daniel Kindie, "Which Way the Horn of Africa: Disintegration or Confederation?" in *Proceedings of the Sixth Michigan State University Conference on North East Africa, April 23-25, 1992* (Compiled by John Hinant). East Lansing, MI: MSU, 1992, pp. 157-169 as examples of such attempts. Other examples of efforts to examine the possible solution to the problems of the countries in the horn (some of which consider federalism as an option) include: Francis M. Deng, *War of Visions: Conflict Identities in the Sudan*. Washington DC: The Brookings Institution, 1995; John Sorensen, *Imagining Ethiopia: Struggles for History and Identity in the Horn of Africa*. New Brunswick, NJ: Rutgers University Press, 1993; John Markakis and Katsuyoshi Fukui (eds), *Ethnicity and Conflict in the Horn of Africa*. London: James Currey, 1994; and Peter Woodward, *The Horn of Africa: State Politics and International Relations*. London: Tauris African Studies, 1996. An excellent summary and critical review of these books is available in: Kassu Gebremariam, "Perspectives on the Horn of Africa's Conflict: a Cure to Prevention of the Collapse of Regional Countries in the 21<sup>st</sup> Century?" *Third World Quarterly* (1997), Vol 18, No. 1, pp. 175-181. More recently, an attempt at examining the Ethiopian federal system by putting it in a comparative perspective is attempted in David Turton (ed), *Ethnic Federalism: The Ethiopian Experience in Comparative Perspective*. Oxford/Athens, OH/Addis Ababa: James Currey/Ohio University Press/ Addis Ababa University Press, 2006. But as one could quickly gather from a cursory glance at these works, none of these writings-save Assefa Fisseha's, "Theory versus Practice in the Implementation of Ethiopia's Ethnic Federalism" in David Turton(ed) above-- are written from a legal perspective. Needless to say, none are written from the perspective of comparative constitutional law.

and fair inter-group relations in the medium-term), and regional (re)integration (a greater sub-regional peace, cooperation, and interdependence, alias ‘peace in the longer term’). After weighing on the factors for and against the adoption of the Ethiopian federal arrangement as a model, I will examine tentatively the possible candidates who can be interested in the Ethiopian federal model. Finally, I will draw some conclusions as to the comparative relevance of the model for other similar polities. Throughout this piece, I will argue that while adoption of any legal model (with or without adaptation) often depends on the success of the model in the country of origin, the Ethiopian federalism which may have shown more signs of limits and strains than success, can still be a model, if not for its success, merely for its potentials.

The overall objective is to raise questions and spark a discussion, even a conversation, over the possibility of multi-ethnic federalism serving the purpose of bringing about internal peace, entrenching ethno-cultural justice and greater regional integration in the Horn of Africa. The key questions I seek to raise and reflect upon include the following: what does the Ethiopian federal experiment offer to the troubled sub-region of the Horn of Africa? In particular, what is its significance in terms of bringing about internal peace, just and fair governance of ethno-cultural diversity, and facilitating a broader sub-regional integration? In the course of articulating these questions, I also seek to explore the prospect of its “exportability” to, and subsequent success in, the neighbouring countries of Eritrea, Kenya, Southern Sudan, The (wider) Sudan, and others.

In so doing, following this introduction—in sections two and three—I shall first descriptively present the Ethiopian “brand” of federalism. Then, in section four, I will identify the three purposes for which multi-ethnic federal arrangements might (not) be relevant for the countries in the sub-region. In section five, I assess the possibility for the federal experiment to be adopted or rebuffed in some of the countries that might be its borrowers. Thus, I assess the factors for and against borrowing in each country in the sub-region. In section six, I explore the factors that facilitate or hinder the success of legal borrowing by relying on strands of thought from comparative law. Finally, in the conclusion, I summarise the answers to the questions albeit tentatively.

The underlying assumption of this paper is that examining the comparative relevance of Ethiopia’s federalism helps us take a relatively more objective stance as we assess the success or failure of Ethiopia’s federalism. Now that—in this piece—we are considering the possibility of “exporting” it, because it is imperative to present ‘the best’ to the neighbouring countries, it impels us to look into the shortcomings and vulnerabilities of the federal

experiment more piercingly. The venture in exploring the comparative relevance thus helps us take a more detached and a less politicized posture than the attempt to assess it in a manner pertinent to domestic public decisions.

## 2. Ethiopia and Federalism: Past and Present

Ethiopia is one of oldest countries in the sub-region<sup>9</sup>. It is also one of the most actively engaged ones in the politics and security of/in the sub-region. As a polity, it is a country with “multiple personalities.”<sup>10</sup> These “personalities” are part of the images Ethiopia projects, or is perceived as projecting, in relation to its neighbours. Discussing these images (resulting from the personalities) is important as they form part of the “chemistry” that goes into accepting or rejecting the legal technology Ethiopia seeks to “export”(in this case, federalism.) Depending on the historiographic paradigms that project Ethiopia’s image, one can have at least six ‘personalities’ in Ethiopia. Thus, according to Teshale Tibebu, a social historian of Ethiopia, Ethiopia can mean one or more of the following things:

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<sup>9</sup> Ali Mazrui refers to it as “the most ancient of sub-Saharan African states” and contrasts it to South Africa whom he dubs “the most modern of the sub-Saharan states.” See Mazrui, “Ethnicity in Bondage: is its Liberation Premature?” (Key note address at a UNRISD/UNDP International Seminar on Ethnic Diversity and Public Policies, New York, 17-19, 1994.), also available at <http://www.mtholyoke.edu/acad/intrel/mazrui.htm>. Sorensen, *supra* note 8, tends to disagree with the idea that it is as ancient as it claims to be. He argues that the claim to being ancient is a hegemonic vision concocted by nationalists (such as the late Emperor Haileselassie I) when in actual fact this claim is fictitious.

<sup>10</sup> Teshale Tibebu, *The Making of Modern Ethiopia, 1855-1974*. Lawrenceville, NJ: Red Sea Press, 1995, chapter one, pp.3-21, summarizes these images of Ethiopia. Note that these images at times contradict with each other. These contradictions have been brought out—separately, in a different context, from a different angle-- in a piece by Annette Weber, “Will the Phoenix Rise Again?: Commitment or Containment in the Horn of Africa” (paper presented on the 4<sup>th</sup> Expert on Regional Security Policy at the Greater Horn of Africa, 28-30 November 2008, Cairo, EGYPT). Weber refers to Ethiopia as ‘a Phoenix in Arms’ but quickly contrasts her metaphor with Nurudin Farrah’s reference to Ethiopia as an “Empire in Rags.” Nuruddin Farrah is a renowned Somali novelist originally from Ethiopia (Kalfo, Ogaden) who is reported to have said this in reference to Ethiopia’s economic strain and its languishing under famine and poverty. Such reference is made, for example, by Said Samatar, “The Islamic Courts and Ethiopia’s Intervention in Somalia: Redemption or Adventurism?” (Paper presented to Chatham House, London, October 1, 2007), available at: [http://www.chathamhouse.org.uk/files959\\_250407\\_samtar.pdf](http://www.chathamhouse.org.uk/files959_250407_samtar.pdf). Weber says that it is at ones the strongest and the weakest country in the region at a time. She says, to wit, “in terms of stability in the horn, Ethiopia has always been the straw that broke the camel’s back”, p.5.

- a. *Christian Ethiopia.*** This image is projected by the Axumite paradigm of Ethiopian historiography. In this paradigm, Ethiopia is “a Christian island surrounded by a heathen sea.” The core of this image of Ethiopia “encompasses the area from Dabra Bizen in Eritrea to Dabra Libanos in Shoa, which forms one compact cultural entity.”<sup>11</sup> This is what Teshale chooses to call the Geéz civilization image of Ethiopia.<sup>12</sup> This Ethiopia is described as the “Christian orient of ‘Black’ Africa.”<sup>13</sup>
- b. *Semitic Ethiopia.*** This image is projected by the Orientalist/Semiticist paradigm. Ethiopia, or more narrowly Abyssinia, is a black-Caucasian, Semitic-Christian nation. It is “the living land of the Bible”, a black Canaan. In this paradigm, “Ethiopia is seen as the south western end of the Semitic world in Africa” and Ethiopians are Semitic, not Negroid; civilized, not barbaric; beautiful, not ugly.”<sup>14</sup>
- c. *The Authentic African Ethiopia.*** This image is projected by the pan-Africanist paradigm which views Ethiopia as “the spark of African political freedom,” the ‘rock of black resistance against white invasion’, “symbol and incarnation of independence”, the “pride of Africans and negroes” everywhere, the “metaphor for Africa wronged by the West”, the “concentrated expression of Africa”, the “hope and pride of Africa.”<sup>15</sup>

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<sup>11</sup> Teshale Tibebu, “Ethiopia: The “Anomaly” and “Paradox” of Africa,” *Journal of Black Studies*, Vol. 26, No. 4 (March 1996), p. 427.

<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.* Teshale here quotes from Dugan and Lafore to make his point. They say, to wit: “Ethiopia is an Old Testament land [where] the Song of Songs and the Ten Commandments are a living lyric and a living law and where the sons of Solomon are kings and prophets still. ...” J. Dugan and L. Lafore, *Days of Emperor and Clown: The Italo-Ethiopian War, 1935-1936*. Garden City, NY: Doubleday, 1973 as quoted in Teshale.

<sup>14</sup> *Ibid.* Teshale here makes the point that “It is quite revealing that more is written on Ethiopia in the *Journal of Semitic Studies* than in the *Journal of African History*.”

<sup>15</sup> Teshale, *supra* note 10. Elsewhere, *supra* note 11, p. 426, he also observes that Ethiopia “has been revered as the symbol of Black defiance of White domination.” Quoting Thwaite, he underscores that Ethiopia was the “shrine enclosing the last sacred spark of African political freedom, the impregnable rock of black resistance against white invasion, a living symbol, an incarnation of African independence.” Thwaite in: Asante, *Pan-African Protest; West Africa and the Italo-Ethiopian Crisis, 1934-1941*. London: Longman, 1977, pp.16-17.

- d. *The Black Colonial Power Ethiopia.*** This is the image projected by the ethno-nationalist paradigm of Ethiopian history which postulates that Ethiopia was “the only Black African power that participated in the European Scramble for Africa”<sup>16</sup> by taking control of many peoples of the wider south Ethiopia such as the Somalis, the Oromos, and the other Cushitic, Omotic, and Nilotic peoples of the far flung southern parts of Ethiopia and, in the post WWII times, (re)annexing Eritrea. This paradigm, otherwise known as the *colonial thesis*, contends that Eritrea, Oromia, Ogadenia (another name for the ethnic Somalis of Ethiopia who live in Ogaden), and other subject peoples of Ethiopia (e.g. the Sidama) are colonized as a consequence of which they deserve to exercise their right to self-determination to stay with or separate from Ethiopia. Self-determination is invoked as a tool of decolonization, and Ethiopia is projected as a colonial power.
- e. *Ethiopia with its own Triple Heritage.*** This image is projected in the heritages’ paradigm of Ali Mazrui who says that Ethiopia, too, has its own triple heritage within Africa, namely, indigenous, Semitic, and Greco-Roman.<sup>17</sup>
- f. *Feudal Ethiopia.*** This is an image projected by a Marxist and/or Modernist paradigm which argues that Ethiopia is a feudal or feudal-like state akin to those in medieval Europe which needs to experience a series

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<sup>16</sup> Teshale, *supra* note 11, p. 421, quotes from a number of historians including Toynbee, Schwab, Tidy and Leeming, and others to make this point. For instance, he cites Gann and Duignan who argue that Ethiopia partook in the scramble for Africa by “competing effectively with the French, Italians, and British along Ethiopia’s borders.” Gann and Duignan (eds), *Colonialism in Africa, 1870-1960* (Vol I). Cambridge: Cambridge University Press, 1981, p.16.

