UNIT I

INTRODUCTION TO CONSTITUTIONAL LAW

Unit Introduction:

Dear learners, under this unit the module provides definitions and concepts for the word constitution and constitutionalism and the distinguished features of the concepts, key notions and concepts nexus to Constitutionalism such as, Democracy and Rule of Law. In addition the unit explains features and functions of constitutions, classifications of constitutions, Contents of constitutions and a brief history of constitutionalism in relation countries like Ancient Greece, Roman Civilization, England, USA and France. So, that to understand the whole discussions of the unit your are required to read and answer questions.

1.1 Definitions and Concepts

?Beloved students, what is the word constitution? What is constitutionalism? What is the difference between the two terms? What is the purpose of having principles of constitutionalism?

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Constitution is: A body of fundamental principles or established precedents according to which a state or other organization is acknowledged to be governed**.** The action of forming or establishing some thing: the constitution of a police authority**.** The system of fundamental laws and principles that prescribes the nature, functions, and limits government or another institution power.

The fundamental law, written or unwritten, that establishes the character of a government by defining the basic principles to which a society must conform; by describing the organization of the government and regulation, distribution, and limitations on the functions of different government departments; and by prescribing the extent and manner of the exercise of its sovereign powers. It is, a legislative charter by which a government or group derives its authority to act.

The concept of a constitution dates to the city-states of ancient Greece. The philosopher Aristotle (384–322 B.C.), in his work Politics, analyzed over 150 Greek constitutions. He described a constitution as creating the frame upon which the government and laws of a society are built:

Constitute, constitution:-Constitute can mean "make laws" and a constitution is a "how-to" document for a government or organization. To constitute means to make up, order, or form. Thus a nation's constitution should pattern a political system. Some texts implicitly proclaim themselves to be supreme law and many do so explicitly. Still, a document's bearing the title, a constitution and declaring its own control over all other political acts may not mean very much. We need to distinguish between the authorities a text asserts.

A Constitution as a Charter: (document granting certain rights and privileges; contract, lease) for Governments**:** At minimum, an authoritative constitutional text would more often sketch the fundamental modes of legitimate governmental operations. A constitution as a guardian of fundamental rights: If a text is authoritative, for it embodies democratic theory, It must protect rights to political participation; and If it is authoritative and embodies constitutionalism, It must protect substantive rights by limiting the power of those even freely chosen representatives.

The constitution as covenant: **(**treaty, pact; contract, formal agreement), symbol, and aspiration: In so far as a constitution is a covenant by which a group of people agree to (re) transform themselves from mere state into a nation. In a related fashion, a constitution may serve as a binding statement of people's aspirations for themselves as a nation.

In public law constitution means: The organic and fundamental law of nation or state, which may be written or unwritten, establishing the character and conception of its government, laying the basic principles to which its internal life is to be conformed, organizing the government, and regulating, distributing, and limiting the function of its different departments, and prescribing the extent and manner of the exercise of sovereign powers. In more general sense, any

fundamental or important law or edict; as the novel constitution of Justinian; the constitution of Clarendon.(Black's law dictionary)

Constitutionalism: is belief in the fundamental principles of a constitutional government, the principles of the form of government defined by a constitution, the principles of constitutional government or adherence to them. It is also, Constitutional rule or authority or a constitutional system of government (usually with a written constitution).

The term Constitutionalism refers to the position or practice that government be limited by constitution, usually written. The term may also refer to a movement or effort to enforce such a legal order, usually called constitutional compliance.

Constitutionalism is also concerned with:-the principles of constitutional design, which includes the principle that the field of public action be partitioned between delegated powers to the government and the rights of individuals, each of which is a restriction of the other, and that no powers be delegated that are beyond the competence of government.

The idea of, Constitutionalism is often associated with the political theories of John Locke and the "founders" of the American republic, and equated with the concept of *regula iuris*, the "Rule of Law", that government can and should be legally limited in its powers, and that its authority depends on enforcing these limitations. The doctrine or system of government in which the governing power is limited by enforceable rules of law and concentration of power is limited by various checks and balances so that the basic rights of individuals and groups are protected.

The best short statement of the rationale of constitutionalism is that of James Madison, the most influential draftsman of the US Constitution. He states that. "But what is government itself? Is it, the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were

to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed: and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions."

"Constitutionalism means limited government. But the interpretation given to the traditional formulae of constitutionalism has made it possible to reconcile these with a conception of democracy according to which this is a form of government where the will of the majority on any particular matter is unlimited

1.2 Key notions and concepts: that have connection to constitutionalism

?Dear learners, what comes to your mind when you hear the word democracy? What is constitutional democracy? What is rule of law? How, democracy and rule of law play a role to attain constitutionalism?

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Democracy is: political orientation of those who favor government by the people or by their elected representatives or form of government in which the supreme power is vested in the people and exercised directly by them or their elected agents under the free electoral system. It is political ideology, political orientation, political theory orientation, political theory an orientation that characterizes the thinking of group or nation.

Constitutional Democracy: to enjoy reasonably effective, but still limited governance, many countries have adopted a mix of constitutionalism and democratic theory. Most so-called democratic systems, such as those of: Australia, Austria, Canada, Germany, India, Italy, Japan, Spain and the United States, would be more accurately classified as constitutional democracies. Each of

these polities have provided for a wide measure of political participation and simultaneously restricted the peoples' over-governance by putting in place a variety of institutional means. Each of them, again, has distributed the power to the Legislative, Executive and adjudicate among the three departments of government.

Constitutional democracy is a political hybrid, the product of an uneasy union between, on the one hand, the normative theories of constitutionalism and democracy and, on the other, the desire to live under what James Madison called "free government." Walter F. Murphy combines a lifetime's study of constitutions and democracy with traditional storytelling to answer fundamental questions about constitutional democracy: How is it created? How is it maintained? How can it be adapted to changing circumstances?

Constitutional Democracy is, quite simply, a masterpiece. Only someone with Walter Murphy's immense learning could so effectively bridge the gap between constitutional law and political philosophy, and as a bonus provide a model of how material from other countries can be used to illuminate American law and politics. A constitutional democracy is a government under law in which coalition and majority rule is balanced by minority and individual rights, and in which most rights are balanced by responsibilities - including the responsibility of each citizen to study the history of constitutional government in order to illuminate it in ways that no definition ever can … and in order, thereby, to allow it to evolve further in light of ancient wisdoms and the needs of our evolving global civilization**.**

Constitutionalism and democracy remains a challenge for a long time, the two concepts have been polemic /controversial/ and diversely/differently) understood. Yet, the "veneration" of constitutionalism and democracy is among the most enduring and probably justified vanities of liberal democratic theory. As Wiseman rightly pointed out, regarding democracy many governments of quite different types wish to describe themselves as democratic. In some cases the term has even been incorporated into the official name of the state ... although it is a noticeable paradox that in most cases where this happened (e.g. the German Democratic Republic, the Peoples' Democratic Republic of Yemen or the Democratic Republic

of Congo) the states concerned appear significantly undemocratic. According to Rosenfeld, constitutionalism is "a three-faceted concept", as it requires imposing limits on governmental powers, adherence to the rule of law, and the protection of human rights. Constitutionalism is the antithesis of arbitrary rule. Its opposite is despotic government, the government of will instead of law.

As far as democracy is concerned, its different definitions revolve around what Abraham Lincoln referred to as "government of the people, by the people and for the people". It is a political system characterized by the participation and government of the people through their freely elected representatives, by the recognition and promotion of human and peoples' rights, including the rights of the opposition and the minorities.

The people are sovereign in any democratic government, which is based on the rule of law expressing their will. Modern constitutionalism is democratic constitutionalism and modern democracy is a constitutional one. Britain has been generally cited as a case of democracy without a constitution, in ignorance of the fact that constitutionalism is as much known in Britain as it is in democratic countries with a supreme constitution.

Constitutionalism and democracy are so related that "constitutional democracy" may appear to be a tautology. Nowadays, there is practically no African country without a written constitution and whose leaders do not profess their faith in the ideals of constitutionalism and democracy.

1.3Rule of law

There is no single agreed definition of the rule of law. However, there is a basic core definition that has near universal acceptance. As Emeritus Professor Geoffrey Walker, has written in his defining work on the rule of law in Australia:'…most of the content of the rule of law can be summed up in two points: That the people (including, one should add, the government) should be ruled by the law and obey it and that the law should be such that people will be

able (and, one should add, willing) to be guided by it.It is a Rule according to law, rule under law, or rule according to a higher law.

- The rule of law is an ambiguous term that can mean different things in differen t contexts.
  - In one context the term means rule according to law.
  - In a second context the term means rule under law. No branch of governmen t is above thelaw, and no public official may act arbitrarily or unilaterally out side the law.
  - In a third context the term means rule according to a higher law. Nowritten l aw may be enforced by the government unless it conforms with certain unwr itten, universal principles or fairness, morality, and justicethat transcend hu man legal systems.

The **rule of law** (also known as ***nomocracy)*** is the legal principle that law should govern a nation, and not arbitrary decisions by individual government officials. It primarily refers to the influence and authority of law within society. The phrase can be traced back to 16th century England, and it was popularized in the 19th century by British jurist A. V. Dicey. The concept was familiar to ancient philosophers such as Aristotle, who wrote "Law should govern".

Rule of law implies that every citizen is subject to the law, including law makers themselves. In this sense, it stands in contrast to an autocracy, collective leadership, dictatorship, or oligarchy where the rulers are held above the law (which is not necessary by definition but which is typical). Lack of the rule of law can be found in democracies and dictatorships, and can happen because of neglect or ignorance of the law, corruption, or lack of corrective mechanisms for administrative abuse, such as an independent judiciary with a rule-of-law culture, a practical right to petition for redress of grievances, or elections.

1.4 Elements of rule of law

Five elements comprise the rule of law. Each must be present for rule of law to prevail. Those elements are:-

1. **Order and security**: Rule of law cannot flourish in crime-ridden environments or where public order breaks down and citizens fear for their safety. The executive branch has immediate responsibility for order and security, but the judiciary has an important role as well in protecting rights and providing for the peaceful resolution of disputes.
2. **Legitimacy:** Laws are legitimate when they represent societal consensus. Legitimacy addresses both the substance of the law and the process by which it is developed. This process must be open and democratic.
3. **Checks and balances**: Rule of law depends on a separation of governmental powers among both branches and levels of government. An independent judiciary is seen as an important "check." At the same time, checks and balances make the judiciary accountable to other branches of government. Like all branches, the judiciary is also accountable to the public.
4. **Fairness**: Fairness consists of four sub-elements: (1) equal application of the law, (2) procedural fairness, (3) protection of human rights and civil liberties, and (4) access to justice. These sub elements are key to empowering the poor and disadvantaged, including women. The justice sector bears primary responsibility for ensuring that these sub-elements are in place and implemented.
5. **Effective application**: This element pertains to enforcing and applying laws. Without consistent enforcement and application for all citizens and other inhabitants, there can be no rule of law. The judiciary is an important element of the enforcement process. The essential elements of rule of law and the justice sector are mutually reinforcing in consolidating democracy.

1.5 principles of the rule of law

The rule of law is a system in which the following four universal principles are upheld:-

1. The government and its officials and agents as well as individuals and private entities are accountable under the law.
2. The laws are clear, publicized, stable and just, are applied evenly, and protect fundamental rights, including the security of persons and property.
3. The process by which the laws are enacted, administered and enforced is accessible, fair and efficient.
4. Justice is delivered timely by competent, ethical, and independent representatives and neutrals who are of sufficient number, have adequate resources, and reflect the makeup of the communities they serve.

These are four universal principles which comprise the World Journal of Politics (WJP's) notion of the rule of law are further developed in the nine factors of the WJP Rule of Law Index.

1. **Limited Government Powers**: In a society governed by the rule of law, the government and its officials and agents are subject to and held accountable under the law.
2. **Absence of Corruption**: The absence of corruption - conventionally defined as the use of public power for private gain
3. **Order and Security**: Human security is one of the defining aspects of any rule of law society. Protecting human security, mainly assuring the security of persons and property, is a fundamental function of the state....
4. **Fundamental Rights**: Under the rule of law, fundamental rights must be effectively guaranteed.
5. **Open Government**: Open government is essential to the rule of law. It involves engagement, access, participation, and collaboration between the government and its citizens, and plays a crucial role in the promotion...
6. **Regulatory Enforcement**: Public enforcement of government regulations is pervasive in modern societies as a method to induce conduct.
7. **Civil Justice**: In a rule of law society, ordinary people should be able to resolve their grievances and obtain remedies in conformity with fundamental rights through formal institutions of justice in a peaceful...

8. **Criminal Justice**: An effective criminal justice system is a key aspect of the rule of law, as it constitutes the natural mechanism to redress grievances and bring action against individuals for offenses against...
9. **Informal Justice**: For many countries it is important to acknowledge the role played by traditional, or 'informal', systems of law — including traditional, tribal, and religious courts, as well as community-based...

The same have been designated as the substantive, the formal aspects of constitution. Of the formal/elements aspects of constitutive aspects, rule of law stand out as the most comprehensive and vital doctrine, principle and/or concept (hereinafter referred to as principle) of modern constitutions. In the sense of Lon Fuller's view of the "inner morality" of law, Rule of Law is not treated in its general sense of government under law, but in much more specific, comprehensive manner. According to Fuller yet "… a comparison can be made between the internal morality of law and the natural law of carpentry; which the carpenter has to follow whether his aim is to build a hideout for thieves or an orphanage.