<sup>17</sup> Ali Mazrui in his “The Africans: A Triple Heritage” (a documentary film produced and released in 1986) argues that sub-Saharan Africa has a triple heritage, namely: indigenous, Islamic, and Christian. In an earlier article, he observes that Ethiopia has its own triple heritage: indigenous, Semitic, and Greco-Roman. See Ali Mazrui, “The Semitic Impact on Black Africa: Arab and Jewish Cultural Influences,” *Issue*, 13, pp. 3-8. But note that Ethiopia has an Islamic heritage as well. See, for example, Hussein Ahmed, “The Historiography of Islam in Ethiopia,” *Journal of Islamic Studies*, Vol. 3, No.1 (1992); and Kassaye Begashaw, “The Archaeology of Islam in North East Shoa,” in *Proceedings of the 16<sup>th</sup> International Conference of Ethiopian Studies* (Svein Ege, Harald Aspen, Birhanu Tefera, and Shiferaw Bekele, eds). Trondheim: TUP, 2009 for an inkling to the Islamic heritage (its good and bad legacies) in Ethiopia.



of social revolutions in order to fully partake in progress. This paradigm, one quickly notes, tends to coincide and resonate with the ‘national oppression’ thesis which seeks to explain the phenomenon of diversity and the uneven relations among the diverse ethnic groups of Ethiopia not as a colonial relation but rather as one of a feudal hierarchy.

These diverse and at times contradictory images Ethiopia projects aside, there is no gainsaying that: a) Ethiopia is a country where diversity is a lived experience (if only a denied norm)<sup>18</sup>; and b) that the historic relations among these diverse groups are uneven. It is important to note that the move to a decentralized federal system was motivated by the impulse to overcome the deficits of equality, justice, and democracy that was the hallmark of “feudal”, autocratic, and oppressive (“colonial” or otherwise) Ethiopia.<sup>19</sup>

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<sup>18</sup> Edmond Keller observes that the assumption that the Ethiopian emperors of the 19<sup>th</sup> and mid-20<sup>th</sup> centuries created a national identity endorsed by multi-ethnic group—thereby successfully creating a nation state—is challenged by empirical evidence flowing from the turn of events after 1974. See his, “The Ethnogenesis of the Oromo Nation and its Implications for Politics in Ethiopia,” *The Journal of Modern African Studies* (1995), Vol 33, No.4, p. 622. Thus, one can say the ‘Ethiopian nation state’, as such, was, at best, more a project than a reality, and an unfinished one at that.

<sup>19</sup> Scholars who stress the “feudal” personality of Ethiopia insist that there was a national oppression in Ethiopia but it was not in any way one that we can characterize as ‘colonial’. These recognize the fairness of the quest for ethnic equality and internal self-determination (i.e. autonomy) but stop short of justifying secession. On the other hand there are those who, viewing, Ethiopia as but a black, poor, dependent colonial power, justify the use of self-determination (including secession) as a tool of decolonization in Ethiopia. Secessionist movements such as OLF [Oromo Liberation Front], SLM [Sidama Liberation Movement], ONLF [Ogaden National Liberation Front], are the political parties that subscribe to the latter view. See Merera Gudina, *supra* note 4, on the distinction between the national (re)unification thesis, the national oppression thesis, and the colonial thesis in Ethiopia’s historiography. See also Assefa Jalata, *Oromia and Ethiopia: State Formation and Ethnonational Conflict, 1868-1992*. Boulder, CO: Lynn Reinner, 1993 for an extended elaboration of the colonial thesis. The Eritrean liberation movements (EPLF and ELF) acquiesce in the colonial thesis but stress the fact that Ethiopia, by annexing Eritrea in the 1960s, continued the colonialism imposed on them by the Italians in the 19<sup>th</sup> century. See Christopher Clapham, “Eritrean Independence and the Collapse of Ethiopian Colonialism: Causes, Consequences, and Implications,” *Geopolitics and International Boundaries*, Vol.1, No.2 (1996), pp.115-129.

## 2.1. Ethiopia and Federalism: Past

The historic Ethiopian state was a unitarist state making the least effort to institutionalize federalism or other forms of decentralization.<sup>20</sup> The commitment to *the ideal of a strong unitary state* had anathematized federalism as a step to the dismemberment of the country. The country was seen as *too united* or *too delicate* to accommodate such an arrangement.

The Ethiopian state constituting the territories that comprise today's Ethiopia was largely a creation of a century ago. The 1931 Constitution, the first written constitution which was promulgated only decades after the completion of the process of Empire-building, did not make any reference to federalism. True to its goal of unification and modernization of the country under an Emperor, it could envisage only a unitary state. The Italian occupation of 1935-41 disrupted the constitutional development.

In 1952, Eritrea was federated to Ethiopia by a Federal Act of the United Nations.<sup>21</sup> Two traits most describe the Ethio-Eritrean Federation: 1) that it was more of an international compromise than an internal 'covenant'; and 2) that it is, as most commentators called it, a marriage between unequals. Bairu Tafla<sup>22</sup> put his finger on this point when he said that the Federation had "two inherent problems" that led to its subsequent failure namely,;

*“it was imposed from outside and was tolerated by both Eritrea and Ethiopia on the basis that ‘half a loaf is better than nothing’. It was also a marriage between two incompatible beings-the giant and the*

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<sup>20</sup> This is notwithstanding the feudal acceptance of the fact of weak, or at times, non-existent, centralization that obtained in the imperial times, especially during the 'Era of Princes' (alias the *Zemene Mesafint*) and in the 19<sup>th</sup> century (e.g. during the reign of Emperor Yohannes IV of Ethiopia). The tolerance of uncentralized exercise of local power among local nobles is often a begrudged concession, on the part of the emperors, to the practical infeasibility of controlling the outlying provinces. Some unexamined statements about the *de facto* federalism that existed in pre-1931 Ethiopia aside, the historic Ethiopian state was centralist although it has never been fully centralized. Lack of centralization is not synonymous with decentralization let alone with federalism.

<sup>21</sup> United Nations General Assembly Resolution No 390 (V)/1952.

<sup>22</sup> Bairu Tafla, "The Ethio-Eritrean Federation in Retrospect" in Woodman and Forsyth, (eds), *supra* note 8, p.7.

*dwarf, the strong and the weak, the rich and the poor, the autocratic and the democratic.*"<sup>23</sup>

So delicately constructed was the Ethio-Eritrean federation that it could lapse only for about a decade. The Ethiopian political tradition of the time, being autocratic and centralist, was not accommodative of the pluralism inherent in federalism. Indeed, in Ethiopia "[t]he rulers obviously confused administrative plurality with disintegration and anarchy."<sup>24</sup> Unity was equated with uniformity. Centralism was reinvigorated in the guise of unity and perfected by Emperor Haileselassie I.<sup>25</sup> The trend towards centralism was perhaps the cause of mismanagement of the federalism which was subsequently liquidated in favor of unity in 1962.

The Eritrean constitution and the Federal Act, which was passed on 10 July 1952 and came to force as Proc. no 124 of 11 September 1952 (*Negarit Gazeta*), federated Eritrea as an "autonomous unit" of Ethiopia (Art. 3) "under the sovereignty of the Ethiopian crown." The Government of Eritrea had its own legislative assembly representing the people (Art. 39). It had a government with legislative, administrative and judicial powers (Art. 4). The legislature had legislative competence over virtually everything in Eritrea, from criminal law to laws on education and resources, etc (Art. 5). Eritrea had a strong autonomy, with a rather ceremonial Imperial presence represented by his representative (Arts. 10 and 11). This representative of the Emperor formally introduces the Chief Executive after the latter is elected by the Parliament (Art. 12), opens and closes the Parliament's sessions with an address from the throne; and promulgates Eritrean laws passed by the Parliament (Art. 15 and 18). The Eritrean government had also judicial and executive powers to exercise. The executive is composed of the Chief Executive and his "Executive Secretaries" (a term preferred to "Ministers" for obvious reasons) (Art. 68). An Advisory Council, entrusted with economic planning and the drafting of statutes, was established (Art. 84).

Judicial independence was guaranteed (Art. 86). The Supreme Court and other courts as may be formed were vested with the judicial power (Art.

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<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid*, p.6.

<sup>25</sup> *Ibid.*

85). The court applies all the laws of Eritrea. Whether it also applies federal laws was not clear. The judges are nominated by the Chief Executive based on the recommendation of the President of the Parliament which in turn is supported by a commission's report (Art. 87). The Supreme Court, in addition to being the highest court of appeal, checks constitutionality of laws issued by the Parliament, decides on conflict between the Eritrean government and other organs and can impeach the Chief Executive (Art. 90).

Membership to the Parliament comes through elections, but as there were no strong political parties, the campaigns were not as strong as one would expect them to be today. The absence of many civic societies is also notable. The relative awareness of the mass was an asset, although to most of them federalism was a queer form of governmental arrangement. Thus there was a clear lack of federal culture as most highlanders sought total unity with Ethiopia while others (most of the lowlanders) sought total independence from Ethiopia or the powers that be.<sup>26</sup>

Moreover, the relatively liberal constitution envisaged a democratic system of government which notionally challenged the autocratic Imperial rule in the other parts of the country. The practice in Eritrea was seen as a threat to the legitimacy of the Ethiopian regime. The 1955 Revised constitution was in a sense an attempt to catch up with the development in Eritrea. The 1955 constitution made no reference to the federalism, though. It established the supremacy of the constitution and by implication of federal laws. But it did not spell out the federal powers and state powers as such. This silence created a room for an unnecessary involvement of the imperial representatives in the affairs of the Eritrean government which ultimately led to the dissolution of the Federation.

Eritrea became a state forming the federation not because it fit any mode of state formation, but rather because it outlived the Italian colonialism under which it was ruled since the 1880's to 1941 when the Allied forces (chiefly the British) ousted the Italians and took over the Eritrean territory. After a lengthy debate in the UN on how to dispose of former Italian colonies

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<sup>26</sup> See Zewdie Retta, *The Eritrean Affair (Ye Eritrea Guday*, in Amharic). Addis Ababa: Mega, 2000 for a meticulous presentation of the details of the process that led to the federal compromise first and to the dissolution of the federation later. The book is full of extracts from minutes, exchanges, and letters from and to imminent political actors of the day.

in Africa, a compromise was reached in 1952 to federate it with Ethiopia. It is plain therefore that because it was an arrangement by the international actors, the Ethio-Eritrean federation defies both categorizations of federalism (i.e. of territorial or ethnic or personal?). It was neither territorial nor personal. The boundaries of Eritrea were of colonial making and were as such arbitrary. Because there are the same people groups on both sides of the Ethio-Eritrean border, one cannot say this is an ethnic federalism. Because the Eritrean territory was cut-off from the hinterland Ethiopia since the 1880's, it was not the reordering of the Ethiopian land-mass for the sake of federalizing the country that resulted in an Eritrean and an Ethiopian state. It tends to be an aggregative type of federalism in a sense. It is a queer association of a former colony (Eritrea) with a sovereign state (Ethiopia) who claimed that the colony was part of itself before it was forcefully alienated from it.<sup>27</sup> But the association had similarity to what Daniel Elazar calls federacy.<sup>28</sup>

What was the consequence of this? The major consequence was that the Ethiopian leaders failed to take the federalism seriously. This was manifest in their excessive involvement in the affairs of Eritrea, at times even contrary to the Eritrean constitution.<sup>29</sup> The eagerness to bring Eritrea to complete unity with Ethiopia led to the revocation of the constitution early in the 1960's by an order of the Emperor. Those who sought independence from the beginning protested against the abolition of the federalism with armed violence. Legal solution to the crisis was not at hand--and was not even sought. The abysmal failure of the federalism left us with hardly any lesson to draw from the experience. Yet in retrospect, one cannot fail to see the fact that the imposed nature of the federalism, the absence of federal culture, and the absence of civil societies, and excessive emphasis on unity as uniformity, have played a role in leading to its failure.

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<sup>27</sup> *Ibid.*

<sup>28</sup> See, for example, Daniel Elazar, *Federalism and the Way to Peace*. Kingston: Institute of Intergovernmental Relations, 1994 for an elaborate distinction between Federations, Federacies, Confederations, Associated Statehood, and other variants/species of the federal mode of ordering government. See also his *Exploring Federal Systems*. Tuscaloosa, AL: Alabama University Press, 1987, for a more extended discussion of the variants of federalism.

<sup>29</sup> Bairu Tafla, *supra* note 22, p. 7.

Since the failure of the Ethiopia-Eritrean federalism, no effort was made to restore it in the subsequent years. A nationalist war started in Eritrea. In the 1960s and 1970's a student movement leaning progressively to the left arrived on the scene. At the same time, centralism continued to be the creed of the system. The Eritrean liberationist movement inspired other ethno-nationalist movements in other parts of the country. An inarticulate Oromo nationalist movement started to be in the subtext of Ethiopian politics. The student movement started to discuss the "National Question" in Ethiopia. The Somalis of the Ogaden were also part of the discussion of the time. Later, the Tigrean Liberationists, inspired by the Eritrean movement joined the league of those who challenged the Ethiopian centralism that was moving on in total ignorance of the self-defining pluralism. Conflated with the issue of class (e.g. the farmers' quest for land), ethnic and religious questions came out to demand a benign response.<sup>30</sup> The 1955 Revised Constitution was not of course capable of handling this move. Intensified by other political factors, a popular revolution ensued. The revolution changed the regime. But centralism continued to be the norm. "Ethiopia First" became the motto. Ethno-nationalism was perceived to be a threat to national sovereignty and territorial integrity of Ethiopia. It was even considered counter-revolutionary and reactionary.

The provisional government (the PMAC or the Derg as it is popularly known) did not opt for federalism. On the contrary, it exerted the maximum effort to intensify rigorous centralism. Although it made a concession to the question of "nationalities" as it recognized the equality of "nationalities" and their languages and while it could admit the fact of diversity, the government did not even change the number and powers of the provinces (except in name, as they were changed *from teklay gezat to kiflate hager*). That is to say, there were 14 *teklay gezats* which became the 14 *kiflate hager*, with no substantive devolution of power. The time from 1974 to 1987 was a time during which Ethiopia did not have any formally written (comprehensive, "codified") constitution. When in 1987, the PDRE was established the centralism was

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<sup>30</sup> See Kiflu Tadesse, *That Generation* (Ya Tiwliid, Amharic). Addis Ababa: Shama, 1999 for the details on the key issues that exercised the imagination of the left leaning student revolutionaries of the 1960s and 1970s. Their response to the challenge of ethnic diversity was complex. To some ethnicity was secondary and subordinate to the class question. To others it was primary and superior. To yet others, it was only an instrument of mobilization against an imperial order.

maintained except that there were now about 24 provinces and 5 autonomous administrative regions. The recognition of some regions as autonomous was an effort to diffuse the mounting pressure by opposition fighters in what was otherwise a centralist state with "democratic centralism" as its motto.

In reaction to the grip of tough centralism, ethno-nationalist groups mounted opposition against the PDRE regime until it collapsed in 1991 leaving the political space for ethno-nationalist groups who, for a while, appeared to take decentralization seriously. The Transitional Charter was the first legal document to institutionalize decentralization. Being a product of compromise among ethno-nationalist movements, it emphasized "nations, nationalities, and peoples" (roughly ethnic groups) as the units serving as the basis for decentralization. Proclamation no. 7/1992 made this ethnic-based decentralization more articulate and real. The 14 self-governing regions were mainly ethnic in their making although almost none were entirely homogenous. Based on this proclamation, National, Regional (the then equivalents of what are now called 'States') and Local Governments were formed and an incipient form of self-government was made apparent. Nonetheless, it was only after the promulgation of the FDRE Constitution that federalism as such was formally institutionalized in Ethiopia.

## **2.2. Ethiopia and Federalism: Present**

### **2.2.1. Origins**

The origins of the current federal option are in the ethno-nationalist liberationist rhetoric of the post -1991 era of Ethiopian history. Led by the Ethiopian Peoples' Revolutionary Democratic Front (EPRDF), a number of ethno-nationalist liberationist fronts came together in a National Peace Conference that led to a Transitional Charter (TC) that served as the interim constitution from 1991 to 1995. It is in the negotiations that led to the TC that for the first time in Ethiopia's history ethnic groups' rights as such are guaranteed a formal legal recognition. Ethnicity was at last "free from bondage"<sup>31</sup> in the oldest of sub-Saharan African countries. Along with this also came the introduction of what was the nucleus of the contemporary federalism. The TC recognized the right of "nations, nationalities, and peoples" to self-

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<sup>31</sup> Ali Mazrui, *supra* note 9.

determination up to and including secession.<sup>32</sup> A subsequent proclamation, Proclamation No.7/1992 established 14 self-governing regions.<sup>33</sup> It also reinforced the recognition extended to the right to self-determination by the Charter.

In complete departure from the unitary past, the Charter and the Proclamation devolved power from the center to the self-governing regions and signalled the beginning of a ‘holding together’ federalism.<sup>34</sup> In 1995, this move towards a federal system through ‘scaling down’<sup>35</sup> was perfected when the explicitly federal (Federal Democratic Republic of Ethiopia’s [FDRE]) constitution came into force. The federal option was a reaction to what was thought to be an oppressive unitary past, a reaction to a state nationalism that sought to unite the country through, among others, involuntary assimilation and homogenization. One can also say that the federal option was taken due to the *exhaustion of centralization and unitary system* of government. It came when the long suffering *nation-building project (which has been on the political scene from 1855 to 1991) has spectacularly failed*. The centralist and unitarist model has little resources with which to flexibly respond to the strains imposed on the state by ethno-national diversity.

### 2.2.2. The Federal Compact: Negotiating the Federal Idea

Federalism was formally ushered in by the 1995 constitution. The constitution constituted the federation and continues to be its compact.<sup>36</sup> Pre-eminent in the negotiation of the constitution were ethno-nationalist forces,

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<sup>32</sup> Art 2 of TC

<sup>33</sup> See Proclamation to Establish National-Regional Self-Governments, *Negarit Gazeta* Proc No. 7/1992.

<sup>34</sup> Alfred Stepan makes a distinction between ‘coming together’ and ‘holding together’ federalisms by looking at their origin. See his “Federalism and Democracy: Beyond the US Model” *Journal of Democracy* (vol. 10, No.4) (1999), pp. 19-34.

<sup>35</sup> I am indebted to Donald L. Horowitz, “The Many Uses of Federalism” *Drake Law Review*, Vol. 55 (2007), pp.101-113 for this term.

<sup>36</sup> The significance of these forces as the holders of constituent power (*pouvoir constituant*) was made apparent in the opening clause of the preamble of the constitution which reads: “We, the Nations, Nationalities, and Peoples of Ethiopia...” (See Paragraph 1 of the Preamble of the FDRE Constitution).



principally a coalition of ethno-nationalist fronts and movements called collectively the Ethiopian Peoples' Revolutionary Democratic Front (EPRDF). The constitution was drafted by a Drafting Commission duly established by law.<sup>37</sup> The commission engaged in teaching the public about constitutions, democracy, human rights, civic participation, etc with a view to raising the constitutional consciousness of the public. After preparing a preliminary draft which it submitted to the Legislature of the Transitional Government (the Council of Representatives), they also organized several events at several levels all over the country on which the draft text of the constitution was discussed. Although the turnout was low and the level of engagement was modest, there were discussions in which the issue of self-determination, especially secession, and federalism were hotly debated. In the Transitional Legislature (alias known as the Council of Representatives, [COR]), it was very hotly debated even though the single most dominant party in there was the EPRDF.<sup>38</sup> After this rather sporadic and in many ways inconsequential public deliberation, the draft was submitted to the Constitutional Assembly in 1994 for further deliberation upon it and for adoption. The constitutional assembly was an assembly that was popularly elected in 1994, an election the fairness and free-ness of which was contested by the parties opposed to EPRDF. Even in the EPRDF dominated Constitutional Assembly, the points that were very much at issue were the issue of the federal choice, the mode of state formation, the issue of languages, national symbols (flag and emblem), etc.<sup>39</sup>

Consequently, the federal option, its bases for carving out the constituent units, the constitutional recognition of the unconditional right to secession were among the most contested points as a result of which federalism remains to be a controversial subject in Ethiopia to date.<sup>40</sup> But what does the

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<sup>37</sup> Proc no. 24/1992, proclamation issued by the Transitional Council of Representatives to establish the Constitution Drafting Constitution, *Negarit Gazeta*, Proc no. 24/1992.

<sup>38</sup> The discussion in the COR on every provision of the draft is compiled into a large volume of minutes in Amharic, now available in the archives of the House of Peoples' Representatives (HPR).

<sup>39</sup> The discussion in the constitutional assembly is copiously documented in a set of minutes compiled into six volumes (in Amharic), now available in the archives of the HPR.

<sup>40</sup> See Tsegaye Regassa, "Issues of Federalism in Ethiopia: Towards an Inventory of Legal Issues" in *Issues of Federalism in Ethiopia* (Tsegaye Regassa, ed). Addis Ababa: Addis

federal constitution, Ethiopia's federal compact, offer? I now turn to a brief description of the federal constitution.

The Federal Constitution is a compact document made up of a total of 106 articles divided into 11 chapters. (As a legal document, it is a well organized document with an enviable degree of simplicity and clarity.) It is the legal document that *constituted* the federation. From its preamble, we note that it is a compact agreed upon among the “nations, nationalities, and peoples” of Ethiopia. It is thus a solemn contract, treaty, even a vow, among these groups who reconstituted Ethiopia into a federation of disparate ethno-linguistic groups that aspire to build “one economic community” based on a “common destiny” born out of a shared past.<sup>41</sup>

From the preambles, one can glean such principles with far reaching consequences as the principle of the salience of self-determination, the sanctity of human rights, the sacredness of the principle of inter-personal and inter-group equality, and the primacy of the need to build a democratic order based on the principle of the rule of law for the sake of a sustainable peace. Apart from these, the constitution postulates five basic principles as ‘fundamental’ pillars of the constitutional order. These principles are that of sovereignty of ‘nations, nationalities, and peoples’, constitutional supremacy and constitutionalism, sanctity of human rights, secularism, and of transparency and accountability of government.<sup>42</sup>

In its chapter three,<sup>43</sup> the constitution provides for a catalogue of fundamental rights and freedoms. About 31 “kinds” of rights are recognized and granted a constitutional guarantee. The provisions of this chapter are *entrenched*, i.e., they are protected from easy (and often unilateral)

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Ababa University Press, 2009, pp. 1-68, for a tentative inventory of controversies regarding the Ethiopian federal system.

<sup>41</sup> Paragraphs 3-5 of the preamble of the FDRE constitution.

<sup>42</sup> See arts 8-12 for these principles.

<sup>43</sup> Chapter three, the chapter that can be taken as Ethiopia's Bill of Rights chapter, extends from art 13 to 44 in which all the traditional civil and political rights, economic, social and cultural rights, as well as the rights to peace, development, and environment are enshrined.

encroachment through making the amendment procedure rather rigid.<sup>44</sup> Nevertheless, the absence of an *application* clause (that indicates whether they have *direct*<sup>45</sup> or *indirect*<sup>46</sup> application), *interpretation*<sup>47</sup> clause (that clearly indicates the institutions, principles, methods, and steps to be used in the construction of human rights clauses), *limitation*<sup>48</sup> clause (that regulates the

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<sup>44</sup> According to art 105(1) of the FDRE constitution, chapter three can be amended only through the consent of all the nine state legislatures and the 2/3<sup>rd</sup> majority vote of the Federal Houses (i.e., the House of peoples' Representatives and of the House of the Federation). It is very intriguing that the provisions that divide powers as 'federal', 'state', and 'concurrent' (arts 50-52) are not subjected to the more rigorous method of amendment as per art. 105(1). They can be amended as per art 105(2) which requires the agreement of 2/3<sup>rd</sup> of the states and of the two federal houses.