The internal morality is to be distinguished from the external morality or the substantive aims or values that particular legal rules (standards) seek to promote. In other world (he] developed a conception of the Rule of Law, not by appealing to moral values drawn from the external morality, (which will, of course, vary with different legal rules and systems and from natural school perspective to other schools of jurisprudence), but by spelling out the values that underlie the concept of law itself."

These values are characterized as the eight desiderata. These identified eight elements of law, recognized as necessary for a society aspiring to institute the Rule of law state as follows:-

1. Laws must exist and those laws should be able to win obedience.
2. Laws must be published.

3. Laws must be prospective in nature so that the effect of the law may only take place after the law has been passed. Laws should be written with reasonable clarity to avoid unfair enforcement.
4. Law must avoid contradictions. (intelligibility)
5. Law must not command the impossible. (Non self-contradictoriness)
6. Law must be general.
7. Laws must stay constant through time to allow the formalization of rules; however; law also must allow for timely revision when the underlying and political circumstances have changed.
8. Official action should be consistent with the declared rule. (Congruency).

1.6 Features and functions of the constitution

1.6.1 Features of the constitution

1. **Supremacy:** The constitution is the foundation of the rule of state. The constitution is the embodiment of the fundamental laws. Describes how the wording of the Constitution can be changed.
2. **Rule of law:** The constitution describes the powers and functions of different org government and the relations among these organs. It states on the one side the powers and duties of the government and, on the rights and duties of citizens. It connects the ruler to the ruled, and vice versa**.**
3. **The principle Separation of Powers and Checks and Balances:** to protects abuse of power by means of dividing power horizontally between the three branches of the government. It describes the power and functions of these different organs of the government.
4. **Generality**: it is difficult to include every matters in the constitution, so, that constitution is designed in a very generic terms to serve trans-generation.
5. The "essence" of other Fundamental Rights, Freedom and dignity of the individual
6. Independence of the Judiciary (Provides for the creation of courts and its power)

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1.6.2. The Functions and Importance of constitution

Some of the most importance and functions of the Constitutions are the following:-

1. **Indispensable for Administration**: Constitution is indispensable f administration of state. Administration would not be smooth, fair and efficient in the absence of a constitution. The constitution is a record of the state providing for rule of law.
2. **Empowerment of state:** The constitution gives powers and strength to the state and government.
3. **Establishment of values and Ideals:** Every constitution aims at establishing values and ideals. These ideals may include democracy, freedom or liberty, welfare people, equality and justice.The ideas, values and goals of a constitution may be stated clearly or impliedly, of the goals of India is establishment of socialism. This has been clearly stated in preamble of the constitution. The interests of rich Americans have been protected b American constitution.
4. **Shows Path and Direction to Government:** The constitution is blue print governance. It is the duty of government to follow this blue print. The constitution shows direction to the government. The government is likely to reach its goal if it proceeds in that direction. The constitution advises the government to avoid disputes, and also to disputes.
5. **Makes Government Stable and Disciplined:** If the different organs of govern perform their functions according to the provisions of the constitution, the government will be effective and stable. The constitution has also fixed the limits of powers of to organs of government. They cannot cross these limits. As a result of this, there prevails discipline in the government.
6. **Gives Rights to Citizens and Makes Them Duty-bound:** The constitution gives valuable rights to citizens, such as, political, economic, social and cultural rights. In no times, the government cannot withdraw these rights from citizens. So long as the citizens enjoy these rights, the government cannot be authoritarian or dictatorial. Citizens, while enjoying their rights,

are also required to discharge some duties, should remain loyal to their sovereign state and respect the rights of other citizens of country. The constitution injects a sense of discipline in the citizen.

7. **Lends Legitimacy to State/Government:** The constitution, while giving powers to the state/government and determining their functions, (ends legitimacy to their functions and decisions. In the absence of a constitution, no state will get respect from other states and even from its own citizens.
8. **Establishes Linkage between State/Government and Citizens:** The state and citizen, unless related and linked to each other, will lose then identity. Any ambiguity or trouble in their bilateral relations will cause damage to both the state and citizen. The constitution determines the nature of relations between them.Generally, a constitution merely deals with limitations on power. Power corrupts and absolute power corrupts absolutely. A constitution is concerned with the allocation of powers - what the legislature, the government and the judiciary may or may not do. A constitution is established to restrict the possibility of abuse of power by those exercising governmental functions, whilst providing a reasonable area for state activity.

1.7 Classifications of constitutions

1.8.1 By looking at the Nature of the Constitution itself: Traditional approach

Written /unwritten, codified/un codified Classification: It is generally agreed that the written /unwritten dichotomy/separation in to two parts/ is false distinction as there is no constitution which is entirely unwritten and nor is there a constitution which is entirely/absolutely/ written. What is meant by a written constitution is, therefore, one that is reduced into a form of a document having special sanctity.

The term written constitution, according to C.F. Strong, also designates a rather complete document/instrument in which the framers of the constitution have attempted to arrange for every foreseeable contingency in its operation.

Unwritten constitution on the other hand is one which has grown up on the basis of custom rather than of written law. Notable in this regard is the United Kingdom. But then, there is a great deal of statute law that could properly fit into the realm of constitutional law, and much of it treats fundamental political institutions in the same way as "written" constitution does.

To restate what has been said at the beginning of this section, the classification of constitution on the basis of whether they are unwritten or written is illusory. But we can adopt this classification as a valid classification by considering it as dealing: First- with the degree of codification, second- with the degree of written detail, and thirdly- with the origin of the written text of the documents.

The degree of codification could be established only if an agreed list of 'basic constitutional constituents' were accepted, as it is only with such a bench mark that one could have a measure. Many constitutional texts deal only with the skeletal outlines of topics, leaving the details to be regulated by organic laws or ordinary statutes. But there are some constitutions that display enough detail that one usually expects to find in subsidiary legislations. Indian and Mexican constitutions are good examples in this regard.

2. Rigid/flexible, Conditional/unconditional Classification:

The true ground of division by virtue of the nature of the constitution itself is whether it is flexible or rigid. A written constitution is a standard of reference for classifying constitutions as rigid or flexible as unwritten/unmodified or non-documentary constitution cannot be other than flexible, and it is possible for codified/documentary constitution to be either flexible or rigid. The most important question, here, would then be what is it that makes a constitution rigid or flexible?

3. By looking at the Nature of the State itself: Federal/Unitary classification

In a nutshell, the classification of constitutions into federal, unitary and confederate is based upon the principle by which the powers of government are distributed in the constitution between the government for the whole country and governments which may be established for its constituent part.

a. ***In a federal constitution:*** powers of governments are divided between government for the whole and governments for parts of the country in such a way that each government is independent and none is subordinate to the other**,** and legislature in both cases have limited powers.

b. ***In a unitary constitution:*** on the other hand, the legislature of the whole country is the supreme law-making body and it has the mandate to allow other legislatures to exist and exercise their powers while reserving the right to overrule them as they are subordinate to it.

c. ***If the government of the whole country is rather subordinate to the governments of the parts,*** the constitution of such state would come to have another name - a confederate constitution. These are not very convenient terms though. They are often used as words tantamount to the words “federation” or federal, as the Swiss constitution which is federal describes itself officially as ‘constitution federal de co confederation Suisse’ while it is customary in Canada to speak of the union of the provinces as confederation.

4. By looking at the nature of the Government itself: Presidential/Parliamentary Classification and Republican/Monarchical Classification

A. Presidential/Parliamentary Classification**:** It goes without saying that it is up to the executive to formulate policies and execute same upon gaining the sanction of the law through legislature. This in turn calls for checks or limitation upon the executive as misuse/abuse of power might arise in the absence of control. Thus the executive should necessarily be answerable to somebody whether this somebody is the legislature or the public at large (through periodic election.

- If the executive is immediately answerable to the parliament, then it can be called parliamentary executive.
- But if it is immediately responsible at definitely arranged intervals to some wider body and is not amenable to removal by the action of the legislature, then it is called presidential executive.

B. Republican/Monarchical Classification:A constitution can be classified as republican or monarchical though such classification has a lesser significance nowadays. The classification on the basis of this distribution is so less significant that it means little more than that where the head of state is a president, then that state is a republic, and where the head of state is a king, that state is a monarchy or a kingdom. In fact, the distribution between a republican and a monarchical constitution once had considerable meaning and importance as it stood for the difference between what may be called popular/democratic government and absolutism, autocracy, or dictatorship.

- A monarch, as the name implies, was the sole ruler responsible to himself alone. But it is difficult today to find examples of such absolute monarchies.
- The transformation of absolute monarchies into constitutional or limited monarchies all the more diminishes the significance of the distinction.

5. By looking at the Legislature Unicameral/Bicameral/Tricameral/Tetracameral

A. Unicameralism: Unicameralism is the practice of having only one legislative or parliamentary chamber. Many countries with unicameral legislatures are often small and homogeneous unitary states and consider an upper house or second chamber unnecessary. A view in favor of unicameral legislatures is that if an upper house is democratic, it simply mirrors the equally democratic lower house, and is therefore duplicative. A theory in favor of this view is that the functions of a second chamber, such as reviewing or revising legislation, can be performed by parliamentary committees, while further constitutional safeguards can be provided by a written constitution.

B.Bicameralism: Although the ideas on which bicameralism are based can be traced back to the theories developed in Ancient Sumer and later ancient Greece, ancient India, and Rome, recognizable bicameral institutions first arose in medieval Europe where they were associated with separate representation of different estates of the realm. For example, one house would represent the aristocracy, and the other would represent the commoners. The Founding Fathers of the United States also favored a bicameral legislature, though not based on class distinction. As part of the Great Compromise, they invented a new rationale for bicameralism in which the upper house would have states represented equally, and the lower house would have them represented by population. Some countries, such as Argentina, Australia, Belgium, Brazil, Canada, Germany, India, Malaysia, Mexico, Pakistan, Russia, South Africa, Switzerland, and the United States link their bicameral systems to their federal political structure.

In the United States, Australia, Mexico and Brazil, for example, each state is given the same number of seats in the legislature's upper house. This takes no account of population differences between states it is designed to ensure that smaller states are not overshadowed by more populous ones. (In the United States, the deal that ensured this arrangement is known as the Connecticut Compromise.) In the lower houses of each country, these provisions do not apply, and seats are allocated based purely on population. The bicameral system, therefore, is a method of combining the principle of democratic equality with the principle of federalism all citizens are equal in the lower houses, while all states are equal in the upper houses.

C. Tricameralism: Tricameralism is the practice of having three legislative or parliamentary chambers. It is contrasted to unicameralism and bicameralism, both of which are far more common. The term was used in South Africa to describe the Parliament established under the apartheid regime's new Constitution in 1983. Other instances of trilateral legislatures in history

include Simón Bolívar's model state. The word could also describe the French States-General, which had three 'estates'.

South African tricameralism: In 1983, South Africa's apartheid government put forward a constitution providing for a tricameral legislature. On 2 November, around seventy percent of the country's white population voted in favor of the changes black South Africans were not consulted, and under the proposal they continued to be denied representation since in theory they were citizens of independent or autonomous bantustans.

- The South African tricameral parliament consisted of three race-based chambers: House of Assembly 178 members, reserved for whites. House of Representatives 85 members, reserved for Colored, or mixed-race, people House of Delegates 45 members, reserved for Asians.

D. Tetracameralism: Tetracameralism (Greek tetra, four + Latin camera, chamber) is the practice of having four legislative or parliamentary chambers. It is contrasted to unicameralism and bicameralism, which are far more common, and tricameralism, which is rarely used in government.

Medieval Scandinavian deliberative assemblies were traditionally tetracameral, with four estates; the nobility, the clergy, the burghers and the peasants. The Swedish and Finnish Riksdag of the Estates maintained this tradition the longest, having four separate legislative bodies.

Finland, as a part of Imperial Russia had tetracameral system until 1906, when it was followed by the then most modern legislature, the unicameral Parliament with universal suffrage.

The Upper House

An upper House is one of two chambers of a bicameral legislature, the other chamber being the lower house.

An upper house is usually distinct from the lower house in at least one of the following respects: It is given less power than the lower house, with special

reservations, e.g. only when seizing a proposal by evocation, not on the budget, not the house of reference for majority assent. Only limited legislative matters, such as constitutional amendments, may require its approval.

In parliamentary systems the upper house is frequently seen as an advisory or "revising" chamber, for this reason its powers of direct action are often reduced in some way. Some or all of the following restrictions are often placed on upper houses:

- Lack of control over the executive branch.
- No absolute veto of proposed legislation (though suspensive vetoes are permitted in some states)
- A reduced role in initiating legislation.

The Lower House

A Lower House is one of two chambers of a bicameral legislature, the other chamber being the upper house. Despite its theoretical position "below" the upper house, in many legislatures worldwide the lower house has come to wield more power.