<sup>45</sup> *Direct application* relates to the situation whereby the provisions of chapter three are invoked in the process of litigation to assert a particular claim hoping to obtain a specific remedy emanating from the self-executing nature of the human rights chapter. It is so invoked when the chapter is viewed as a special law directly applied in the course of litigation to assure the plaintiff a special regime of remedy.

<sup>46</sup> *Indirect application* is said to exist when the human rights chapter, by permeating the system from behind, prompts all public decisions (be it in court or otherwise) to be respectful of the rights and freedoms recognized therein. In these circumstances, the human rights chapter serves more as a framework of understanding, a tool of interpretation of other laws, than as a special regime of law applicable directly in its own right. In indirect application, the human rights chapter of the constitution "loses" itself into the other (ordinary) laws and disciplines them thereof. For an elaborate discussion on direct/indirect application, see generally Johan De Waal, Iain Currie, and Gerhard Erasmus, *The Bill of Rights Hand Book* (4<sup>th</sup> ed). Lansdowne: Juta & Co. Ltd, 2001.

<sup>47</sup> An interpretation clause would clarify to us as to what modes, principles, and techniques ought to be adopted in the course of constructing the provisions of chapter three. In particular, it would clarify issues of procedure (jurisdiction, standing, and justiciability), content (the scope and limitations of a particular right), and remedies (as to the consequences of the decisions of the tribunal that is engaged in the work of 'making sense' of the chapter). It would also hint at the steps and principles (e.g. textual/literal, historical, purposive, etc) to be used in the actual task of interpretation. The reason all these are not self-evident in the 'normal' judicial process in Ethiopia is because, at least since 1991, the courts have had no experience in the hermeneutics of human rights; it is also the result of the fact that the courts' position vis-a-vis the constitution is ambiguous. See Section 38 of the constitution of South Africa, for example, for how constitutions deal with interpretation of human rights provisions.

<sup>48</sup> The constitution does not set aside a separate provision dealing with limitations to be imposed on the exercise of human rights. But built into specific provisions are some

manner in which limitations are imposed when necessary), and the ambiguity with regard to the role of courts to enforce constitutional human rights—owing to the bifurcated division of the interpretive power between courts and the House of the Federation—have played a role in the diminished implementation of human rights in Ethiopia.<sup>49</sup>

The constitution establishes a parliamentary system of government with a formally (weak) bicameral legislature at the federal level.<sup>50</sup> The lower house is the supreme legislator and the supreme political organ.<sup>51</sup> The upper house has little legislative role; instead it has interpretive and adjudicatory powers.<sup>52</sup>

limitative phrases. But absent a general limitation clause, we hardly know how to rule on the (im)propriety of a limitative legislation, decision, or any other measure.

<sup>49</sup> Art 13 is only partially about application and interpretation. Art 13(1) states that the state—at all levels—is the duty bearer of obligation emanating from chapter three. Art 13(2) states that interpretation of chapter three must conform to the principles of the UDHR, the UN Covenants, and other international human rights instruments ratified by Ethiopia, but says no more. Note that Art 13(1) is thus about the *reach* of the Human Rights Chapter. Art 13(2), on its part, seems to suggest that hermeneutically speaking, the Ethiopian system is an open system allowing the invocation of international human rights jurisprudence such as the General Comments of the Human Rights Committee, etc.

<sup>50</sup> Art 53 of the FDRE.

<sup>51</sup> Arts 54-55 of the FDRE Constitution.

<sup>52</sup> Art 62 of the FDRE constitution enumerates a number of ‘powers and functions’ of the HoF. From among the 11 powers and responsibilities, only one suggests the legislative role the HoF has. This is seen in sub-article 8 which reads: “It shall determine civil matters which require the enactment of laws by the House of Peoples’ Representatives.” A strict reading of this provision suggests that this is more a *meta-legislative power* than a legislative power proper. The HoF can thus be said to have a legislative power only in the meta-legislative sense. One can think of its power to order federal intervention in the states (art 62(9)) as another similar, i.e. meta-legislative, or quasi-legislative, power. But this can be the case only if the order to intervene demands that the HPR issues an ‘intervention proclamation’. But if the order is directed merely to the Federal Executive, then there is no way that this power under art 62(9) can take a legislative (be it *meta*, or *quasi*-) form. Added to this is the HoF’s involvement in assigning taxing power undesignated to be within the domain of the states or the federal government or of concurrent powers (art 99). This joint engagement in assigning taxing powers (with HPR)—if at all legislative—is another moment when the HoF comes close to enjoying a legislative power. The other decision-making power of the HoF that has some resemblance to a legislative power is its involvement in constitutional amendment as per the provisions of arts 105 (1)c and 105 (2)a.

It is a house in which nations, nationalities and peoples (and, indirectly, states) are represented in proportion to their numbers.<sup>53</sup> The constitution also establishes an executive made of the Prime Minister, the Council of Ministers and the Ministries.<sup>54</sup> It also provides for a ceremonial executive headed by a President who serves as the non-partisan, non-political Head of State.<sup>55</sup> Furthermore, it provides for a three-tiered, parallel, court system of federal and state judiciary.<sup>56</sup> A Constitutional Inquiry Council with an advisory power (to send recommendations on constitutional interpretation) that assists the House of the Federation is also provided for.<sup>57</sup> Moreover, the constitution lists down the policy objectives and directive principles that guide government policies, decisions, and activities in its chapter 10. Thus the directives that guide the foreign affairs, defence, political, social, cultural, and environmental policies of the country are specified therein.<sup>58</sup>

### **2.2.3. The States and the Federal Government**

The Ethiopian federation is composed of nine constituent units carved on the basis of “settlement patterns, language, identity, and consent of the people concerned.”<sup>59</sup> These nine states, officially called variously as “National Regional States”, “Regional States,” “Regions”, or simply “States”,<sup>60</sup> are: Afar, Amhara, Benishnagul-Gumuz, Gambella, Harari, Oromiya, Southern Nations, Nationalities, and Peoples (SNNPRS), Somalia, and Tigray.<sup>61</sup> Most of

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<sup>53</sup> All nations, nationalities, and peoples are represented by one member having one more additional member for every additional one million. See art 61 of the FDRE Constitution.

<sup>54</sup> Art 72 of the FDRE constitution

<sup>55</sup> Art 69-71 of the FDRE Constitution

<sup>56</sup> Arts 78-79 of the FDRE constitution.

<sup>57</sup> Arts 82-84 of the FDRE constitution.

<sup>58</sup> See arts 85-92 for these policies.

<sup>59</sup> Art 46(2) of the FDRE Constitution

<sup>60</sup> Throughout this paper, the term used will be “states” at times interchangeably with sub-national entities. This is done only for reasons of convenience.

<sup>61</sup> Art 47 (1) of the FDRE Constitution.

these states are ethnically heterogeneous although in most of them there are dominant ethnic groups after whom the states are often named.<sup>62</sup>

The power of the states is provided for in Article 52 of the FDRE constitution as the “reserved” or ‘residual’ power that is “not given expressly to the Federal Government alone, or concurrently to the Federal Government and the States.”<sup>63</sup> While the constitution reserves the “residual” powers to the states, it also makes it clear that states, among other things, have the power to set up their own administration “that best advances self-government, a democratic order based on the rule of law; to protect and defend the federal constitution”, to “enact and execute” their own state constitutions, and other laws, to administer land within the framework legislations of the federal government, to levy and collect state taxes on their own revenue sources, to establish and administer their own police force, etc.<sup>64</sup> Obviously one can have a fuller picture of the ‘residual’ powers only after considering the list of federal

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<sup>62</sup> Hence, we have the states of Amhara, Oromia, Somali, Afar, and Tigray, in all of whom we have diverse peoples other than the Amhara in Amhara state (such as the Agaw, the Argoba, the Oromo, etc), other than the Tigrayans in Tigray (such as the Erob and the Kunama), other than the Oromos in Oromia (such as the Zay, and pockets of other peoples living mostly in urban centers all over the state), other than the Afar in Afar State (the urban dwellers who have migrated into the region over the years), the Somalis in the Somalia State (urban dwellers in the cities and towns). The SNNPRS is demographically intensely diverse, and is obviously an exception in this regard, i.e., in the sense that there is not one predominant group that can be associated with the identity of the State. Harari state is composed predominantly of the Oromos, the Harari, and many other people groups who live in the city of Harar. Given the fact that the Harari are numerically small in the state, Harari, too, is an exception in having a political predominance that lets the state be identified with it while it is the smallest in terms of numbers. Harari is also unique in its adoption of a mode of democracy that is more consociational than any of the states or even the federal government can afford. Gambella is composed of the Anywaa, the Nuer, the Mezenger, the Mao, and the Opo peoples but ‘Gambella’ does not signify a people group. Likewise, Benishangul-Gumuz is composed of the Berta, the Gumuz, the Shinasha, the Mao and Como peoples and the name hardly refers to anyone group in the state—except the Gumuz. Interestingly, in these latter states of the Western periphery of Ethiopia, there is a distinction made even in the constitutions between ‘indigenous nations, nationalities’ [of , for example, Berta, Gumuz, Shinasha, Mao and Como in Benishangul-Gumuz State] and ‘other peoples residing in the region’. (See for instance Preamble, Parag. 3 and Article 2 of the constitution.)

<sup>63</sup> Art 52(1) of the FDRE constitution.

<sup>64</sup> See art 52(2) a-g of the FDRE Constitution.

powers in the preceding provision<sup>65</sup> which includes those powers traditionally known as federal powers (such as foreign affairs, defence, interstate commerce, interstate relations, currency, foreign trade, national security, transportation, postal services, and telecommunication, some natural resources including land, etc). Because the list of federal powers seems to be long, people often reasonably doubt if the residual powers reserved to the states in Ethiopia are really significant. Nevertheless, it is important to note at this juncture that state constitutions play an immense role in articulating these ‘plenary’ powers so that they can be better exercised by the states in consonance with the principle of self-rule that constitutes an aspect of federalism.

It is interesting to observe that some of the state powers “enumerated” (by way of example) in art 52(2) (a-b) tend to impose an obligation on states. Thus, to an extent, they seem to be determining the key elements of the state constitutions. That is to say, a state constitution that does not recognize the pre-eminence of the principles of self-government, democracy, and rule of law, and is not poised toward protecting and defending the federal constitution cannot be accepted as valid. It stands to reason, then, that all state constitutions, minimally, need to abide by these principles.

In the Ethiopian federation, symmetry is the norm.<sup>66</sup> Thus, states have “equal rights and powers.”<sup>67</sup> State legislatures command the supreme political power and are accountable to the people(s) of the states.<sup>68</sup> States are obliged to establish local governments at various administrative levels so that there are possibilities for local people “to participate directly in the administration” of these levels of governments.<sup>69</sup> The state legislatures’ powers “to draft, enact,

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<sup>65</sup> Art 51 of the FDRE constitution

<sup>66</sup> I am quick to concede the point that in multi-national polities, asymmetry is almost inevitable. See, for instance, Rainer Bauböck, *Multinational Federations: Territorial or Cultural Autonomy?*. Malmö: Malmö University (Willy Brandt Series of Working Papers in International Migration and Ethnic Relations 2/01), 2001. Bauböck says that “Asymmetry is endemic to multinational federations...” (p.11).

<sup>67</sup> Art 47(4) of the FDRE constitution.

<sup>68</sup> Art 50(3) of the FDRE constitution.

<sup>69</sup> Art 50(4) of the FDRE constitution.

and amend” the state constitutions is also recognized in the federal constitution.<sup>70</sup> Its supreme legislative power is similarly recognized in the same provision. The states’ executive and judicial powers—and by extension all the powers that mark sovereignty at the local level—are also recognized in the constitution.<sup>71</sup> Although the constitution does not explicitly stipulate the existence of the *principle of federal supremacy*<sup>72</sup> in the Ethiopian federation, it holds, in consonance with the *principle of federal comity*, that “[T]he states shall respect the powers of the Federal Government and the Federal Government shall likewise respect the powers of the States.”<sup>73</sup> This provision is indicative, at least in theory, of the dual nature of the Ethiopian federation.

The perusal of this provision in conjunction with the provisions that indirectly (through nations, nationalities, and peoples) grant the right to self-determination<sup>74</sup> to the states, give the impression that the Ethiopian federal system guarantees state sovereignty. As a result, it is incumbent upon the state constitutions to articulate, elaborate, and give institutional expression to this state sovereignty that seems to be regnant in the constitution.

### 3. Ethiopian Federalism: Distinctives

The federation that was born out of the concern for ethno-nationalist groups’ right to self-determination (which in turn was a result of an age-old quest for ethno-cultural justice<sup>75</sup>) manifested a number of *unique features*. The

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<sup>70</sup> Art 50(5) of the FDRE Constitution

<sup>71</sup> Art 50(6-7) of the FDRE Constitution.

<sup>72</sup> The principle of ‘federal supremacy’ or ‘federal paramountcy’ maintains that the federal government, its laws, and institutions are supreme, i.e., superior to, and override, the state laws and institutions.

<sup>73</sup> Art 50 (8) of the FDRE constitution.

<sup>74</sup> Art 39 of the FDRE constitution.

<sup>75</sup> It is to be noted that the two most important questions that dominated the Ethiopian political terrain since early 1960s, and indeed the predominant preoccupation of the student movements of the age, were the question of land (typified by the slogan, “Land to the Tiller”) and the “Question of Nationalities”. There is a huge body of literature on this. Balsvik’s *Haile Selassie’s Students: The Intellectual and Social Background to Revolution, 1952-1977*. East Lansing: African Studies Center, Michigan State University, 1985; Kiflu Tadesse *supra* note 29; Edmond Keller’s “Ethiopia: Revolution, Class and the National Question” 80



recognition of the right of secession,<sup>76</sup> the use of ethno-linguistic criteria as a basis of state formation,<sup>77</sup> the unconventional constitutional interpretation through the upper house of the federal legislature,<sup>78</sup> the fact that states are not directly represented in the upper house,<sup>79</sup> the fact that the upper house has little,

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*African Affairs* No 321, 1981; Merera Gudina *supra* note 4; Assefa Jalata, *supra* note 19; Andargatchew Tiruneh, *supra* note 2; are only a few notables among a morass of books and articles on the historic questions of class and ethnicity in Ethiopia. The “question of nationalities” was subordinated to the question of class in the course of the making of the 1974 revolution and its unfolding in the subsequent years, but since 1991 it seems that, on the wake of the collapse of the *Derg*, the former has triumphed as the preeminent question that, if repressed, hardly dies out.

<sup>76</sup> Art 39(1) recognizes the “unconditional right to self-determination, including the right to secession” of every nation, nationality and people. The procedure for secession is described in art 39(4) as follows: “*The right to...secession... shall come into effect: a) when a demand for secession has been approved by a two-thirds majority vote of the members of the Legislative Council of the Nation, Nationality or People concerned; b) when the Federal Government has organized a referendum which must take place within three years from the time it received the concerned council’s decision for secession; c) when the demand for secession is supported by a majority vote in the referendum; d) when the federal government will have transferred its powers to the Council of the Nation, nationality, or People who has voted to secede; and e) when the division of assets is effected in a manner prescribed by law.*” This clause—as divisive as it looks on the surface—is said to have had a uniting effect in the mid-1990s because it helped some of the peripheral regions/states to commit themselves to give Ethiopia a chance. It is also said that it prevented violent clashes and consequent dismemberment of Ethiopia. It is thus presented by its proponents as a uniting thread in the face of impending disunity and a guarantee of peace in equality.

<sup>77</sup> See art 46(2) which holds that states are formed “on the basis of settlement patterns, language, identity and consent of the people concerned”.

<sup>78</sup> The House of Federation poses formally as the upper house of the federal legislature. See art 53 which says that “There shall be two Federal Houses: the House of Peoples’ Representatives and the House of the Federation.” This obviates the fact that Ethiopia’s legislature is bicameral in form although it is unicameral in actual operation. That aside, Art 62 cum 82-84 indicate that the House of the Federation (with the support of the Council of Constitutional Inquiry) is the ultimate interpreter of the constitution. Subsequent federal legislations, namely Proclamations No. 250/2001 and 251/2001 confirm and elaborate on the interpretive powers of the House of the Federation and of the Council of Constitutional Inquiry. This makes Ethiopia’s system unique compared to other contemporaneous constitutions of its time (such as that of South Africa, Namibia, etc).

if any, legislative role,<sup>80</sup> etc, can be mentioned as evidence of its unique features.)

#### 4. Relevance to Other Diverse Polities

Why do we seek to explore the transferability of the Ethiopian federal system to some countries of Africa? Why do we even talk about the relevance of such an arrangement to these countries of an intensely turbulent sub-region? Exploring the potentials and limits of such a federation is important because the quest for a “solution” to the problems of internal and external conflicts in the sub-region continues unabated. On the whole, the assumption behind the discussion in this section, as it is behind this piece in its entirety, is that federalism might help better handle the problems of conflict at both domestic and international/sub-regional level thereby leading to peace and stability at least by reducing the incidence of its violent manifestations. In the abstract, there are three major reasons for considering federalism as a form of flexible governance that can possibly absorb the kind of challenges posed by diverse and competing ethnic nationalisms. We now turn to the consideration of these three reasons one after the other.

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<sup>79</sup> The House of the Federation, the upper house of the Ethiopian parliament, is “composed of representatives of Nations, Nationalities, and Peoples” (art 61(1)). The House is thus a representative of the ethno-cultural groups rather than the states. But the states may have their interests aired through the ethnic groups that come out of them. Besides, the fact that the representatives are—in practice so far- selected by the state legislatures (often from within the state legislatures), rather than by direct popular vote, has created the impression that they represent the states. The state legislatures are of course allowed to elect the representatives themselves or to “hold elections to have the representatives elected by the people directly” (Art 61(3)).

<sup>80</sup> In deed the House of Federation has little legislative role. This is evidenced by the fact the list of powers and mandates under article 62 refers only to two matters, among a total of 11, as the ones relating to legislation. These matters are: a) determination of “the division of *revenues* derived from joint Federal and State tax sources and the *subsidies* that the Federal Government may provide to the States” (art 62(7)); and b) determination of “civil matters which require the enactment of laws by the House of Peoples’ Representatives.” (art 62(8)). One can quickly note that even these are not legislative matters *in stricto sensu*; they are rather directions on what to legislate upon, sort of a license for the HPR to legislate on the matters indicated.

#### 4.1. Federalism for Internal Stability and Peace: Short Term.

First, the interest in peace and in the defusion of conflict and tension demands consideration of federalism as an option. The urgent need to disarm the armed and to take out the military option as a solution to political problems, and thereby replacing it with politico-diplomatic solutions, requires that there is a guarantee to a minimal degree of autonomy and power-sharing in a broader encompassing polity. The self-rule and shared-rule components of the federal idea offer a synthesis of this demand to enjoy autonomy in one's locality and share power in the larger polity. Multi-ethnic federalism such as the one being practised in Ethiopia, then serves as an instrument of brokering truce, especially in post-conflict societies such as those that exist in the horn of Africa region.

An ethnicity-sensitive federalism in Ethiopia, when it arrived on the scene in 1991/1995, had helped end a conflict born out of a quest for ethno-cultural justice<sup>81</sup> and resentment of what was perceived as a privileged ethnicity's dominance from the center. The recognition of the right to self-determination (political, cultural, and economic), and even secession, the (legal promise of) fair representation in the structure of the "central" government buoyed many a political actor with hope, and led to demobilization of their liberationist armies.<sup>82</sup> This plucking out of the military solution to a political

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<sup>81</sup> That is to say, it helped warring factions to come together and negotiate a space in the restructured Ethiopia. With regard to some, e.g. the Somalis in Ogaden, this conflict took a new shape and re-emerged in 1994 when the ONLF decided that the EPRDF-led Transitional Government has not delivered on its promises. Similarly, in Oromia, OLF—which disarmed itself to take part in the Transitional Government—went back to take arms again when it decided that the democratization process is derailed. See generally Leenco Leta, *The Ethiopian State at the Crossroads: Decolonization and Democratization or Disintegration?* Lawrenceville, NJ: Red Sea Press, 1999 on the latter.

<sup>82</sup> This was the case in Ethiopia when, immediately after forming the Transitional Government, the liberation movements agreed to demobilize their armed forces in the interest of peace and stability. While so agreeing, they also agreed to maintain the EPRDF forces as the country's armed forces for the transitional time. The anomaly here is the Eritrean situation. The Eritreans, by virtue of the military triumph of EPLF over the *Derg* in Eritrea, had already formed a separate Provisional Government since the fall of Asmara in May 1991. While the general discourse of 'self-determination up to and including secession' (art 2(3)) in Ethiopia might have reinforced the events unfolding in Eritrea, Eritrea did not secede—and peace did not come-- by virtue of the implementation of the provisions of the TC or the subsequent federal constitution (which also endorsed the right to self-determination and secession as a towering constitutional human right in its famous article 39).

stalemate was achieved by a dispensation of multi-ethnic federalism. To be fair, in Ethiopia, there are many groups that hold the view that, because the promise was not fully delivered in practice, the peace and stability was and still is fragile. Nevertheless, there is no gainsaying that, owing to the federal dispensation, at least in 1991/1995, disintegration and dismemberment of Ethiopia as a country was kept at bay; conflicts are devolved to the sub-national level; ethno-nationalists' questions for secession, autonomy, recognition, equality and non-discrimination were blunted. For preservation of unity and for assuaging extreme nationalist demands, multi-ethnic federalism was of some help in Ethiopia.<sup>83</sup>

#### **4.2. The Federal Idea as a Legal Technology for Governance of Diversity: Medium Term**

In the medium term, multi-ethnic federal systems such as Ethiopia's might help to entrench the politics of recognition. By constitutionalizing and institutionalizing ethno-political relations, it engenders broader accommodation and deeper recognition of diversity. Reinforced by the peace and stability that the first purpose outlined hereinabove provides, multi-ethnic federalism helps

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<sup>83</sup> Elsewhere, I argued that the most explosively violent conflict that seized the country chiefly orientated as one taking place between a dominant and repressive center (embodied by the Derg government in Addis) and a host of liberationist forces from the peripheries (typified by EPRDF, OLF, ONLF, and several others including EPLF) was resolved through the military triumph of the latter but then an equally explosive circle of violent conflict between a potentially dominant center and weaker peripheries was averted by the recognition of self-determination, autonomy, and ethno-cultural justice through the Charter (1991-1995) and through the Constitution (after 1995). In post-constitutional times, such conflicts have not only been made to take the conflicts of constitutional type (e.g. litigation) democratic-political type (e.g., electoral, representational), they have also been devolved to the sub-national level. This might have multiplied the incidence of low-key conflicts by accentuating the competition born out of heightened ethnic self-awareness and awareness of new interests, but surely has reduced the nation-wide conflicts that threaten the existence of the Ethiopian polity as such. See, Tsegaye Regassa, "Learning to Live with Conflicts: Federalism as a Tool of Conflict Management in Ethiopia" (forthcoming in 2010). This should, however, not give the impression that the quest for secession among some groups (such as the Somalis in Ogaden, or the Oromos in Oromia) has been jettisoned. Nor should it give the other false impression that the unity of the country is so well established that we can now take it for granted. Besides, it should also be noted that, especially since the 2005 election and the altercation that followed it, there was a general state of peace-lessness although there was little overt violence.

build a multi-national state building. Building a multi-national state in turn helps to decouple the concept of nation-state thereby leading to the distinction between the notions of nation-states and citizenship.<sup>84</sup> In this scenario, multi-national federalism as a legal technology will help ensconce the federal principles of self-rule and shared rule and extend them to the need to fulfil ethno-nationalist quest for autonomy and difference on the one hand and fair and equitable sharing of the “national” power, resources, and opportunities on the other.