In comparison with the upper house, lower houses frequently display certain characteristics:

- Given greater power, usually based on restrictions against the upper house. Directly elected (apportionment is usually based on population).Given more members. Elected more often, and all at once. Given total or original control over budget and monetary laws. Able to override the upper house in some ways.
- In a presidential system, given the sole power to impeach the executive (the upper house then has to try the impeached. Many lower Houses are named in the following manner: House/Chamber of Representatives/the People/Commons/Deputies, i.e. Deputies, Chamber, House, Commons, House, Legislative, and National Assembly (hence also Bundestag, German for federal assembly)

6. By looking at the nature of the Executive

When we create a typology of the executive, we have to take into consideration the fact that the quantum, quality and configuration of power assigned to the executive is a function of variety of factors. By taking this multiple factors in the Wight, they may bear upon the system which one may characterize as mono cephalous, bicepalous and acepalous or dispersed leadership. The word "cephalous" finds its origin in Greek to refer to multiple headed Gods. Now, it has been found a useful way of characterizing various types of executive.

a. **Monosepalous Executive:** The best typology in this respect is the kind of executive we find in Britain parliamentary or cabinet form of government (executive). Although in this form of government, the executive is drawn out of the parliament, particularly from that of the House of Commons, once it did so, it's no more an adjunct of the parliament, rather it's an independent entity. This entity consists of two separate, distinct, and yet connected offices: the Office of Prime Minister and that of the Council of Ministers. The two offices are connected by the person of Prime Minster for he is the chairman of the Council of Ministers. The Prime Minister is not a mere spokesman of the Council of Minster, but its leader. As a leader, it is the Prime Minister who determines the agenda of the Council of Ministers. This means the power to determine the priority of governmental action at any one time is in his hands.
b. **Bicephalous Executive:** An executive with two heads, i.e. the President and Prime Minister. The President is elected for seven years and has a lot of executive power. The Prime Minister, on the other hand, is appointed by the president for five years. The president is required to appoint the Prime Minister who owns the largest vote. Thus, the Prime Minister owes his position primarily to electorates which makes him a contending power owner. This becomes clear, where the President and the Prime Minister come from different parties.
c. ***Acephalous Executive (Dispersed Leadership):***Group leaders, the prime minister have little executive power to execute by himself for he shares his power with group leaders within the same party. A party in Japan is characterized with strong function which often looks like contending parties. Due to this reason, the powers of the Prime Minister are actually shared

between and among these group leaders thereby giving a picture common to a cephalous leadership.

7. By looking at the Nature of the Judiciary: Prerogative/rule of law system

The judiciary, the third of the three great departments of the government, can be classified on various grounds such as whether the judiciary has the mandate to question and interpret the Acts of the legislature, as in the United States, and those which are but apply the acts without question as in the United Kingdom. But the distribution we are interested in is based on the difference of legal systems. Thus, we can divide states into those in which the executive being subject to the operation of the rule of law (to be discussed later) and is unprotected - the common law states; and the prerogative states in which the executive is protected by a special system of administrative law.

1. 8 A Development of State in the Paradigm of Western Civilizations and Their Brief History of Constitutionalism

Here, *constitution* is understood in the much broader sense, as a frame of political organization, expressed through and by laws (i.e. as expression of customs and practices) and as a force, in which we see the establishment of relatively permanent institutions with recognized functions. When we say *constitutional state*, we mean, therefore, an entity in which the powers of the government have been made relatively stabilized. This sort of state (the germ of the fetus of state) was observable, as far back as ancient Greek. The same sort of state continues to evolve, but without changing its typology up until Renaissance, more particularly until after the Industrial Revolution; wherein and there after developed the *modern nation-state.*

1.8.1 The Rise of State without Nationhood

1.8.1.1 The Greek City-State

It is true that political separatism had been a marked characteristic of Greek socio-political life. Indeed, it was almost the religious devotion of the Greeks in

the principle of antinomy of the liberty of the group which finally engulfed them. But they knew only the city – state. The whole political outlook of the Greek was determined by this fact so that even the most brilliant political philosophers, whom Greek produced were incapable of looking beyond this conception of a state. Aristotle, in laying down what he conceived to be the physical limit of a true state, said that it should be large enough to be economically self-sufficing and small enough to permit all the citizens to meet together in one place.

A Greek citizen was actually and in person a soldier a judge and a member of the governing assembly without a limitation of territory and of numbers, such as the Greek city-state implied the personal discharge of a citizen's responsibility which would have been impossible otherwise. This personal service, moreover, pre-supposed another institution i.e. slavery. The ancient Greek was placed in a best position to be an active citizen, because the means of existence were produced by slaves who were outside of the pool of citizenship.

One may also attribute philosophy to flourish for this same factor. When Aristotle for example, used the term state, he comprehended it as a spiritual bond, not a mere piece of governmental machinery. The state exists, said Aristotle, not merely to make Life possible, but to make life good State was a divine entity, an ideal of self (commonly) realization.

To Greek philosophers like Plato and Aristotle, there was opposition between the individual and the state. The state was, in fact, the individual's only means of realizing his own best ends. The test of good citizenship, for such thinkers, was observance of the laws. The law represented a fixed universal good, which was a safeguard against individual caprice. Thus, both Plato and Aristotle emphasized the importance of political education for only through an informed citizenship could the state be preserved from anarchy.

Plato's solution, as outlined in the Republic lay in an aristocracy of political intellect, a body of "Guardians" qualified to rule through a rigid system of training

which should lead up to the creation of the ideal state. His attempt was to escape from the tyranny of the mob, rule by the people (democracy). He wanted to stake a mean between the unrealizable best and the intolerable worst.

But neither of these solutions was capable of saving the Greek city–state from extinction. The only possible way of perpetuating the liberty of Greek as a whole was one which never occurred to Greek thinkers. One practical attempt was made to bring about a wide political union. This was attempted when Athens first formed a league of equal states called the Confederacy of Delos, but when she attempted to convert this into Athenian empire in which she was in effect to hold the hegemony over the rest, other states, headed by Sparta, rose against her. She was, because she thus threatened to demolish what was conceived then as not only the very basic of the free states, but also the sole ground of true happiness i.e. city-state life.

What Greek political constitutionalism lacked was something, which is vital to the continued existence of such a form of government, namely one which has the ability to move with the changing times and to meet new needs as they manifest themselves. Although the political existence of the Greek city-state was thus slipped into abysmal, her polilitical idealism remained alive to present political organizations, at least, as classical example.

1.8.1.2 The Roman City-State and Empire-State

Rome too was a city-state in its beginning. But encircled and threatened right from the beginning of its earliest years by hostile states, it was driven into a policy of expansion which did not cease until the Roman Empire came to be coterminous with the civilized world. The importance of Rome in the history of constitutional law lies in the fact that its constitution played in the ancient world a part comparable to that played by the British constitution in the modern world.

The constitution of Rome was first quite determinate instrument of the government. Yet like that of Britain, it was made up of “mass of precedents” carried in memories or recorded in writing, of dicta of law or statement, of customs, usages, understanding and beliefs which all have bearing upon the methods of government, supplied with a few number of statutes.

At first Rome was a monarchy, but later the kings were driven out and the Republic began clearly to emerge. In this republican constitution, there were three elements of government, which were supposed to balance and check one another. First, the monarchical element (transformed from the original kings) manifested itself in the office of the Consuls, of whom there were two, elected annually, each with the right to veto the other. Secondly, the aristocratic element was embodied in the senate, an assembly with, at one time, great legislative powers. Thirdly, the democratic element existed in the meetings of the people and three sorts of conventions were made according to the division of land or people (curies, centuries or tribes). The theory of this triple division of power lasted till the fall of the empire. But, as Rome expanded, it necessarily ceased to be intact.

The Roman State lasted in a certain sense, for two centuries, and during that time many changes took place in its constitution. The Roman constitution, too, it must be remembered was a city-state. Rome ceased to be a city-state and became world-state; then the republican form of government became inconsistent with the reality on the ground, for here again, we observe the absence of the two indispensable conditions or presupposition of modern constitutionalism: namely, representative democracy and nationalism. The democracy of Rome, like that of the Greek City-states, was direct primary democracy, and the idea of representation was foreign to the one as to the other.

The Roman method was to destroy nascent local feeling by the system of divide and rule, for it could not give its subject-peoples a share in the government without introducing the notion of representation; and this it never did. Thus, the old republican constitution fell in to disuse. The conception of it as a nice balance

mechanism of monarchical, aristocratic and democratic forces was no longer tenable.

Yet, this is easy a fact which had an important influence on later political theory and to some extent on present institution. In reality from this time what was called the Roman Republic was nothing more than the rule of the senate. Yet always the postulate even then remained that all political powers were ultimately derived from the people. There had always been a saving clause in times of crisis. The saving close permitted the establishment of a temporary dictatorship in order to cover it with a constitutional cloak. The despotic – recognizing its own importance – the Emporium in fact, if not in name, was born.

The theory of the '*Roman Imperial Power*' can be gathered from the Institutes and Digest of Emperor Justinian War, the great codifier of the Roman law. The supreme legislative authority, according to the code, still rested with the Roman people. The rights of the Emperor were the result of the people's delegation of power. The powers of the people were never formally abolished at any period in the history of the Empire, but fell gradually into oblivion. It was the peculiar flexibility of the Roman constitution which made possible this fiction, i.e. delegation even where there were none of the nature of mandate.

The Emperors were, according to this fiction, simply magistrates, who concentrated in their hands the various offices of the old republic, because the Roman magistrates had a great power, given to them by the constitution in the great days of the Republic.

The senate, too, by continuing deliberation, gave the appearance of the existence of a republic form of government. But the Senate become totally enfeebled in the later days of the Empire and degenerated into a mere administrate of the Emperor's will. Thus, the Roman constitution began as a happy blend of monarchical, aristocratic and democratic elements, but ended as irresponsible autocracy.

National feeling was entirely absent in the Roman Empire. The subject, i.e. the various peoples knew nothing of the rights and duties attributed to nationals and to citizens other than mere belongingness to the Roman Republic under a constitution, but Rome was a city and Romans were always that of a city, and this made the growth of autocracy all the more easier.

1.8.1.3 Medieval State

All over Europe then rapidly developed the phenomenon of feudalism. This was a kind of medieval constitutionalism, since it was to some extent systematized into generally accepted form of social and political organization. It's essential feature was a division of land into small units, the general principle of which was that "every man must have a lord. This added to the shadow claims that society developed its own hierarchy not a permanent institution but as a fact, as a pyramid, at the apex of which stood the Emperor, who was in turn, regarded as *God's vassal*.

The evil of feudalism lay in the inordinate power it gave to the great barons, in proportion to their strength. The day was thus delayed when a state, as a unit could emerge. We, therefore, find that the strong kings of the Middle Ages were those who endeavored to concentrate power in their own hands only to systematically put in place a centrally controlled unit. The control was, however, dependent on the baronial supremacy.

In this way feudalism seemed to have been an inevitable growth to bridge the gulf between the chaos of early medieval times and the order of the modern state. In England and France particularly, and to a less extent in Spain, the policy of the kings was to concentrate power in their hands, and to control and finally destroy the great feudal fiefs. And it is precisely in these countries that we may look for the first faint emergence of the two principles which we have described as the necessary condition of the growth of modern constitutionalism, namely,

nationalism and representative democracy. Moreover, it was in these two countries that the assembly containing representatives of estates, with less than the baronial ones, first appeared

The sense of nationalism in Spain grew out of different sets of circumstance. On the other hand, in Germany and Italy, where the conception of the Holy Roman Empire was much more generally accepted, feudal anarchy continued to operate into much later date than in the three states.

The other matter of constitutional interest which emerges from this long period of internecine struggle was the experiment generally known as the Concilaiar Movement. This followed the scandal of the great schism which divided Western Europe into two religious allegiances under different popes. The second Charlemagne was attempted to revive an earlier institution for the government of the church namely, the General Council, to which the pope was to be forced to submit, The Council of Pisa followed by the council of Basel, were attempts made to put the Pope under a control of some kind, but from that time onward the councilor system, as a method of church government, disappeared.

Though the councilor movement was itself a failure, it had considerable significance in the history of constitutionalism in two ways. First, the organization and procedure of the councils acknowledged the national divisions into which Europe was now falling. Secondly, the councilor movement gave rise to much speculation as to the methods by which a General council might be made to represent the views of the whole body of the Faithful, as distinct from those merely of church dignitaries.

Towards the end of the middle Ages, then, in the whole of Western Europe, we find a fever of political speculations which arouse out of the abuses of the Catholic Church and whose object is to give that church a new constitution. In England, France and Spain, we find at this time, the actual germs of the modern constitutional state for in these states practical politics out strode legal theories

and the ghost of the Holly Roman Empire. In Germany and Italy it continued to stalk for many years.

1.8.1.4 The Renaissance State and the Effect of Industrial Revolution on Nation-State Formation

The process of the breaking–up of medieval institutions¸ which we have been tracing¸ was given a tremendous impetus by the great revival of antique culture of the 15th century, which with all its consequences is generally called the renaissance. The general effect was at once one of atomization and one of integration: it atomized the medieval world but integrated individual states.

In England, France and Spain it affected a more closely integrated state on nation lines. In Germany and Italy the process of integration went on, but over much more confined areas, so that in the scoundrel (end) many little states arose. But in many respects the renaissance undid the good work that had been going on in the three western states.

The Renaissance state was not a truly constitutional, much less democratic. Its essential quality was external sovereignty, which implied a strong general authority maintaining itself at any cost, chiefly with a view to strengthening the state against all its neighbors.

The statesmen of the renaissance, indeed, caught little of the spirit of antique political philosophy, whereas Greek autonomy was conceived as the only means of assuring the good life to the individual. In short, the Renaissance monarchs were concerned with politics and not in the least with ethics.

The political effect of the religious reformation of the 16th century was to give to the Renaissance state a divine sanction. The theological attitude logically implied

complete toleration of religious opinions. This was not feasible arms only, but when Luther came he made a perfect prince. It was thus possible for elector of Saxony to establish a state church.

Such a church was bound to become as exclusive and intolerant as the one it had superseded. Thus the political consequence of Luther's doctrinal onslaught upon the papacy was to atomise the world still further, and to add to the prerogative of the renaissance sovereign.

In France, Prussian and Austria despotism became complete. In France the State General, from the time of the Renaissance, met less and less frequently and it was not convened at all until the eve of the revolution. The two great characteristics of this type of despotism were a professional army and profession bureaucracy drawn generally from the middle class of bourgeoisie.

Thus the only unifying force was the crown, which sought no aid from any representative body; and so the organs of a properly constituted body politics failed to thrive by activity. That was the reason why, on the continent, the full development of constitutionalism was delayed until the 19th Century, and when it did came, it took a series of revolutions to achieve it. In England alone, Renaissance monarchy was not allowed an unchecked despotism.

1.8.1.5 Development in England

England, too, had its period of despotism in the Renaissance time, but peculiar circumstances prevented it from becoming strengthened and fixed as it did on the continent. Yet there was the occasion for the setting up of the monarchy which is sometimes called the Tudor Despotism.

That, however, is a term which requires a good deal of qualification. The Tudor Despotism had three organs of government only one of which can be compared to the highly-trained bureaucracy which became a marked feature of despotic

government on the continent. This was the council, which was the monarch's tool in the executive department. Its inordinate power was checked by the existence of the other two, namely, parliament and the justices of the peace. It is true that parliament sanctioned, with the aid of the council, but the important point is that it continued to meet and to approve all legislative proposals.

Undoubtedly, the Tudor parliaments were mostly subservient, but this was because three of the five Tudor monarchs voiced the will of the nation. When the monarchs no logger embodied that will, parliament, with its entire machinery readily revolted.

The *Justices of Peace*, who locally administered the policy of the central government, were not, like the local administrators unpaid workers drawn from the landed gentry.

The insularity of the country, which freed it from the constant need of armed defense against foreign aggression and which cut it off from those forces which continued to strengthen the continental autocracy, made it possible to blend the despotism of the monarch with the deeply-rooted principle of local and central self –government.

The isolation of the sate also strengthened its sense of nationalism, and this was enhanced by a series of events in the Tudors period. The first was the reformation, which transferred the headship of the church from the Pope to the English monarch and thus preserved it completely from papal interference. The second was the defeat of the Spanish Armada.

The civil war (1642-49) really destroyed whatever chance there was of establishing in England the type of enlightened despotism. The Stuart autocracy had attempted, under Charles II and James II, to raise its head once more, but it was so utterly overthrown by the Revolution of 1688-89 that any future attempt to revive the royal power was bound to fail.

Here it is necessary to emphasize two great facts connected with the Revolution of 1688. The first is that the control of affairs was effectively transferred from the king to the *"king in parliament"*. The second is that this change was placed in on a statutory basis. Before this time there was no statutory law of the constitution. What was there was only customs and convention, for Magna Charta was hardly a statute. In any case, most of its provisions became obsolete with the passing of the feudal age which produced it, the commons were glad enough to quote it as a precedent, though.

Under the Commonwealth and protectorate fully written constitutions were produced, but they passed away with the restoration. Certain financial provisions connected with the restoration had statutory force. But in any case they were included in the general revolutionary settlement.

The various statutes passed at the time of the Revolution of 1688-89 placed the sovereignty of the British state irrevocably in the hands of parliament, for the Bill of Rights and the Mutiny Act gave parliament the control of the army. By the simple device of annual supplies of money for its up-keep produced an effective prevention of tyranny. Yet this was only general legislative supervision which existed in the hands of the king and his ministers. Yet in the course of the 18th Century, by a purely conventional and finally by the end of the century, there was one added power to parliament, i.e. the control of the executive.

Meanwhile, the legal history of the state had fixed the principle known as *"the Rule of Law"* which means the equality of all citizens of whatever rank before the law. Statutes like Habeas Corpus and the Act of Settlement had secured, on the one hand, the immunity of the citizen from false imprisonment, and, on the other, the immunity of the judge from royal interference. Again, judicial decisions like that in connection with John Wilkes achieved simultaneously the security of the citizen from wrongful arrest and the subjection even of ministers of the crown to the ordinary processes of law.

Thus, by the second half of the 18th Century, Britain was a constitutional, though not a democratic, state. By conventional growth and by a series of statutes her three organs of government: legislative, executive and judicial were properly constituted and related in such a manner as to ensure the absence of tyranny.

The principle of representation was deeply rooted in this system. But no ideas of franchise extension had yet come to be accepted as practical politics. For this, the country had to wait for the combined effects of the French and industrial Revolutions.

The Britain Constitution was the result of a slow, conventional growth, not, like the others, the product of deliberate invention, resulting from a theory. Yet, though its development was not the result of a theory or theories, it was made the starting point of the political speculation which characterized the 17th and 18th centuries. Britain was thus the only constitutional state in the world. It was inevitable, therefore, that this system should become a model for the later constitutional development of other states.

1.8.1.6 Developments in America and France

The political tyranny, which the Renaissance hand produced and the persistence of religious intolerance which the Reformation had done nothing to ally, gave rise to an explanation of the kind of state which was to hold the field until the dawn of the 19th century. This was what is generally known as the social contract theory.

The contract theory, argues that the state is born out of compact made among a number of men who come to gather to end an intolerable state of nature. By the compact men abandon certain of their natural rights, but only those necessary for the establishment of a civil condition of society. The object of political society is, therefore, to secure that the rights not so abandoned continue to be guaranteed to the citizens. If the establishment of government is contractual, it follows that

when government becomes tyrannical it breaks the contract. Citizens of such a state would, therefore, have the right to remove such a government.

The compact, according to Lock, was made between the subjects and the monarch to establish a common organ for the interpretation and execution of mans rights, as existing before the political condition was established.

In his social contract, Rousseau made a brave attempt to build up a logical and even in controvertible defense of democracy. If men were born free and yet were everywhere in chains, said Rousseau, the only means of rendering the slavery legitimate lay in the retention of the sovereign power in the hands of the individuals who had made the contract. The contract secured equality, thereby each giving himself up to all gave him up to none.

This theory was literally the forerunner of two great revolutions which occurred at the end of the 18th century, one in America, and the other in France. The revolution in America was not confined to the war of Independence. It took also the form of a series of democratic changes in each of the thirteen colonies and the drafting of state constitutions which were collected and published in 1781.

The collection was translated into French and had a considerable bearing on the constitution – making, which marked the revolutionary period in France. But the influence of the war of American. Independence itself and its consequences on the history of modern constitutionalism was even more striking.

The war resulted from an economic regime which the American colonists regarded as tyrannical. Their slogan was *“no taxation without representation*." The representation of the American colonies in the parliament at Westminster at that time was a manifest impossibility. So, the American war of independence broke out and ended in the establishment of a new political entity known as the United States of American founded upon a constitution promulgated in 1787. This

constitution embodied the principles enunciated in the Declaration of Independence. This is the beginning of modern documentary constitutionalism.

It would not, perhaps, be possible to assert that Rousseau's influence was directly felt by the Americans. It would be nearer to the truth, probably, to say that the fathers of the constitution were continually informed by the same spirit as that which inspired Rousseau's political philosophy. But, Rousseau was directly behind those who led the early movements of the French Revolution.

When the bankrupt government of France in 1789 resorted to the expedience of recalling into existence the Estates General, which had not met since 1614, it carried into the forum all the idealistic dogmas of Rousseau and his followers, and thus brought them in to practical conjunction with the promulgation of a political constitution.

The national assembly of 1789 thus drew up the *"Declaration of the Rights of Man and of Citizen"* before coming to its proper business of making a constitution. This document was saturated with the dogmas of the contractual origin of the state, sovereignty and of individual rights

The constitution, which followed in 1791, and to which this declaration was prefixed, did not last, because the legislative Assembly to which it gave birth was unaided to deal with the state of anarchy that developed within France and the state of war without.

Nevertheless, this is the second great stage in the development of modern documentary constitutionalism as the American Revolution is the first. The French ideals became what had never been in its British or even in its American form a challenge to every constituted government which did not recognize and embody the sovereignty of the people.

1.8.2 Nationalism and Liberalism as Propelling Forces

Paradoxically, the Napoleonic regime and its consequences in Europe did the rest, for now that the principle of democracy had been fairly launched on the Continent. All that was required to give effect to the spread of constitutionalism was a sufficiently vital sense of nationalism among the various oppressed communities, to which it was addressed.

The nationalism of which we spoke in connection with the Renaissance was a vague and largely unconscious development. The nationalism, which followed the failure of the Napoleonic conquest of Europe, was a mighty fire, which first consumed the incendiary, and then smoldered, to burst into flame edifices of the old regimes. Not for nothing was the battle of Leipzig called the “Battle of the Nations” though the royal and aristocratic diplomatists who made the Treaties of 1814-15 failed to grasp the true purport of the movement, which had engulfed the pretensions of Bonaparte.

Those treaties restored, in most countries, the ancient despotisms, which the Revolution had sought to overthrow and revived most of the pre-war frontiers. Where this was not done, they cut away added areas and populations from their old allegiances and placed them under new ones according to the dictates of power, policy or the right of the victor. The result was that the universal emergence of the national constitutional state was postponed, though it was not possible to say it was dead. Another result was that the zeal of the reformed was driven underground and burst into occasional revolts.

The diplomats who were supposed to have been in charge of the peace of Europe were concerned rather to crush this revolutionary spirit, wherever it appeared, but their hold weakened with time. In the year 1830 there was a serious resolution in most continental states. As usual, it began in France, where the restored Bourbon dynasty was overthrown and a still more limited monarchy was introduced under Louis Philippe. But this was the only movement which was attended by success at the time, with the exception of that in Belgium which led to the establishment of a new independent state under a constitutional monarchy.

Another series of revolutions in 1848 much more serious than that of 1830, showed once more the weakness of a mere liberalizing movement not founded upon national unity of the constitutions promulgated at that time. Only those of France, Sardinia, the Netherlands and Switzerland survived the reaction. Of these, the first was soon lost in the establishment of the Second Empire under Louis Napoleon, while the second persisted but feebly until it came to be associated with the unifying movement in Italy. So it was said that *"whenever French sneezes, Europe catches cold."*

After the failures of 1848 therefore, a new turn was taken by the aspiration of the liberal reformers. Besides the obvious fact that the revolutionary method had failed, a new and very important factor was working towards the peaceful settlements of political problem. This was the effect of that vast serious of changes which we call the Industrial Revolution. When this economic revolution began to work itself out in England, it was inevitable that it should have a series effect upon the political situation. It destroyed for ever the preponderant weight of the agricultural classes in the community and brought into being a new middle class, the capitalists, who year by year became more insistent in their demand for political recognition

The Reform Act of 1832 granted emancipation to this class. This Act swept away many of the abuses which had accumulated through the centuries, redistributed parliament seats so as to destroy the representation of areas which had outlived their former political significance, and gave parliamentary representation to the new urban areas which had developed through the industrial changes. In doing this it enfranchised the new capitalist, though by no means introduced a complete system of democracy. It was the first step towards it, and in the right line of constitutional development, as opposed to revolutionary method.

The enfranchisement of the middle class, indeed, strengthened the cabinet system, i.e. the control of the executive by parliament, already firmly founded

during the 19th century, by changing the center of political gravity from the lords to the commons and by brining into existence a new division of parties on which the maintenance of a real cabinet system depended.

This great movement, arising from the Industrial Revolution inevitably spread to the continent. As it did so, it brought in its train consequences, which strengthened the tendency to changes on constitutional lines, for it effected an alliance between existing governments and the new capitalists who wanted above all benefits, peace and order. Moreover, it gradually tended to intensify the existing sense of nationalism by prompting a policy of economic protection.

But these industrial changes also brought into existence vast urban agglomerations of wage – earners who, in their turn, demanded political rights. In England, this led first to a working class movement known as Chartism, whose purpose was to bring pressure to bear upon the government to grant, among other things, franchise reform. When this had worked itself out without success, there came the two reform Acts of 1867 and 1884, the general effect of which was to enfranchise lodgers in the towns and agricultural laborers. But in most countries, before the political machine could be so adjusted as to grant such rights revolutionary theories were already being propounded whose object was to overthrow existing governments and establish a new form of society.

1.8.3 The Second Half of the 19th Century

The second half of the 19th Century was the heyday of documentary constitutions. With the exception of those of Great Britain and the United States, no existing constitution was older than the 19th century ones. Most of those which existed in the first half of that century have since then either entirely disappeared and replaced by new ones or so fundamentally amended and revised as to be in effect new ones.

This great surge of constitutionalism originated in the unifying movements in Italy and Germany, which were, in their turn, largely responsible for the republican constitution promulgated in France after the war of 1870 in Italy. The Sardinian Constitution was one of the only three that survived the catastrophe of 1848 Revolution. Between the years 1859 and 1870 by a series of revolts and wars the various states were amalgamated with Sardinia, and each came into the Union. The constitution of Sardinia was made to apply this Union, thus finally forming the kingdom of Italy.

In Germany, again after the failure of 1848, the pre-existing system was revived, but by means of three wars fought between 1864 and 1871, engineered and executed by the genius Bismarck. Denmark was defeated and lost the Duchies of Schleswig and Holstein; Austria was expelled from the German Confederation and the second Empire was overthrown in France.