In Ethiopia, ethno-cultural justice is constitutionalized, institutionalized, and as such, regularized.<sup>85</sup> Ethnic self-assertion is legally routinized. The fears of discrimination, involuntary assimilation, oppression, and even genocidal persecution are assuaged as there are legal protections for equality, difference (of linguistic, identity, religious, or cultural type), autonomy (including self-law), self-governance, and even independence. The self-determination clause (in art 39) guarantees political autonomy/independence; stresses the right to language, history, and culture; and recognizes the right to “a full measure of self-governance”. The principle of federal comity (art 50(8)) and of subsidiarity (implicit in federalism in general) guarantees the exercise of self-rule locally. On the whole, self-rule seems to be doing well in Ethiopia.<sup>86</sup>

Shared rule, which theoretically, is possible especially through the “House of ethnicities,” called in Ethiopia the House of Federation, is undermined by the mode of representation (one for each plus one more representative for every additional one million, art 61(2)). The fact that the

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<sup>84</sup> See generally Alain Gagnon and James Tully (eds), *Multinational Democracies*. Cambridge: Cambridge University Press, 2001 for a discussion on the need for such decoupling.

<sup>85</sup> By so doing, Ethiopia has made a bold departure from the trend in Africa which, for the times since decolonization, has endorsed the slogan ‘kill the tribe to build the nation.’ See Will Kymlicka, “The Global Diffusion of Multiculturalism,” in *Governing Diversity: Democratic Solutions in Multicultural Societies* (Razmik Panosian, Bruce Berman, and Anne Linscott, eds). Montreal/Kingston: Rights and Democracy/EDG, 2007, p 11 (Here, Kymlicka says: “‘Kill the tribe to build the nation’ was a popular expression in many post-colonial African countries.”)

<sup>86</sup> Note however that owing to the little political party pluralism in the contestation for state and the federal, and the dominant and centralized nature of the ruling EPRDF, self-rule could not have a full expression as yet. See Lovise Aalen, *Ethnic Federalism in a Dominant Party State: The Ethiopian Experience, 1991-2000*. Bergen: Ch Michelsen Institute, 2002 on this matter.

voting system is majority system (art 64) minorities having no veto on the traditional ‘vital’ matters also undermines their power as groups who engage in shared rule. The fact that the constitution is mute on executive power-sharing, or representation in other institutions (such as the federal judiciary, security, the federal army, or civil service, etc) also seems, on the face of it, to undermine the shared rule component. Nevertheless, in practice, there is a constant, and often, silent act of balancing the ethnic configuration of the federal cabinet, judiciary, civil service, and even the military.<sup>87</sup> On the whole, although one cannot insistently argue that ethno-cultural justice is securely ensconced in Ethiopia, one can fairly say—especially considering the existence of the legal, structural, and procedural infrastructure in place and the little good practice that even goes beyond the silence of the constitution—there is enough room afforded to grant legal-institutional expression of the quest for ethno-cultural justice. Hence, multi-national federalism’s significance as a tool for dispensing ethno-cultural justice.<sup>88</sup>

### 4.3. Federalism for Regional (re-)Integration: In the longer term

Federalism can also be sought in the Horn of Africa owing to its potential utility as a tool of guaranteeing sub-regional peace via regional (re-) integration. It is trite to say that all the countries in the sub-region share people (who live across borders), cultures (languages, histories, and identities), and resources (which especially the pastoralist peoples seek, unhindered by national boundaries). Tigrigna speakers live in Eritrea and Ethiopia. The Afar people straddle the territories of Eritrea, Ethiopia, and Djibouti. Somali speaking people live in the Somalias, Kenya, and Ethiopia. Oromos, the Nyangatom, and other Nilo-Omotoc peoples inhabit Ethiopia and Kenya. The Nuer, the Anua,

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<sup>87</sup> Art 87 of the constitution, the article stating the “Principles for National Defense” holds that “The composition of the national armed forces shall reflect the *equitable representation* of Nations, Nationalities, and Peoples of Ethiopia” (art 87(1)).

<sup>88</sup> Of course another suggestion would be to have a decentralized unitary government especially in view of the similarity of peoples, cultures, identities, resources, environments, experiences, and fears, etc. But at least in Ethiopia and the Sudan, unitarism is viewed as too oppressive of and too constraining to diversity. As a result, lessons of history counsel us against it: it has been tried and found wanting. Indeed, it is exhausted at least in some of these countries.

and the Gumuz live both in Ethiopia and the Sudan. The Kunama and the Irob (alias the Saho) also live in Eritrea and Ethiopia. Often, when two neighbouring countries have conflicts, the peoples living across borders shoulder the brunt of pain of war. At times, they cause the wars. The neighbours use their ‘kins’ in the other countries to destabilize each other arming them as opposition groups. The demographic linkage is so strong that any domestic problem with a peripheral people in one country has a reverberating effect on the people in the neighbouring countries.

These countries also share an environmentally fragile ecology in their borders. There is an economic inter-dependence (for ports, natural resources, and agricultural consumption products). Because of the weaknesses of states in almost all of these countries, there is a shared sense of military and geopolitical insecurity. In deed such a fear is a constant presence in the region. That is why most media describe the entire region as nothing less than ‘volatile’.

A multi-ethnic federal arrangement that pays sufficient attention to ethno-nationalism and its quest for ethno-cultural justice, I argue, will help stretch a thread that can bring these countries together to allay their common fears of economic inviability, military insecurity, internal instability and deficit of ethno-cultural justice. The fact that everyone will reserve their right to independence in the secession clause that is now part of the Ethiopian federal experiment will preclude fear of conceding one’s sovereignty on a permanent basis. One might suggest that this is more like a confederal arrangement, but confederalism—always suffering from the deficit of democracy that comes along with the indirect relation between the confederal government and the citizens—does not suit the goals intended for this federal project within each country, although it seems to come as rather handy.<sup>89</sup>

## **5. Who Cares to Buy Federalism from Ethiopia, and Why: A Search for Potential “Market”?**

### **5.1. Eritrea.**

Eritrea will be the most unlikely candidate to adopt the Ethiopian brand of federalism. This does not mean that for that reason it is not useful to Eritrea. But why would Eritrea not want to consider federalism Ethiopian style?

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<sup>89</sup> Note however that, rather curiously, Clapham refers to the Ethiopian federation itself as confederal, often using the term “ethnic confederalism”. See Clapham, *supra* note 19, p. 125.

Whence comes the resistance? Why would Eritrea resist adoption of the contemporary Ethiopian federalism? One of the reasons is rooted in the history of the recent past: Ethiopia and Eritrea were once part of a federation that did not work.<sup>90</sup> And in more recent times—at the time of the discussions that led to the adoption of federalism—Eritrea had advised Ethiopia against dabbling with ethnicity<sup>91</sup>. Politically, they would argue, nation-building requires a degree of unconcern for diversity management. They project a shared history, in Eritrea, of resistance to Ethiopian (centralist and unitary) oppression. They claim to have no ethno-cultural justice deficit at home yet. If they do, it is one that they share in the larger Ethio-Eritrean political space<sup>92</sup>. Hence, no incentive to go federal in Eritrea, let alone to go ethno-federal like Ethiopia. Moreover, Eritrea is relatively small geographically. If the thesis that holds that federalism is for large countries obtains, then Eritrea might feel that it doesn't need it. Further, disaffection with the practice (i.e., the wrong turn the practice might take) makes the federal option unattractive if not downright repulsive. Eritrea perceives the Ethiopian federalism as an example of failure in political arrangement rather than that of success. For Eritrea, federalism in Ethiopia did not pacify the country, did not address the issue of ethno-cultural justice and did not help integrate Ethiopia better (echoing the view among some circles in

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<sup>90</sup> See Thomas Goumenos, “The Pyrrhic Victory of Unitary Statehood: A Comparative Analysis of the Failed Federal Experiments in Ethiopia and Indonesia” in *Defunct Federalisms: Critical Perspectives on Federal Failure* (Emilian Kavalski and Magdalena Zolkos, eds). Aldershot: Ashgate, 2008, pp.41-47, on the failed Ethio-Eritrean federal experiment. See also Tekeste Negash, *Eritrea and Ethiopia: The Federal Experiment* (2<sup>nd</sup> Printng). New Brunswick, NJ: Transaction Publishers, 2005, for a more comprehensive and historically informed treatment of the Ethio-Eritrean experience.

<sup>91</sup> See Tekeste Negash and Kjetil Tronvoll, *Brothers at War: Making Sense of the Eritrean-Ethiopian War*. Oxford: James Currey, 2000, pp. 1-3, 12-20, 87-90 on the divergent strategies the two regimes adopted in the two countries with regard to ethnicity. The whole book tries to reconstruct the differences between TPLF and EPLF in visions, strategies, and tactics in advancing their goals one of the points of divergence being on the extent to which they can take ethnicity in nation-building (in the case of Eritrea) and state restructuring (in the case of Ethiopia).

<sup>92</sup> But this is so in spite of the resistance movements mobilized along ethnic lines in contemporary Eritrea. The armed Red Sea Afar movement, the armed movement from the side of the Kunama are examples one can cite to show the existence of ethnic tensions in Eritrea. That Eritrea is an ethnically diverse country is too obvious to need a discussion here.



Ethiopia that federalism is more the dividing than the uniting factor in Ethiopia).

Moreover, Eritrea's rivalry with Ethiopia and its current competition for hegemony in the sub-region is another factor that plays against the adoption of the Ethiopian brand of federalism. The lesson that emerges from this is that: one does not borrow from a rival, even when, on its merit, the legal technology to be borrowed is good per se<sup>93</sup>. Given the fact that this rivalry is reinforced by a historic relationship of the oppressor and the oppressed, the victor and the vanquished, it is difficult to imagine Eritrea to be lulled by the federalism technology. Difference in national character, self-image, subjective sense of superiority, etc will be part of the mix. Finally, we should not underestimate the effect of neighbourly proximity as such proximity gives the air of familiarity. And like in everything else in life even in law, the familiar is the dull, and hence the unattractive, the less charming. The Ethiopian brand of federalism is not exotic enough to stir Eritrean curiosity. Added to that is the lack of prestige of the Ethiopian federal system, at least in Eritrea. Prestige is important because one of the factors that facilitate the migration of law (or a particular legal technology such as federalism) is prestige of the country of origin (of its wider culture as well as its laws).

## 5.2. *The Somalias*<sup>94</sup>

Somalia is many and one at a time. Somalia is one in the sense that it is a country constituted of one (Somali) ethnic group. It is homogenous in terms of ethnicity as well as religion (Islam). But it is also many in the sense that

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<sup>93</sup> See, for example, Ugo Mattei, "A Theory of Imperial Law: A Study on US Hegemony and the Latin Resistance," *Indiana Journal of Global Legal Studies*, Vol 10, pp. 383-448, on the importance of prestige for the reception to, and subsequent success of, a legal technology in another (host) country. See also Ugo Mattei, "Patterns of African Constitution in the Making" *Cardozo Law Bulletin* (1999), available at: <http://www.jus.unitn.it/Cardozo/Review/constitutional/Mattei-1999/Patterns.html>.