In this way four new constitutional states emerged. In Denmark, in 1864, the Crown was forced to accept a parliamentary system, in Austria and Hungary new constitutions were drawn up in 1860, under a union of the Crowns. In Germany, the German Empire was established in 1871; and in France the Third Republic was finally constituted in 1875. Each of these constitutions adopted parliamentary institutions, which were copies, more or less revised forms of the British model. Each of them contained democratic elements but the powers of parliament were not yet such as to satisfy all the demands of liberal reform. Moreover, nationalism had triumphed only up to a point.

Nationalism became the battle – cry of the Balkan peoples, who were still oppressed under the heel of Turkey. As a result of a war between Russia and Turkey and the interest taken by the then powers in the conflict at the congress of Berlin, two new. i.e. states Serbia and Rumania were established. Montenegro, which had maintained its independence through many centuries, was doubled in size. Greek had already secured her independence in 1832 and was being governed finally under a constitution in 1864. Abdul Hamid had proclaimed a

constitution for the whole Ottoman Empire, but it had been abrogated within two years. The Young Turn Party successfully revived this constitution and made Turkey a constitutional monarchy. Taking advantage of these Turkish disturbances, Bulgaria declared her complete national independence.

Thus, under the influence of western Liberalism, the south East corner of Europe, so long oppressed by the oriental despotism of the Turks, had, by the first decade of the 20th century, adopted, at least, a form of political constitutionalism. In each case, a new state was established based on emancipation.

In no case were national aspirations fully satisfied and this fact led to the Balkan wars. Nevertheless, the second half of the 19th and the opening years of the 20th century, should how widespread the hope that national democracy might prove to be the most satisfactory ground, on which to build the progressive constructional state.

1.8.3.1 The First World War

By the eve of the first world war, in 1914, then, the national constitutional experiment was, in some form or another, being tried in every state in Europe, with the exception of Russia where attempts at constitutionalism had gone no further than the establishment of partially elected Assembly (the Duma), which from its inception in 1906 became weaker rather than stronger. Nor was constitutionalism confined to Europe, the United States and the British self-governing Dominions. It had spread also to many outlying parts of the earth, south America, Japan, and even to China.

This constitutionalism was always molded either on the British model or on the variant form of which adopted by the United States. This is to say it established representative institutions and made the nation the basis of the state. Where a nation could not be said to exist, as in China, the constitutional trend nurtured the growth off nationalism and used it as a political platform. Yet, political

constitutionalism had in most cases still further to go in the matter of representative democracy and nationalism.

If history proved, as it seemed, that nationalism was the only firm foundation for constitutional rights, the sole question was whether the so far unfulfilled dreams of national unity could be realized by peaceful means or whether it would require a catastrophe to bring their realization. At all events, whether the catastrophe was necessary or not, it dubitably occurred when war broke out in 1914. Moreover, there were some states in which, though they possessed a constitution, the political organization could not be called democratic, especially in the absence of popular control of the executive, which was particularly true of Germany,

It is not surprising, therefore, that a war fought, as Woodrow Wilson said, to make the world safe for democracy, should have had, as one of the most marked features of its aftermath, a rich harvest of constitutionalism. The victors asserted that a lasting peace could be founded only on the basis of the self – determination of peoples, which meant that the suppressed nationalities should so far as this was practicable establish themselves as independent bodies on a national basis. The application of this principle involved the partial or complete break-up of four great Empires; Germany, Austria, Russia, and Turkey which the war itself had already achieved.

The peace treaties created new sovereign states like Finland, Estonia, Latvia, Lithuania, Poland, and Czechoslovakia; dismembered others like Germany and Austria; and Enlarged yet others like Serbia (called Yugoslavia in its enlarged form) and Rumania. A new documentary constitution in each case cropped up from these changes. Personal liberty, popular sovereignty and nationality were the characteristics of the constitutions of all these constitutions. They all had without exception adopted the British plan of parliamentary control of the executive with certain variations, though many of them even went further in matters of universal suffrage. So far as could be achieved, democracy had

certainly triumphed. With due regard to the exigencies of strategy and economic stability, nationality may also be said to have triumphed.

A yet further development of constitutionalism which was born out of the result of the First World War is the establishment of the League of Nations. Here, for the first time in history was an organization of many states under a definitely constituted body of rules and set of organs. The League was at once empirical and experimental in the constitutional practice of the states that formed it. We call it a constitutional experiment, not because it was an independent body with sovereign powers, (for that it certainly was not) but because it aimed, by constitutional means, at preventing or peacefully settling conflicts between the sovereign bodies that were its members. It was, therefore, in line with the constitutional progress that had up to then been achieved by most western states.

The Backlashes: In the immediate post-war period, it seemed that nationalism, representative democracy had joined to achieve an almost universal victory for the rights of man and the rule of law, and that the lessons of political constitutionalism were to be at last successfully applied to the solution of the problem of world peace.

Unfortunately it was soon to be forcibly demonstrated that political charters of themselves are not enough, unless the will to make them work is not present among the people for whose benefit they are designed. Unconstitutional practices will inevitably be adopted to nullify them. Therefore, it was that in the years following the settlement of the First World War, an authoritarian reaction against democratic constitutionalism occurred in several European states.

The Russians were the first to repudiate political constitutionalism. The Russian Revolution of 1917 passed through two phases. First the political or liberal revolution in March, which destroyed the Tsarist autocracy and established a republic constitution with a parliament (Duma) and cabinet modeled broadly on

the French pattern. Secondly, the October or Bolshevik Revolution, overthrew the Duma and establish the Worker's Republic.

In 1918, Lenin had produced a constitution, which was prefaced by a *"Declaration of the Rights of the Laboring and Exploited peoples"* a phrase that clearly indicated the nature of the Russian Brand of Western constitutionalism. As an application, of the doctrines of Marx, the new regime in Russia was concerned with establishing not the constitutional rule of the majority but the Dictatorship of the Proletariat, which Stalin, elaborating the original thesis of Lenin characterized as the *"dictatorship of the Communist Party as the force which guides the Proletariat"*.

There was thus in Soviet Union two elements which distinguished it from constitutional State, as we had been informed of so far – first, a political dictatorship through the dominance of a single party to the exclusion of all others. Second, a totalitarian system, which is meant to use the political machine to control and direct every aspect of the economic, social and even religious life of the people. These futures of dictatorship and totalitarianism characterized Mussolini's regime in Italy and Hitler's Third Reich in Germany.

In October, 1922, when the Fascist militia marched on Rome, the king, to avoid civil war, invited Mussolini to form a cabinet. The cabinet having been formed, the Chamber of Deputies, to save itself from immediate dissolution granted Mussolini special powers. From that moment on Mussolini gave himself the high-sounding title of Duke, gradually undermining the constitutional system under which Italy had lived for more than half a century. The electoral law was modified so as to produce an artificial Fascist majority in parliament and soon all other parties were suppressed and the Fascist Grand Council, which embodied the Duke's will became the only effective organ of government. At the same time, Mussolini abolished all associations weather social political or cultural, which did not subscribe to the theory and practice of Fascism.

Hitler accepted the chancellorship-i.e., the Office of Prime Minister at the hands of the President of the Republic. At no time did Hitler denounce that constitution but using the plenary powers granted to him by the Reichstag and approved by the President, rapidly destroyed the foundations of the constitutional state. He forcibly dissolved all other parties, excepting his own, i.e., the National Socialist Party. The many employer's associations and trade unions were dissolved and were replaced by the state-controlled Labor Front. All independent opinion was suppressed and the press became the tool of the Nazi Party.

To justify the regime, the whole fabric of Hitler Germany was bolstered by a pseudo-philosophy of the state which argued that the Nazi Party was synonymous with the German Nation, and the Western Democracy was an outworn creed. But in truth, Nazism, as one of Hitler's renegade followers said, was nothing more than *"a doctrine [with] less nihilism"*.

The success of dictatorship in Italy and Germany had a disastrous effect on the political constitutionalism of neighboring states. And this was especially true of Spain, where in 1932, only a year before Hitler's assumption of power, a new constitution had been promulgated.It was against this constitution that General Franco revolted in 1936, and for three years Spain was a prey to civil war. Franco finally crushed the Republicans in the spring of 1939 and established his dictatorship.

In almost all States of Europe, there were cells of Nazi propaganda, and it was only with the greatest difficulty that, in the few years of a precarious peace, such states as Belgium and the Netherlands, Denmark and Czechoslovakia could maintain their parliamentary institutions. Most of the others succumbed to Hitler's force or cajolery and allowed their constitutional safeguards to be whittled away by some form of dictatorship. Then Hitler began his series of open aggression, which in 1939 brought the western democracies into arms against him, and the Second World War began.

1.8.3.2 World War II and Thereafter /Consequences /

The political consequences of the Second World War are pouring to be even more complex and disruptive than those of the first. The result is a complete shifting of the centers of world power. Control has passed from western and central Europe into the hands of two super-powers, the United States and Russia. In this new situation remarkable constitutional changes have already occurred and are still taking place.

In Europe, the defeat of Germany and Italy ended the Nazi and Fascist regimes, although it did not succeed in wholly eradicating the disturbing authoritarian systems in Spain and Portugal. The liberation of the Nazi-occupied countries by the confuering armies from west and east had strangely different results in various parts of the continent. In the west, north and south it led to the restoration of parliamentary democracy in France (first under the fourth Republic, and later modified under the fourth Republic), in Italy (where a republic replaced the monarchy), in the Netherlands, Belgium, Norway, and Denmark (where the royal families were reinstated). In the centre, German was divided into four zones each controlled by one of the occupying powers: the United States, Britain and France in the west and soviet Russia in the East. Later, the three western powers agreed to the establishment in their zones of the Germany Federal Republic, with a parliamentary constitution and the occupation virtually ceased. At the same time, Russia, in her zone, established the German Democratic Republic, which, however, she continued to dominate.

The peculiar circumstances and timing of the two- way confutes of Hitler’s Europe made Russia the liberator of the lands on her western border. These were Poland, Czechoslovakia, Hungary, Rumania, and Bulgaria. Here was an opportunity to spread the communist power which Russia could not miss. In each of these countries, therefore, she gave armed support to communist minorities and was thus able to force on all them a communist regime with a constitution largely based on the Soviet model.

While the former U.S.S.R. was using its newly-found strength to establish its communist domination of Eastern Europe, the U.S.A by means of the Marshall plan, helped democratic notions of the west to recover economically from the effects of the war. These moves led to a drawing together of European democratic nations of the west to recover economically from the effects of the war. These moves led to a drawing together of European democratic states in various international organizations. Of these, probably the most significant is the European Economic Community, or common market, because it has political and constitutional implications.

Another vital consideration in the new world situation arises from the fact that the states of western Europe which had established Empires overseas were so weakened by the two waves that they have lost, or are steadily losing their former hold on their colonies or dependencies, with the result that new independent states, with their own political constitution have arisen or soon will emerge in Asia and Africa as well as in the Caribbean. These movements, taken together with those inspired by the militant nationalism of the peoples of the Middle East, are creating constitutional factors of incalculable import in a rapidly changing world.

The attempt to apply constitutional method to international relation after the First World War had failed to prevent a second world war. The end of the Second World War offered the victors a new opportunity to attempt to find the means of maintaining world peace and security through a permanently constituted international organization. Here again, however, we should think rather in terms of the cumulative effect of the two wars. The charter of the United Nations clearly derived a good deal of inspiration from the covenant of the League of Nations.

Questions that matter

1. Internal morality vis-à-vis external morality necessary for institutionalizing rule of law

2. good governance vis-à-vis bad governance
3. Discuss, Challenges to constitutionalism in Africa: focus on Ethiopia
4. Discuss each of the classification of the constitution on different bases.
5. By looking to the text of the 1995 Ethiopian constitution and is practice since 1995 to then argue the nature of Ethiopian executive whether it fails under the mono cephalous or bicepalous or acepalous (dispersed leadership). Give detailed reason for your answer.

UNIT II
UNDERLYING POLITICAL VALUES

2.1 Unit introduction

Constitution is a malty discipline subject. It is basically a legal and a political document. As a result, law students are expected to understand the basic political values which have relation to constitutional values. Such political values include Liberalism, Republicanism and Communitarians System. Those political values also have great relation with the principles of democracy. So, that the discussion in this unit also includes theories, Justifications and critiques of Democracy.

?Beloved students, what is your understanding about those political values like Liberalism, Republicanism and Communitarians? What is their difference? Is there any common feature/s which they share?

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2.2 Liberalism

It is a political doctrine that takes protecting and enhancing the freedom of the individual to be the central problem of politics. Liberals typically believe that government is necessary to protect individuals from being harmed by others but they also recognize that government itself can pose a threat to liberty. *Classical liberalism* is a philosophy committed to the ideal of limited government and liberty of individuals including Freedom of religion, speech, press, assembly, and free markets. Classical liberalism developed in the nineteenth century in Western Europe, and in America.

Notable individuals who have contributed to classical liberalism include Thomas Malthus and David Ricardo. Jean-Baptiste Say drew on the economics of Adam Smith, a psychological understanding of Individual liberty, natural law and utilitarianism, and a belief in progress. Classical liberals established political parties that were called "liberal", In United States classical liberalism came to dominate both existing major political parties. There was a revival of interest in classical liberalism in the twentieth century led by Friedrich Hayek and Milton Friedman. In the late 19th century, classical liberalism developed into Neo-classical liberalism, which argued for government to be as small as possible in order to allow the exercise of individual freedom In its most extreme form, it advocated Social Darwinism. Libertarianism is a modern form of neo-classical liberalism.

The term classical liberalism was applied in retrospect to distinguish earlier nineteenth-century liberalism from the newer social liberalism. The phrase classical liberalism is also sometimes used to refers to all forms of liberalism before the twentieth century, and Some conservatives and libertarians use the term classical liberalism to describe. Their belief in the primacy of economic freedom and minimal government. It is not always clear which meaning is intended

2.3 Republicanism

Is the principles of a theory of government in which the supreme power rests in the body of citizens entitled to vote and exercised by representatives they elect directly or indirectly and by an elected or nominated president the political orientation of those who hold that a republic is the best form of government is the ideology, political orientation, political theory that characterizes the thinking of a group or nation the head of state is appointed by means other than heredity, often through elections.

The exact meaning of republicanism varies depending on the cultural and historical context. In general republicanism implies: the absence of monarchy, but it may indicate anything from 'rule by many people and by law', through oligarchy, to arbitrary rule by one person.

2.4 Communitarians System

This term is of 20th-century origin, It is derived from the 1840s term communitarian, Which was coined by Goodwyn Barmby to refer to one who was a member or advocate of a communalist society. The term is primarily used in two senses: Philosophical-communitarianism considers classical liberalism to be ontologically and epistemologically incoherent, and opposes it on those grounds. Unlike classical liberalism, which construes communities as originating from the voluntary acts of pre-community individuals, it emphasizes the role of the community in defining and shaping individuals. Ideological communitarianism is characterized as a radical centristideology that is sometimes marked by leftism/liberalism/ on economic issues and conservatism on social issues. This usage was coined recently. When the term is capitalized, it usually refers to the Responsive Communitarian movement of Amitai Etzioni and other philosophers.

Communitarianism is a communal system based on cooperative groups that practice some of the principles of communism. It is also a philosophy that emphasizes the connection between the Individual and the community. Community' may be a family unit, Community of people in a geographical location, or who have a shared history or interest. Communitarian philosophy is

derived from the assumption that individuality is a product of community relationships rather than only individual traits/character/personality/.

Communitarianism cannot be classified as being wholly left/liberal/ or right/republic/, and many claim to represent a sort of radical center. Liberals in the American sense or social democrats in the European sense generally share the communitarian position on issues relating to the economy, such as the need for environmental protection and public education, but not on cultural issues. Communitarians and conservatives generally agree on cultural issues, such as support for character education and faith based programs, but communitarians do not support The laissez-faire capitalism generally embraced by American conservatives.

Communitarianism and libertarianism emphasize different values and concerns. Libertarianism is an individualist philosophy Communitarians believe that "the exclusive pursuit of private interest erodes the network of social environments on which we all depend, and is destructive to our shared experiment in democratic self-government" communitarianism, social and political philosophy: That emphasizes the importance of community in the functioning of political life

2.5 The Developmental State

The role of the state in promoting economic growth and social progress in the developing world has been a subject of contestation among international development experts and policy analysts for the past 50 years. Saving a recent shift in emphasis towards the importance of human development and the possibilities of establishing a ‘social democratic developmental state’ on the global periphery, initially the concept of the developmental state was modeled on an analysis of the role of the state in the successful industrialization strategies of Japan and the Asian Tigers. This analysis was emphasizing on studying the role of the state in initiating and shaping industrialization strategies by mobilizing scarce resources and focusing them on selected industrial initiatives.

Bagchi has defined developmental state in terms of its ideological orientation and its institutional arrangements and a state which;

> *…puts economic development as the top priority of governmental policy and is able to design effective instrument to promote such a goal. The instruments would include a forging of new formal networks of collaboration among the citizens and officials and the utilization of new opportunities for trade and profitable production.*

As per this definition, a developmental state should give priority and emphasis for development and shall devote all its potentials towards achieving such end. However, the state is not limited only in designing a development-oriented policy and strategy rather shall be strong and committed enough in facilitating trade and production by creating suitable environment and system that enable private individuals to cooperate with the state. Giving emphasis mainly to its objective, Castells also define a developmental state in such a way that;

> *A state is developmental when it establishes as its principle of legitimacy, its ability to promote and sustain development; understood as the combination of steady and high rates of economic growth and structural change in the productive system, both domestically and in its relationship with the international economy.*

This shows the strong and deeply penetrating role of the state in the economy as a whole and in the market process. Even the state will get its legitimacy as per the extent of its achievement in the economic advancement of the nation by using any means. However the economic role of the state, though decisive and extensive, is not tantamount to running the economic machine, as the case with the socialist policy was; rather, it is to render a helping hand for the establishment of vibrant private enterprises and a capitalist class too.

The developmental state ideology is not free from criticism from its underling political orientation and consecutive outcomes. Looking from the experience of successful developmental states of East Asia, which are mentioned as a model has sown a fear of authoritarian regime in the mind of scholars. Most of these East

Asian countries designed their developmental path on the premise that western democratic values were foreign and a luxury, which are unsuited for the promotion of development in Asia. However, it is not possible to ignore democratic values that got a universal recognition and consensus among different state and none state actors in the modern times. The issue of development is not an independent and neutral phenomenon treated in prior than other democratic and human right values and principles. This obliged countries advocating for a developmental state ideology to reframe it in a way that encompass democratic and human right values too.

2.6 Democracy Revisited: theories, Justifications and critiques

Defining democracy: The origins of the term democracy can be traced back to Ancient Greece. The terminology is derived from the Greek words "*demos*" and "*kratos*" meaning power or rule demos meaning People. These words combine mean 'rule by the people'.

It is a form of government in which the people rule themselves directly. A system of rule that secure the rights and interests of the minorities by lacing checks upon the power of the majority. A society based on equal opportunity and individual merit, rather than hierarchy and privilege.

2.6.1 Models of Democracy

1. **Classical democracy is:** Based on the polis, or city-state of Athens Greece. The form of direct democracy is portrayed as the only ideal system of popular participation. Athenian democracy can be described as a form of government by mass meetings. All major decisions were made by the Assembly to which all citizens belong. Officials were chosen by ballots to demonstrate that a microcosm of the citizenry participated.

   The key Principles of Athenian Democracy: Every citizen should have the right to vote and to hold office. The duty of all citizens is to participate actively in the system Decisions should be made by the majority vote

2. **Protective Democracy:** John Locke argued in the 17th century that: The right to vote was based on the existence of natural rights Locke argued that if government, through taxation, has the power to expropriate property, citizen been entitled to control the composition of the legislature. Democracy now meant a system of government by consent, operating through a representative.

   The critical point of protective democracy is that: It aims to give people the widest scope to live their lives as they choose. This liberty must then be protected by a mechanism of the separation of powers
3. **Developmental democracy:** Jean-Jacques Rousseau provided an alternative view to the democratic theory. Rousseau's model is the general will: The genuine interests of a collective body, equivalent to the common good; The will of all provided each person acts selflessly. He proposed that 'No citizen shall be rich enough to buy another, and None so poor as to be forced to sell himself.' Rousseau's system of radical development required Economic equality. Development of self can only be achieved when Citizens participate in decisions that shape their lives.
4. **People's democracy:** The term people democracy is derived from the Orthodox communist regime. Karl Marx believed in the principle of a democracy based its implication of egalitarian prospects and Thought of a society in which there was common ownership of wealth **(social democracy)**He believed the overthrow of capitalism would lead to the Flourishing of a genuine democracy. A system of 'bourgeois' democracy would be replaced by 'Proletarian' democracy. He predicted that class antagonisms wouldDissolved and the capitalist state would 'wither away'. There could only be one class.
5. **Liberal Democracy:** Is accepted as the worldwide practices of politics. Its key constructs are: Indirect or representative form of democracy in which political office is gained by success in regular elections. It is based on competition and electoral choice. There is a clear distinction between the state and civil society.

2.7 Various interpretation of liberal democracy

1. The pluralist view: The pluralists argued that society is ruled by competing organized groups in which individuals are represented largely through their membership, and all groups have access to the policy process. The main features of the pluralist perspective are as follows; There is a wide dispersal of political power amongst competing groups. There is a high degree of responsiveness with group leaders being accountable to members. There is a neutral government machine that is sufficiently fragmented to offer groups a number of points of access.

2. Elitist view: Elitism developed as a critique of egalitarian ideas such as democracy and socialism. Classical elitists argue that democracy is a 'foolish delusion', according to them the privileged minority in society always dominate with political power. It is this minority group that organize and make decisions, even in parliamentary democracy.

3. Corporatist view: Neo corporatism or liberal corporatism gives rise to'Tripartite government' in which government is conducted through Organizations, state officials, employers' groups and unions to deal directly with one another.

4. Marxist view: The Marxists view of democracy is that power cannot be evenly dispersed in society as long as class power is unequally distributed.

2.8 The Justification of Democracy

We can evaluate democracy along at least two different dimensions: consequentially, by reference to the outcomes of using it compared with other methods of political decision making; or intrinsically, by reference to qualities that are inherent in the method, for example, whether there is something inherently fair about making democratic decisions on matters on which people disagree.

Instrumental Arguments in Favor of Democracy: Two kinds of in instrumental benefits are commonly attributed to democracy: relatively good laws and policies and improvements in the characters of the participants. John Stuart Mill argued that a democratic method of making legislation is better than non-democratic methods in three ways: strategically, epistemically and via the improvement of the characters of democratic citizens. Strategically, democracy has an advantage because it forces decision-makers to take into account the interests, rights and opinions of most people in society. Since democracy gives some political power to each, more people are taken into account than under aristocracy or monarchy. The most forceful contemporary statement of this instrumental argument is provided by Amartya Sen, who argues, for example, that "no substantial famine has ever occurred in any independent country with a democratic form of government and a relatively free press". The basis of this argument is that politicians in a multiparty democracy with free elections and a free press have incentives to respond to the expressions of needs of the poor.

Epistemologically, democracy is thought to be the best decision-making method on the grounds that it is generally more reliable in helping participants discover the right decisions. Since democracy brings a lot of people into the process of decision making, it can take advantage of many sources of information and critical assessment of laws and policies. Democratic decision-making tends to be more informed than other forms about the interests of citizens and the causal mechanisms necessary to advance those interests. Furthermore, the broad based discussion typical of democracy enhances the critical assessment of the different moral ideas that guide decision-makers.

Many have endorsed democracy on the basis of the proposition that democracy has beneficial effects on character. Many have noted with Mill and Rousseau that democracy tends to make people stand up for themselves more than other forms of rule do because it makes collective decisions depend on them more than monarchy or aristocracy do. Hence, in democratic societies individuals are encouraged to be more autonomous. In addition, democracy tends to get people

to think carefully and rationally more than other forms of rule because it makes a difference whether they do or not. Finally, some have argued that democracy tends to enhance the moral qualities of citizens. When they participate in making decisions, they have to listen to others, they are called upon to justify themselves to others and they are forced to think in part in terms of the interests of others. Some have argued that when people find themselves in this kind of circumstance, they come genuinely to think in terms of the common good and justice. Hence, some have argued that democratic processes tend to enhance the autonomy, rationality and morality of participants. Since these beneficial effects are thought to be worthwhile in themselves, they count in favor of democracy and against other forms of rule.

Some argue in addition that the above effects on character tend to enhance the quality of legislation as well. A society of autonomous, rational, and moral decision-makers is more likely to produce good legislation than a society ruled by a self-centered person or small group of persons who rule over slavish and unreflective subjects.

More detailed knowledge of the effects of political institutions can be used to discriminate in favor of particular kinds of democratic institutions or modifications of them. For instance in the United States, James Madison argued in favor of a fairly strong federal government on the grounds that local governments are more likely to be oppressive to minorities. Of course the soundness of any of the above arguments depends on the truth or validity of the associated substantive views about justice and the common good as well as the causal theories of the consequences of different institutions.

Questions that matter

1. Is there any drawback, that someone can raise in democratic theory?

2. From the above discussions and by looking in to the text of the 1995 Ethiopian constitution which political value is developed in the present Ethiopian polity?
3. On the basis of theories, justifications and criticism of the democracy evaluate the situations in Ethiopia concerning the legal and practical issues related to democracy.
4. How do you see Developmental state and democracy? Can you discuss the Ethiopian case of developmental sate ideology?

UNIT III

CONSTITUTIONAL DEVELOPMENT IN ETHIOPIA

3.1 Unit introduction

Ethiopian history began with the Sabeans and not with the indigenous people. It began with the visit of the queen Sheba, allegedly from Ethiopian, to Solomon, king of Israel, in the 10th century B.C. Hence the reference to Ethiopian's three thousand years of history that we hear and read so often indicates short history of Ethiopian precedent. The recent archaeological discoveries in the late 1960s and early 1970s of the earliest hominid in Hadar, in the Afar desert (Lucy or Denqenash) was dated back the Ethiopian history to three and half million years ago. Despite, the fact that Ethiopia has a long history of state formation; she has the short history of formal written constitution. However, there are some practice and documents tile the first written constitution of the Ethiopia. Since the first written constitution at list Ethiopia has four formally written constitutions. So, that this unit explores the constitutional developments in Ethiopia.

? Dear students, does Ethiopia had constitution before the 1931? What is the source of the 1931 constitution of Ethiopia? What initiates the KING to produce

the 1931 constitution? What is the rationale behind to revise the 1931 constitution? What was the source of the 1987 PDRE constitution of Ethiopia?