<sup>94</sup> By the 'Somalias,' I mean Somaliland, Puntland, and Southern Somalia. Somaliland (with its capital in Hargiessa) seems to have succeeded in consolidating peace, working a constitutional system of governance, and a democratic practice since Mid-1995 but it lacked a wide recognition by members of the International Community. Puntland seems to be following suit. The remainder of Somalia (often referred to as Southern Somalia) is formally represented by the Transitional Federal Government of Somalia but is still beleaguered by the forces of the Union of Islamic Courts (UIC), the Al-Shabab, and other war lords, pirates, and terrorists. See Weber, *supra* note 10, p.8 for the use of the term 'The Somalias.'

there is a division into regions, clans and/or sub-clans which invites the use of the term ‘Somalias’ to refer to them. The term “Somalias” is used to refer to Somaliland, Puntland, and ‘Southern Somalia’. And the prospect for it to go federal gives a complex picture emerging in the Somalias. Somaliland and Puntland, in their eagerness to gain recognition from any member of the international community, especially from Ethiopia, and considering the relatively cordial relationship they currently maintain with Ethiopia, may not be averse to the idea of borrowing an ‘Ethiopian’ legal commodity. Indeed, Somaliland seems to be keenly aware of its clan diversity as it framed its constitution and established its now solid government, especially after 2001.<sup>95</sup>

Southern Somalia is already a fledgling federation: the Transitional Federal Charter of Somalia is modelled after the Ethiopian Constitution.<sup>96</sup> Hence, interest in at least one “segment” of Somalia could emerge. The need for guaranteeing equality among competing clans and regions by entrenching a much sought clan- and region-based justice makes the Ethiopian type of federalism a possible option. Moreover, the fact that a broader democratic space created by a transnational federal dispensation can be secured by a multi-national federal system such as Ethiopia’s makes the latter a veritable candidate for adoption. It is to be noted that such a broad democratic space secured by federalism helps to progressively de-securitize ethnicity in the sub-region.

But old history of animosity between Ethiopia and Somalia delegitimizes reception of anything from Ethiopia.<sup>97</sup> The current state of Ethiopian foreign (Somalia) policy will also be part of the mix of factors against Somalia going federal.<sup>98</sup> Nevertheless, the need for truce and

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<sup>95</sup> See Berouk Mesfin, “The Political Development of Somaliland and its Conflict with Puntland,” *ISS Paper 200 (September 2009)* for a summary of the state of affairs in the two Somalias. Following the tack of the constitution of 2001, Berouk (on p. 2) observes that the upper house of the legislature, the House of Elders, is composed of unelected clan elders known as the *guurti*. The *guurti* are nominated by clans during peace building conferences.

<sup>96</sup> Note the name of the Government: THE TRANSITIONAL FEDERAL GOVERNMENT OF SOMALIA.

<sup>97</sup> Said Samatar, *supra* note 10, says that “for ages, Ethiopia stood, in the eyes of Somalis, as the putative foe of the Somalis.” He even quips, by rephrasing the old Mexican lamentation regarding its relation to the US (“Poor Mexico, so far from God and so close to the United States”), “Poor Somalia, so far from Allah, and so near to Ethiopia.” (p.3)

<sup>98</sup> The Ethiopian policy in Somalia is tied to the chief goals of: a) building a viable state in Somalia; b) establishing the rule of law; c) entrenching and protecting peace; and d) helping

transformation of the politics of war into a politics of democratic/electoral confrontation requires the need for a decentralized arrangement of power on the basis, perhaps of clans, sub-clans, sects, and other cleavages that exist and emerge in the contemporary Somalias. Transplanting federalism in the Somalias thus depends, among other things, on which Somalia (greater or fragmented) we seek to imitate Ethiopia's ethno-cultural federalism. In addition, who comes out as a winner from the struggle for hegemony in Southern Somalia; the level and impact of involvement of the international community and its consequences; Ethiopia's policy on the Somalias in general (whether it is going to emerge as principled or pragmatic); the clan configuration of those who control governmental power; the success of the self-rule in the Somali State/region of Ethiopia;<sup>99</sup> and others play a role in determining whether Somalia will go federal or not. Like the case it is in the case of Eritrea, the lack of prestige of the Ethiopian legal system might work against transplantation of the Ethiopian model of federalism.

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democracy take roots. See FDRE, *Policies and Strategies on Foreign Affairs and National Security* (2<sup>nd</sup> ed). Addis Ababa: Ministry of Information, 2004 (in Amharic), p.84. It is remarkable indeed that this document also states that Ethiopia's policy on Somalia must always take account of the presence of Ethiopian Somalis this side of the border whose identity as Ethiopians must be affirmed in an inclusive and democratic citizenship. The document specifically mentions the need to dispense ethno-cultural justice to the people in the Somali region not just as a matter of principled commitment to democracy and development to its own people but also as a matter of securing its Eastern border by taking advantage of the opportunity the similarity of languages, cultures, and faiths offers as a bridge to build between the two countries. Note that cultures are referred to as bridges rather than boundaries (pp.78-83). See also Tsegaye Regassa, "State Building in the Somali Region: Challenges and Implications for Regional stability/Stabilization" (paper presented at the Fifth International Expert Meeting on peace and Security in the Horn, Nov. 4-5, 2009, Cairo Egypt) on the significance of building state in the region to secure the border and to stabilize the Somalias.

<sup>99</sup> Success of the federal experiment in synthesizing the local Somali and the encompassing Ethiopian identity in the Somali region of Ethiopia; the fair balance stricken between the demands of federal self-rule and shared rule; the achievement of stability, state building, ethno-cultural justice, respect for human rights and social justice, and democratic governance; etc will play a role to win the hearts and minds of people in the wider Somalias. The constitutional legal infrastructure now in place in Ethiopia has a potential to do all this.

### 5.3. Kenya.

Kenya's ethnic diversity was always the sub-text of Kenya's politics but has become more so in recent years. Ethnicity has begun to rear its ugly face, and scourges of conflict have started to show ironically in times of better electoral-democratic experimentation.<sup>100</sup> The pattern seems to hold: when centralism/unitarism exhausts, finally a space is created for considering federalism. Ethnic federalism is being considered in earnest. That makes Kenya a plausible candidate for adopting the Ethiopian model of federalism in the foreseeable future. But the question remains: is Ethiopia the right client to adopt it from? Don't the other issues to consider in the analysis of the prospect of adoption in the Somalias and in Eritrea come up again in the analysis of the prospect in Kenya?

### 5.4. Southern Sudan.

Southern Sudan, if separated from the Wider Sudan in the wake of the referendum in 2011 (or even otherwise), it is probably the most veritable candidate to borrow federalism from Ethiopia. Reasons: first, it is diverse although not as diverse as Ethiopia (for no one in the region is). Second, it always defined Ethiopia as the "Christian" or secular ally against Arab Northern Sudan. Third, it shares ethno-linguistically similar people on the border (Nuer, Anua, Gumuz, Uduk, Dinka, etc) some natives, some displaced because of ecological fragility or war. Fourth, because it will have a weak beginning and is thus geopolitically and economically vulnerable as a result, it seeks strong ties with Ethiopia, among others of course<sup>101</sup>. Besides, it is healthy to assume that it seeks neighbourly peace to concentrate on the arduous task of nation-building and state-building. Needless to say, it needs internal peace for state building. So, multi-ethnic federalism can be adopted as a tool of defusing internal conflict. The liberationist (self-determination) rhetoric it has forced into the 2005 CPA (which *de facto* serves as the interim constitution of the Sudan now) resonates well with the Ethiopian constitution's heavy accent on self-determination, secession, and even equality and self-rule. Juba had many draft constitutions and in recent times, it is considering the ethno-federal option.

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<sup>100</sup> This was the case in the 2007 election and the crisis that followed it.

<sup>101</sup> Note that, if independent, South Sudan will be a yet other landlocked country in the horn region.

### 5.5. *The Wider Sudan.*

Wider Sudan is traversed by calls for federalism, self-rule, shared-rule, autonomy, equality, and social justice. These are exactly the values that are given a high premium in the Ethiopian federal constitution. But now that we have South Sudan's upcoming referendum in 2011, a secessionist movement holding sway in Darfur, and other movements intensifying their rage against the North (e.g. South Khordofan, East Sudan's Beja movement, etc.) is it perhaps a bit too late for the Sudan to ponder the values of federalism? Besides, one wonders if the Sudan is willing to relinquish its Islamism which propels a form of religious tyranny (majoritarianism) of the North. What about the Al Bashir-ICC altercation? Where does it lead? Does it lead to the abrogation of the CPA, and if so, are we going to see a new flash of war that will necessitate a new start of peace negotiations? In any event, does the Sudan have any better option than federalism? To make the question more pointed, does it have any better option than the multi-ethnic type? If the answers to these last questions is in the negative, then it is a clue as to the Sudan's potential to become a borrower of the Ethiopian brand of federalism.

### 5.6. *Others.*

*Djibouti*, a small country,<sup>102</sup> with its Afar and Isa population, has a potential of having to face the burden of a bipolar conflict. But both the Afar and the Isa straddle the territories of Ethiopia and Djibouti. The need to blunt the tension between the two groups, the need to de-securitize its two ethnicities (both of which have their larger homes outside of its borders) might make federalism a veritable option. Besides, its small size, the threats from Eritrea,<sup>103</sup> the dependence of Ethiopia on its port and the pressures Ethiopia imposes from time to time, and other reasons might force Djibouti to consider a federal relation with Ethiopia or a greater regional shield. The fact that the Afar in Ethiopia—the largest Afar concentration—and the Isa as well, have their own self-rule (the Isa in the Shinille Zone of the Somali region) and if their autonomy is entrenched through Ethiopia's federal experiment, there is little to

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<sup>102</sup> Weber, *supra* note 10, refers to Djibouti as “last man standing, Francophony on a salt lake.” p. 10.

<sup>103</sup> There is a military confrontation that arose out of a border dispute. The border dispute is the result of disagreement between Italian and French Colonial powers before WWII. New tensions also emerge owing to Djibouti's “monopoly of port activities between the Horn and the Arab peninsula” See Weber, *supra* note 10, p. 11.

fear the threat of dissolution in the wider Ethiopian polity, Djibouti can even be tempted to consider the federal option as a mode of (re-)bonding it with Ethiopia.<sup>104</sup> But will Djibouti be a ‘market’ for Ethiopia’s federalism? The answer to this question depends on the factors that will help determine the answer to the questions raised with regard to the countries discussed thus far.

A call has been, and is being, made in *Uganda* for adopting a federal system. A veritable literature is available on a pro-federalist website (<http://www.federo.com>) on the justification for and the direction proposed for the federal system is to take. They even feature an alternative draft constitution for a federal Uganda that has details about the form of government, the mode of state formation, the powers of the constituent units, and the mode of operation of local government, etc. Ali Mazrui advises that the bipolarly conflictual (and at times even genocidal) relation between the Hutus and the Tutsis in *Rwanda* and *Burundi* can be redeemed through federally dissolving these small countries and incorporating them in a multi-national federal polity in the *Tanzania–Zanzibar* continuum.<sup>105</sup> He advises against ceding them to Congo in spite of their shared colonial history under Belgium. Multi-national federation, according to Mazrui, dispels the bipolar tension, and as in Uganda, Tutsis and Hutus might find a political space of alliance and cooperation in a multi-national federation of the *Tanzania-Zanzibar continuum*. But one does well to ask: is the federal solution a little too late for Rwanda and Burundi?<sup>106</sup> Perhaps. Is the Ethiopian option viable? If not its practice, then its promise might make it an option.<sup>107</sup>

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<sup>104</sup> Note that Djibouti used to be part of Ethiopia before it was given over as a concession to France in the late 19<sup>th</sup> century for their construction of the Djibouti-Addis Ababa rail connection.

<sup>105</sup> Mazrui, *supra* note 7.

<sup>106</sup> A more interesting and perhaps inscrutable question for lawyers is what about the impact of all these developments in international law? What about its adverse effect on the African Union Law which cannot permit us to go against the sacrosanct principle of adhering to colonial boundaries thereby never allowing a rethinking of the old boundaries?

<sup>107</sup> But note that federalism is a familiar concept in this part of the horn. Tanzania-Zanzibar is still a federation of a sort. Uganda and Kenya, along with Tanzania, was once part of the East African Federation. The argument from familiarity (especially from the experience of failure in the past) might win over the interest to adopt federalism, even of the multi-ethnic type (which in a way is new) to the sub-region in general and to these last group of countries in particular.