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3.2 Constitutional Development of Traditional Ethiopia Till 1931

There was certain Development of Documentary Constitution in different parts of Ethiopia before 1931, these includes:-

- In the Northern parts of the country
  - The *Ser'ata Mengist*
  - The *Fetha Nagast*
- In other parts of the country
  - The Classical Gada System

3.2.1 The *Ser'ata Mangist*

Can hardly be considered to be a document of Constitutional Law in its widest sense because: it was the first document to allocating power among the (Crown, its dignitaries and the Church), by means of; "a protocol of ceremonies which had to be consulted whenever occasions required it…" and tried to lay out a pattern of succession to power, However, the problem of primogeniture /right of the firstborn child or eldest son to receive the family inheritance/ was more theoretical than practical as incessant rivalries /competition/ among members of the royal house intermittently switched lines.

Ser'ata MangistMay be considered as the initial document of the Axumite Civilization, which was reinstituted during the time of Amda Tsion (1314-1344) culminating at the time of Fasiladas (1632-1667). It contained some twenty one articles of law, Some most important features of Ser'ata Mangist:The leader being crowned used to be referred to as*'Atse'* meaning King or *'Niguse Negest'* meaning King of Kings. The king also was referred to as 'Jhan' meaning Judge.Signs attributing power used to be the:'Blull' - a ring worn in the right-ear

by the leader, the '*Sendeq Alama*' or the Royal Flag having an orb and a cross on top as emblem, with two live lions sitting at either side. Paraphernalia of any official ceremony consisted of the '*Negarit*' and '*Quenda*' (big and small drums), 'Meleket' and the 'Imbilta' (various types of horns).

As to what concerns the dignitaries/public figures/ it was initially headed by the twelve law-givers, who has been said to have come with Ebna-Hakim, the son of Solomon and Queen Mekeda from Jerusalem, followed by 'Bitweded'. High ranking military functionaries used to be referred as 'Ras', 'Dejazmach', 'Fitawrari', 'Qegn-Azmach', 'Gera-Azmach' and the 'Barambaras'. Religious dignitaries were the'Abune', 'Ichege', 'Liqe Meameran' and the 'Debteras'. The civilian functionaries were the 'Worq Aqafi', the 'Tsehafi Te'ezaz' meaning Bearer of the Seal, 'Agafari' meaning Master of Official Ceremonies and the various'Jandereba-Azaj' (eunuch) meaning administrators of the Palace and the various offices. Hierarchy was not strictly adhered to.

3.2.2The Fetha Nagast

Called "'Law of the Kings':Is a collection of laws which in use in Christian Ethiopia for many centuries. It was originally written in Arabic by theCoptic Egyptian writer Abu-l Fada'il Ibn al-Assal(commonly known as Ibn al-'Assal) (1235-1243)."Ibn al-'Assal divided his work into two distinct parts. The first dealt with religious matters and The second with secular matters. In compiling the first, he relied largely on the Old and New Testaments, writings, and The writings of a number of Fathers of the Church St. Hippolytus and others.

In compiling the second he relied most On a collection of laws found in four books known as "The Canons of the Kings". The first book is the Procheiros Nomos, a handbook of Roman Byzantine laws(Enacted b/n 870 & 878) by the Byzantine Emperor Basilius the Macedonian. The second is an Arabic version (commonly known as '[t]he Syro-Roman Law Book'). This was originally written in Greek at about 480 A.D. The third book has been identified as an Arabic version of another handbook of Roman-Byzantine law, was published

in Constantinople in the year 726. The fourth book has been identified as the 'precepts of the Old Testament', "Given the Roman background of three of the major sources of the secular part of Ibn al-Assal's work, it is no surprise to find it pervaded by principles of Roman Law."

The first part of Fetha Nagast deals exclusively with religious matters, whereas the second part deals with secular matters, Of which Chapter XLIV (44) talks with the relationship between kings and their subjects. The earlier, Chapter XLIII (43), deals about the judge and what concerns judgment. Except these two chapters, Fatha Nagast has very little to say as to what actually constitutes the Law of Constitution; let alone to the present, even to times of its writing.

3.3 The Classical Gada System

The Gada system of the Borena Oromo's is one of the Neolithic [sic] social systems practiced by indigenous nationalities of Ethiopia proper. For the purpose of clarifying its attributes to the Law of Constitution, we make a short note of the Gada system. The Borena Gada system represents a structure of "a society that is stratified into two: One... on the basis of chronological age [the harriya system]. Cross-cutting systems of peer-group structures. The other is on the basis of genealogical /ancestry of person or family/ ties [gada system]. Both sets of groups pass from one stage of development to the next every eight years, while newly born infant boy always enters the system of grades exactly forty years behind the father, regardless of the age of the father.

The Gada system, accompanied by specific rituals /ceremony/Gives entitlement to each group of peers within the same life-age which include giving protective, political, judicial, Administrative, etc ... services. Of these, one that interests us is the judicial service. As no referential document is passed on from the once previously assigned to those newly entitled to take-up the function, any judgment they pass might only be to affecting traditionally recognized and accepted problems; meaning, the system can hardly be presumed to pass consistent

judgments throughout as well as not fail to be circumstantial, let alone outline or devise new decrees in time to newly emerging social phenomena.

So, from the point view of social-structural, and historical approaches, which we chose as a means of evaluation and means of formulating constitutional paradigms, we find the Gada system serving as framework of power allocation (most earliest attribute of Constitution).

3.4 The 1931 Constitution: the Japanese Paradigm/model/

The Meiji Constitution was conceived as a benevolent gift of the Emperor of Japan to his people. The emperor embodied the state itself and was the source and repository of all state power. The myth of legitimating claimed that ruling Japan had been entrusted to the Emperor through his ancestors from Amaterase Omikami, the son Godess.

The most novel aspect of the Mejji constitution was its Bi-cameral nature. The House of peers /the Upper House/ consisted of members from the Imperial nobility, marquees, lower nobility, the imperial academy and high taxpayers. The House of Representative /Lower house/ was Popularly elected from constituencies. The Emperor had veto power over any executive acts and enactments.

The Emperor had the prerogative to determine the organization of all organs of administration, pursuant to which the cabinet headed. The prime Minister was appointed by the Emperor on the advice of elder statesmen. Judicial authority was, in similar manner, invested in the sovereign power of the Emperor. The social-structure and the corresponding political configuration of Japanese society at the close of the 19th Century were very much in line with that of Ethiopia as can be abstracted from the above bird's eye-view exposition.

In Ethiopia **t**here were some very few foreign educated men who had limited access to the ears of the Emperor. One such person was entrusted with the

responsibility of drafting a constitution, which he did, relying heavily on the afore mentioned constitution of Japan. The Emperor with the advice of the nobility promulgated what is said to be the first written Constitution of Ethiopia. The first and foremost political dynamics of that period was Centralization with a view to build a nation state. Tekla-Hawarit. Minister of Finance, one of the groups of intellectuals known by some categories of scholars as “Japanese’s”. Naturally, that was what was sought from the model. Japan with its homogenous people, speaking the same mother tongue, by and large following one religion and with strong affinity to tradition can be nothing but an ideal paradigm for Ethiopia for extrapolation.

The Constitution was meant to serve as an instrument of centralization under the Emperor, reflecting the traditional institution of absolute imperial power Without any limitation and modification. The Constitution was not intended to serve: As instrument of modernization. Even if the establishment of Parliament, Which had, but only the power of discussion

Since his accession to the throne in 1930, Emperor Haile Selassie I has carried forth judiciously, but with imagination, a double-edged program of centralization of government authority and Westernization of native institutions. That is why the introduction of the first written Constitution of in 1931 was considered by many as a step towards centralization and modernization of the system of governance in Ethiopia and highly to the former reason with a view to build a nation state. In addition, the gradual demolition of autonomous or semi autonomous provincial powers during the political struggle following the death of Emperor Minilik II can be also cited as one major cause for the 1931 constitution to came in to force.

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The main feature of feature of the constitution was that almost all powers of the state were bestowed on the emperor as reflected in the constitution, "*By virtue of his Imperial blood, as well as by the anointing which he has received, the person of the emperor is sacred, his dignity is inviolable and his power is indisputable.*

Consequently he is entitled to all the honors due to him in accordance with tradition and the present constitution".

The 1931 constitution which is transplanted from the 1898Meiji Constitution of Japan was perceived and appears to be benevolent gift of the Emperor to his people. The Constitution was meant to serve as an instrument of centralization under the Emperor at the cost of traditional regional and semi-autonomous regions which exist even at the previous regimes, by reflecting the traditional institution of absolute imperial power without any limitation. The point noticed here is that law is primarily the fact that the Constitution laid down the formal basis for the process of centralization and for the institutionalization of administrative machinery and we can say that this Constitution is part and parcel of the history of the creation of Ethiopian Empire.

The introduction of the written constitution was a law keyed coup d'état that alters the power of the traditional monarchy influenced by the nobility and the church by inventing a provision for deliberative chambers. That is why scholars answered the question of who and how the Ethiopian state was formed? By saying, Emperor Tewodros II initiated, Yohnis IV elaborated, Minilik II consolidated, and Hiele Selasie I completed the process of transformation from parcelized sovereignties to centralized sovereignty.

It is also believed that the growing interactions with the West and the emergence of Ethiopian scholars educated in Europe and the growing diplomatic relations during the reign of Emperor Haile Selassie II and Ethiopia's accession to the League of Nations after many years of objection were also taken as the major driving force that led to the promulgation of the first written constitution in 1931. However many believed that, this Constitution was Nothing less or more than a mere confirmation of the powers and Prerogatives of the Emperor, which he would, in any have exercised.

3.5 The 1955 Revised Constitution: Seemingly the Westminster Paradigm and the Aborted Reform thereof

Scholars gave different views as to the reason why the emperor grant a the constitution of the 1955, but most of them stated that the accession of Eritrea with Ethiopia in 1952 was a major cause for the coming in to force of the 1955 constitution even by specifically referring to the prompt made by the United Nations commissioner of Eritrea to emperor Hiele Selasie I to amend the previous constitution.

When the Italian invasion was ended after a straggle for liberation, the involvement of the West in this struggle and their role in post-colonial Ethiopia which gave rise to an increasing interest in modernizing the Ethiopian legal system is also another factor for the coming of this constitution. In addition to the clear inefficiency of the previous constitution to meet the actual situation of the country at this time, the Emperor also reason out in his speech, saying that in order to keep pace with the economic and social progress since his accession to the throne and to meet the changes when Ethiopia spring forward to yet progress and development.

In the history of Ethiopian, it was this Constitution, which, for the first time, articulated the power and structure of Ethiopian polity and it was this document which recognize fundamental human and political rights by incorporated from the United Nation Universal Declaration of Human Rights to which Ethiopia was then a signatory. This revision of the 1931 constitution implied a change in the organization of the system of governance, limiting the power of the emperor to a certain extent. Still this constitution also aimed at creating a single society ignoring the fact that the country is composed of different society with different culture, religion and ethnicity. Even it becomes so harsh when it officially recognizes a state religion. As often as he could, the Emperor filled positions of responsibility in his Government with young, educated commoners or exceedingly loyal aristocrats who had been exposed to western values. Perhaps the most significant aspect of the Emperors social policy was that it almost completely ignored 'the national question'.

West Minister model is a political theory and a constitutional framework brewed and distilled in the English soil and has been operating to date in Britain, its ex-colonies, in particular the Commonwealth Countries, mainly. According to this model, there is, politically speaking, the belief or commitment of non-violent evolution or gradual development. The model itself comprises the following basic elements.

- Firstly, it devolves power to formulate governmental policy from the sovereign body to the various departments of the government. The sovereign body, here, means the Crown in Parliament, and Parliament, in turn, constitutes the House of Lords, composed of appointees of the Crown and the House of Commons – an elected body.
- Secondly, an elected government coming of party/parties, holding majority seat in Parliament and constituting a cabinet of which the Prime Minister is the Head of Government.
- Thirdly, popular will expressed, not only formally through Parliament, but also through other agencies of interest articulation, which are a faci for political expression and association.
- Finally, all these are accompanied by a strong and independent judiciary, which does not only interpret laws, but also sets down new laws by way of predicament.

The Revised Constitution of 1955 like any other, defined and distributed powers, rights and obligations within the country; notably, between the Emperor who had the most self sufficient source of political authority, and the rest of branches of government (which enjoyed derivative powers, either from the Crown and the people or from both). Moreover it incorporated the basic doctrine of fundamental human and political rights from the United Nation Universal Declaration of Human Rights.

The Emperor held a pre-eminent place in the Constitution. He stood apart from other agencies of government and, at the same time, He was the embodiment of them all; and as such he enjoyed a lot of executive, legislative and judiciary

prerogatives (See article 26 of the revised constitution).The Emperor was most closely connected with the executive, with respect to which he had power to appoint and dismiss all the officials including the Prime Minister and members of the cabinet, the power to determine the organization and jurisdiction of government departments, as well as to constitute the civil service belonged to him. He had wide discretionary power concerning foreign policy as well.

The legislative body was bi-cameral. Senators were appointed from the nobility and a few from the commons for their meritorious achievements, while the deputies were directly elected from equally populated constituencies. Election was made purely on personal basis, for there was none in the nature of political party. They also had the power only to call the Prime Minister or other ministers to answer questions concerning the conduct of government affairs or legislative proposals. The Prime Minister stood between the Emperor and the Parliaments.