## 6. Factors for and Against “Exporting” Ethiopian Federalism: The Political Economy of Import-Export—a Quick and Tentative Sketch

In this section, we will attempt to identify some of the factors for and against adopting the Ethiopian brand of federalism. First let us consider the *factors for*, which include:

- a. Fact of shared *peoples, cultures, languages, histories, and identities* across the borders of most of the countries of the sub-region. This factor serves as an impetus for considering federalism for internal peace, ethno-cultural justice, and greater integration and cooperation in the sub-region.
- b. The fact of *common diversity and of common problems* that ensue there from.
- c. The existence of *common fears* that haunt the countries of the sub-region, especially the fears of economic inviability and geo-political insecurity.
- d. The reality of *common needs* shared among these countries, namely: stability, peace, state-building, economic progress, environmental protection (or restoration), and human development.
- e. *Interdependence* (for ports—between Ethiopia and Djibouti or Eritrea, or Uganda and Kenya, South Sudan and the rest, etc—and hydro-power--between Ethiopia and the Sudan, etc-- for instance)
- f. Others.

In contrast to these factors stand the *factors against* adopting the Ethiopian version of federalism. One can easily identify the following as some of the factors against it:

- a. *Relative equality among the countries’ legal systems*. The fact that the usual pattern of law’s migration is from a strong center to a weak periphery contrasted to the non-obvious relative strength of the Ethiopian system poses a challenge to its transplanatability.
- b. *Lack of prestige*. The Ethiopian system is not a prestigious one by any standard. Given Ethiopia’s bad showing in the media for decades (associated with famine, war, abject poverty, dictatorship, etc, all of which tend to stick for various reasons), and the fact that the Ethiopian system hasn’t yet overcome the trinity of deficits (deficits in democracy, human rights protection, and good governance, the latter by the current regime’s admission)<sup>108</sup>, there is little that is spectacularly charming about the practice of the federal experiment in Ethiopia.

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<sup>108</sup> Recent programmatic documents by the Ethiopian government and the ruling party such as *Democracy and Democratic Unity in Ethiopia* (Amharic). Addis Ababa: NP, June 2005,

- c. *Rivalry and competition for hegemony*, especially between Eritrea and Ethiopia. This hinders the possibility of learning from one another.
- d. *History of bad relations* among two or more countries (e.g. Eritrea and Ethiopia; or Ethiopia and Somalia).
- e. *History of failure and familiarity*. Federalism has once been tried in Ethiopia, British East Africa, the Sudan, and Tanzania. (As a result, the mood looks like “So... what is new about this one?”)
- f. *Lack of a compelling success story*. Ethiopia’s experiment is not particularly a spectacular case of success. As has been seen in the foregoing sections, mixed stories emerge from the analysis of the Ethiopian experiment. As a result, why would anyone borrow a system that has not achieved a proven and demonstrated success in the ‘mother’ country? Success, among others, as is well known in the comparative law literature, is what makes a particular legal technology appealing.
- g. *Psychology of countries*. The subjective belief that we have no problem of ethno-cultural deficit, nor do we need this technology as we are a different, if superior, people, also leads to rejection of a legal technology.
- h. The fact that the *federal idea as an idea is a transplant* seeking local legitimacy even in Ethiopia also contributes to the lack of enthusiasm to accept it readily in the potentially host countries.
- i. *Proximity* of Ethiopia to all these countries makes the experiment sound like it is familiar. And as in life in general, the familiar is the dull. “It is not exotic enough to be exciting,” the mood goes. Thus, it is not worth transplanting.
- j. Other factors such as the *absence of clear intellectual (as opposed to political) articulation* of the uses and costs of federalism in the countries of the sub-region, the general *lack of inter-popular dialog* over the matter (over any public matter anyway), and the fact that federalism of any type, being *complex*, requires a corps of *experts* to run it and incurs *expenses* at various levels also serve to undermine the possibility of a federal contagion—for to talk about a ‘federal revolution’ is to be too utopian about it-- in the sub-region.

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make a repeated reference to lack of good governance and the practical problems in the implementation of the democratic dispensation as partly the result of the fact that democracy is merely at its nascent stage in Ethiopia facing formidable historic and contemporary challenges.



## 7. Conclusion

In this piece, an attempt is made to inquire into whether the Ethiopian brand of federalism is exportable. A question is raised as to whether the Ethiopian model of multi-ethnic federalism can be adopted for the purpose of bringing about internal peace and stability, entrenching ethno-cultural justice, and a greater prospect of regional integration in the Horn. In conclusion, let me attempt to summarize the answer to the key questions raised at the outset. Does it bring about peace and stability? The fact that it responds to the quest for identity-based equality, autonomy, and self-rule makes it a candidate as a governance structure for the countries troubled by such quests. These quests, as one can readily note, have been the sub-text of many an African politics which, owing to the salience of the principle of sanctity of the arbitrary colonial boundary, sought to advance nation-building by ‘killing the tribe’.

The fact that the Ethiopian federal experiment extends recognition to ethnicity (thereby freeing it from the “bondage of boundaries”<sup>109</sup>) and accords secession to identity-based groups seems to prevent conflicts by offering the ultimate. It takes the bull by the horn (so to speak) and takes the sting out, as it promises peaceful separation if and when an identity-based group seeks to exit the federation. This disarms the armed ones and takes the military solution out of the political equation. In Ethiopia, as it has been observed above, in spite of the raging controversy over it, it has served—at least as far as some groups are concerned-- as the case of the apparently repulsive becoming the actually attractive, the case of the dividing serving the goal of uniting the country. More importantly, it has helped to convert secessionist conflicts into the normal political and democratic process. To this extent, then, the Ethiopian model can offer some attraction.

The fact that ethnic-based self-rule is recognized in a federation, inter-personal and inter-group equality is guaranteed by an entrenched human rights chapter of the constitution, and a fair and equitable share in the federal power game is constitutionally assured, and that the constituent units might use their secession right for purposes of political bargaining at the center is pivotal in entrenching ethno-cultural justice. In its potential for a fair and even-handed management of diversity, therefore, the Ethiopian federal system might also

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<sup>109</sup> See Mazrui, “The Bondage of Boundaries,” *IBRU Boundary and Security Bulletin* (April 1994), pp.60-65 (available at: [http://www.dur.ac.uk/resources/ibru/publications/full/bb2-1\\_mazrui.pdf](http://www.dur.ac.uk/resources/ibru/publications/full/bb2-1_mazrui.pdf)) on this general bondage of boundaries much of Africa languished under.

offer an example to consider. The fact that the ethnic-based constituent unit formation might initiate a rethinking of old boundaries and a remapping of the region (thereby effectively de-securitizing the hitherto bounded ethnicity); the fact that this in turn reinforces the interconnection among the countries of the region who share trans-boundary people, resources, fears, and inter-dependences; the fact that because of the principle of non-centralization built into a federal system, no constituent unit needs the fear of dissolution, i.e. the fear of being dissolved, in a larger Ethiopia-dominated polity; and the fact that, by exercising the right of secession, any one unit can opt out of the regional federation especially in time of an undesirable centralization; these and other factors might make it suitable for regional integration. This last point strengthens the idea that federalism can be used as a legal technology to be used (even in international law) to facilitate regional integration. This however is not without noting the limits of law to constitute a community, a Horn of Africa community in our case. Indeed, to create a community that comes together to covenantally federate with each other is a herculean task towards which to work. Given the existence of interdependence that exists among the countries in the region, this is not entirely inconceivable. But converting the conceivable to the real (i.e., into a lived experience) takes time. In the long term, therefore, one can consider the federal experiment of Ethiopia as laying the ground work, the foundation, for starting to imagine a federally integrated Horn of Africa community.

Nevertheless, considering the fact that laws migrate depending on factors other than those recognized as important in comparative law such as relative strength of the legal system, similarity or dissimilarity of the legal tradition, its prestige, and its success at home, etc.,<sup>110</sup> the Ethiopian system might not find it easy to migrate to (or diffuse itself into) the countries of the region. This is because although the Ethiopian legal system in general (and its constitutional system in particular) is relatively stronger than most of its equivalents in the region, it is not so outstandingly strong that it invites imitation. Although some of the countries of the region share a similar legal tradition with Ethiopia (e.g. Eritrea, Djibouti, Somalia all having affiliated with the continental European civilian tradition), there are also those countries whose modern legal system is not similar to the Ethiopian one (e.g. Kenya,

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<sup>110</sup> See generally Sujit Choudhry (ed), *The Migration of Constitutional Ideas*. Cambridge: Cambridge University Press, 2006.

Uganda, The Sudan) thereby making it difficult to create a synchronization. But given the fact that the imported European legal traditions affect only the upper layer of the legal systems in all the countries of the region (and hence the common distance of these traditions to all of the countries of the region),<sup>111</sup> and the added fact that the constitutional system that institutionalized the federal system has little link to the civilian tradition to which Ethiopia owes credit for the corpus of its substantive laws, the differences in tradition affects the prospect of exporting it, if at all, less than the other factors do.

In spite of the relative strength of the Ethiopian system, there is no gainsaying that its prestige is still low. That is partly because of lack of efforts at popularizing the system even at home, let alone in the region. Partly, it is because the Ethiopian system has to compete with other more prestigious (or hegemonic) systems (such as that of the US).<sup>112</sup> Moreover, the psychology of the neighbouring nations affects the prestige. Some countries, owing to historic relation of rivalry, often work to put Ethiopia into disrepute by citing it as an example of failure than success. The lack of prestige affects the prospect of reception elsewhere adversely. Added to that is the lack of clarity in the link between federalism and economic growth on the one hand and the lack of consensus, even at home, on the success of the experiment in the area of the economic growth scored in Ethiopia on the other.<sup>113</sup>

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<sup>111</sup> See, for example, Werner Menski, *Comparative Law in a Global Context: The Legal Systems of Asia and Africa* (2<sup>nd</sup> ed). Cambridge: Cambridge University Press, 2006, especially its ch. 6, pp.380-492 on the distance between the often transplanted modern laws and the normative life of the society.

<sup>112</sup> Mattei, *supra* note 93 on the hegemony of American law worldwide.

<sup>113</sup> In recent years, it was repeatedly reported by the government that there has been an economic growth rate of about 11%. In 2009, the growth rate was reported to be at 9.9%, and in 2010, it is expected that the rate will rise to 10.1%. See, Jason McLure, "Ethiopia Expects Economy to Expand by 10.1% This Year (Update1)" (February 4, 2010), available at: [www.bloomberg.com/apps/news?pid=20601013&sid=ahgBUT\\_6y4FA](http://www.bloomberg.com/apps/news?pid=20601013&sid=ahgBUT_6y4FA). The Ethiopian government attributes this economic growth, among others, to federalism. But how exactly federalism contributed to such an economic growth is not manifestly clear. Whether it is by creating a peaceful environment in which to do business; or by empowering/capacitating citizens (through human rights, justice, human development) that it helped achieve such growth; or by unleashing local nationalisms that help grow the *parts* which will then spill over to the *whole*; etc is not clear. There are some who disagree, especially those in the political opposition. Often they doubt the statistics. They also hold that better could have been done if, for e.g., land is privatized and the economy in general is liberalized. Some also

At this historical juncture, the answer to the question posed is a mixture of (half) ‘yes’ and (half) ‘no’ as there are both factors for and against “exporting” Ethiopia’s federalism. Consequently, one wonders if raising the issue of “exporting” federalism in the context of the horn of Africa itself is a bit too premature. Premature or not, as the foregoing pages have shown, the question of “exportability” of the Ethiopian brand of federalism is, at least, worth the asking.

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argue that the logic of cultural boundaries (emphasized in ethnic federalism), being contrary to the logic of profit-led market (which rejects any boundaries including cultural ones), has contributed to the stagnation of the economy.