The judiciary was appointed by the Emperor, according to a special law, however this has no matters to regulate manner of selection, tenure, appointment and dismissal. The Emperor had also judicial function, in the capacity of final Appellate Court of Equity, other than this, the Emperor had a sort of umbrella power of “maintaining justice through courts”. Finally, the Constitution was declared to be the supreme law of the Empire

In the annals of Ethiopian history, it was this Constitution, which, for the first time, articulated the power structure of Ethiopian polity. It was this document which spelt out fundamental rights of citizens. Nonetheless, it was prerogatives and other powers of the Emperor, which, even his over-appointees, felt intolerable, and which the people found imposed on them too heavy burden to shoulder.

The 1960 foiled coup des etats was a clear sign for the need to reform His government, some attempted reforms were taken to empower the Prime Minister as per Order 44, to nominate the members of his cabinet with the approval of the

Emperor. But failed to meet the needs of the time. In the eyes of the then elites one of the premordial needs of the time was the establishment of parliamentary form of government maintaining the Crown as a symbol. By early 1974, events started to take a different course; the entire Cabinet of Aklilu Habtewold resigned and a creeping coup was set in motion. A new cabinet was established under Endalkachew Mekonnen, which was, among other things, one major step as it established a Constitution Revision Commission. The Commission managed to come up with a draft, which appeared in one of the daily papers.

The draft was modeled after what would be characterized as Constitutional Monarchy of Western Democracy with separation of power and controlling mechanisms, with the Emperor, as Head of State, had one effective power only – Commander-in-Chief of the army. The draft was not ratified; instead a new government was established by September of the same year named Provisional Military Administrative Council(the PMAC). As a result a shift took place: egalitarian economic oriented.

3.6 The 1974 Revolution and the 1987 Constitution: the Soviet Paradigm

The given system could have been saved, had the appropriate reform measures been taken, like, among other things, making the Prime Ministers accountable to the Parliament and introducing economic reforms–more particularly, agrarian (fundamental change in forms of land ownership, social or political change in land reform) reform. "*Down with Feudalism, land to the tiller".* The slogan against feudalism meant the destruction of the imperial order – the crown, the nobility and the landed gentry. Including demands of such questions as right of nations and nationalities to self determination. But, in general, it was a cry for equality, equal opportunity and access to resources.

The lower ranks and non commissioned officers took up the political stage, headed by the military; the PMAC.It was said then: "The Revolution has been hijacked". Since 1974 a new social order was in the making. The Provisional

Military Administration was also in the process of reconstituting itself. Naturally, the country became the Peoples Democratic Republic of Ethiopia. Since 1974 a new social order was in the making, the Provisional Military Administration was also in the process of reconstituting itself. To legitimize itself within and broad it had, at least, to take off the uniform and appear in a civil dress. The PMAC presented itself for elections through a new party, the Workers Party of Ethiopia(WPE) a sole political party in the country taking the communist ideology.

The 1987 Constitution in its very first Article, therefore, declared as follows: *"The People's Democratic Republic of Ethiopia is a state of the working People founded on the alliance of worker and Peasants and the Participation of the intelligentsia, the revolutionary army, artisans and other democratic section of the society."*(Emphasis added)

Having overthrown the monarchy and the nobility and having identified itself with the working class, the military did not take time to declare that the alliance would henceforth constitute the vanguard of the toiling masses. Indeed, it was declared in the constitution that: "The Workers Party of Ethiopia, which is guided by Marxism-Leninism is (the) a vanguard party dedicated to serve the working people and protect their interest."Truly, the government by the 1980's was in full control of the economy.

As regards the role of the party in social and cultural respect it was stipulated that the state: "Shall ensure the expansion of education and other means of enriching knowledge in order to develop a new culture and lay the foundation for socialism by enhancing citizens intellectual and physical development as well as their capability for work. The Supreme Soviet of the U.S.S.R. It had a standing body, the Council of state, which was acting as executive committee of the parliament. The president of the council was also the president of the Republic. The power to interpret the constitution and the constitutionality of other laws were given to this body.

The president enjoyed a lot of power. He was the Head of State and had no less power than any head of Government. He had the power to present the Prime Minister, and though him members of the council of Minister to the Parliament, as well as the power to ensure that the council of Minister discharged its responsibilities, and presided over the council as necessary. Upon the occurrence of compelling circumstances, the President had the power to dismiss and appoint the Prime Minster and other ministers.

Judges: wereelected, recalled and dismissed by the parliament and more interestingly the term of their office was made to be congruent of that of the parliament. Although judges were in those days, as in the past, were:to be guided by “no other authority than that the law”, **i**t was clear more than even before that the judiciary was under the double yoke of the executive and the parliament. On top of this, socialist legality required the construction of laws in accordance with “revolutionary legal consciousness”.

It was this constitution raised the idea of nationalities and even affirmative action for the less developed nationalities. Though it is a short lived constitution, the 1987 constitution of PDRE needs credit for its attempt to give recognition for the nations and nationalities and the right that followed for the first time in the history of Ethiopia. It also separates the matter of state and religion claiming the formation of a secular state, which is a better way of looking religious institutions than its past actions, being against every religion. At the end of the Cold War, Soviet support wavered and the integrity of the centralized state was challenged. Two years of military defeats in Eritrea and Tigray, in addition to the gradual desertion of his Soviet allies, fatally weakened the regime headed by Colonel Mengistu

This Constitution does not merit so much discussion because it died well before it was born (four years before it was buried). Soviet communism too collapsed. In 1991 some parallel things seemed to happen in Ethiopia. The entire people

revolted. War engulfed the capital city. Eritrea declared its independence. Mengistu Haile Mariam left for Harare; Zimbabwe.

3.7 The Transitional Charter: Reverse Approach to Nation-State Formation and A Prelude to Federalism

The Transitional Period Charter came to force immediately after the downfall of the PDRE. Government. It has completely changed the structure of the State; i.e., from a unitary to a federal structure. This can be inferred from the Charter itself and proc. no. 7/1991 that the forthcoming constitution would make the Country a federal one. Party pluralism has also been an innovation of the Charter. The Charter declared that the provisions of the Universal Declaration of Human Rights were respected fully.

“Although the Charter mentioned nothing about federalism, from the rights given to the ‘nations, nationalities and peoples to exercise their self-determination up to independence, if they are convinced that their rights to preserve their identity, promote their culture and history’ clearly indicated that the envisaged structure of state was federal.

The National/Regional Transitional self-governments established by Proclamation No. 7 of 1991 Were mainly based on ethno-linguistic boundaries. The proclamation further stated that, ‘National/Regional Transitional Self-Governments shall have legislative, executive and judicial powers in respect of all matters within their geographical areas it was considered that the Transitional Period Charter has served as a sign to the 1994 F.D.R.E. Constitution.

At one point during known as the Era of the Princes, Ethiopia reached the comico-tragic climax of six ‘Emperors’ all claiming simultaneously to be supreme rulers of the same country. The regional autonomy of certain regions, which was later proclaimed during Derg regime, was never really put into practice. It was only after years of destabilization and destruction due to war, drought, famine, and mass migration that a new effort was made to build up a viable system.

“The Charter in its preamble having declared the ‘starting of a new chapter in Ethiopian history: in which freedom, equal rights and self-determination of all peoples shall be the governing principles of political, economic and social life, 'Article 2, affirm the right of nations, nationalities, and peoples to self-determination. Article 2 (b) guaranteed ‘each nation, nationality and people the right to administer its own affairs within its own defined territory and effectively participate in the central government on the basis of freedom, and fair and proper representation.’

“The establishment of National Regional Self-Government was provided for in Proclamation 7 of 1991 by the same title. Article 3 of the proclamation enumerated 63 identified nations, nationalities, and peoples and established 14 regions. Eight of these regions were composite regions embracing from 3 up to 13 identified nations, nationalities, and peoples. Four regions had one identified nation each and greater. Addis Ababa with its amalgam of urban and rural peoples formed a region by itself.

“The proclamation provided for 48 of the identified nations, nationalities, and peoples to be able to establish their own National/Regional Self-Governments at the Wereda or above level. Moreover, it was provide that these Self-Governments of these adjacent nations, nationalities, and peoples may, by agreement, jointly establish a larger Regional Self-Government within any of the 14 regions specified.“The remaining 17 nationalities and peoples having small-sized population – and therefore less than 50% of the population of the Self-Government Wereda were incorporated in it. These nationalities and peoples with small-sized population, and known as ‘minority nationalities’, nevertheless, were provided with appropriate representations in the Wereda Council. These special powers and duties were economic, fiscal, and administrative in nature. The economic and fiscal powers dealt with the right to:

1. borrow from domestic sources and levy dues and taxes;
2. prepare, approve and implement their own budget;
3. plan, direct and supervise social and economic development programmes;

4. establish, direct and supervise social and economic development programmes;
5. administer, develop and protect the natural resources of the Region; and
6. be the owner of the properties of the Self-Government, acquire ownership of and transfer property.

"With respect to the structure of the Self-Government, the proclamation provided seven organs, namely;

1. The National/Regional Council,
2. The National/Regional Executive Committee,
3. The Judicial Organ,
4. The Public Prosecution Office,
5. The Audit and Control Office,
6. The police and Security Office, and
7. The service and development Committee.

"The most important of these organs was: the Council, which had four regular meetings yearly and whose powers were enumerated in Article 15 of the Proclamation. The Council, as the legislative organ of the Self-Government was the repository of overall political power regarding the internal affairs of the Region State. As such it had the following special powers.

1. To issue the constitution and laws of the Self-Government;
2. To elect the Executive Committee and the Chairman and Secretary of the Council from among its membership;
3. To determine the seat of government and the working language of the Self-Government;
4. To negotiate and approve agreements concluded with adjacent Self-Governments with respect to national and border matters;
5. To establish the various organs of the Self-Government, define their responsibilities, appoint their officers and supervise their activities; and
6. To generally exercise the economic, fiscal and budgetary powers granted to the Self-Government.

"The highest executive organ of the National/Regional Self-Government was the: Executive Committee of 11 to 19 members elected by and from the National/Regional Council. The executive Committee was accountable both to the Council of Ministers and to the Council that elected it. Indeed the Proclamation mentions various important areas which are to be determined by law. These include:

a. the adoption of Regional Constitutions,
b. the collection and utilization of revenue by the Self-Government,
c. the jurisdiction of Regional Courts,
d. the administration of the regional judiciary, The assignment of duties to the Regional Prosecutor, the powers and duties of Kebeles and Higher and similar areas.

3.8 The 1995 FDRE Constitution

After the fall of the Provisional Military Council, the different liberation forces transformed themselves into political parties and form transitional government of Ethiopia. The 1991 Transitional Period Charter was described by many authors as a precursor of the FDRE Constitution. It has completely changed the history of the Ethiopian structure of the State; i.e., from a feudal monarchy and centralized unitary past to a federal structure. Saving many criticisms concerning the influence and undue power of the TPLF, many believe that the charter recognizes the countries quest for democracy and stipulate the new regimes commitment to respect the Universal Declaration of Human Rights especially freedom of conscience, expression, association, peaceful assembly and the right to engage in political activity without restriction by forming political parties. Addressing historical grievances of the hitherto marginalized ethnic groups was also what promised.

Ethiopian federalism takes ethnicity as its underlying organizing principle. Ethiopian citizens are categorized into their different ethno-linguistic groupings. Member units of the federation are molded by" settlement patterns, language,

identity and consent of the people concerned" (Article 46(2)). Ethnic federalism is clearly expressed in the Preamble of the constitution which begins "We the Nations, Nationalities and Peoples of Ethiopia." Whether minorities are specially acknowledged in the federal Parliament, or self-governed administrative units at the local level, the Nationality Right is a main feature of the constitution and also a factor in the determination of the division of power.

Questions that matter

1. ✍Can you consider Transitional Charter, as the constitution or not? reason out.
2. ✍Discuss how the Transitional Charter as Prelude Ethiopia to Federalism.
3. ✍Discuss how the Transitional Charter has completely changed the structure of the Ethiopian State.
4. ✍Argue for and against, whether Ethiopia has or has not constitution since the overthrow of the monarchy regime to till 1987.
5. ✍What are the main features of the Monarchal constitution?

UNIT IV

MAKING, AMENDMENT AND PRINCIPLES OF CONSTITUTIONS

4.1 Unit Introduction

Dear students, in the preceding three unit's discussions you learned the meaning and concepts of the constitution and constitutionalism, classifications of the constitution, some political values which annexes to the constitution, history of the Ethiopian constitutional development. And then Know taking those previous discussions as spring board you will learn the making, amendment and fundamental principles of the constitution in general and that of the Ethiopian constitution in specific. This unit also includes discussions

intellection to the salient features of the FDRE Constitution and the status of international instruments under the FDRE Constitution.

? Dear students, What a Constitution should contain?

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4.2 Contents of constitutions

As to the question what goes into a constitution, since the major purpose of a constitution is to establish the main organs of a government and ensure appropriate power division among them and also to control the exercise of governmental power, especially as affects the rights and interests of individual citizens and those of different communities in a multiethnic community, the constitution is supposed to set standards against which governmental actions could be measured.

It should also reflect or take good account of the country's geography and history, its legal system, and existing form of government and the culture of the people. Is the country homogeneous or multi-ethnic? What are the units of social organization and the importance given to customary rights? And how are individual rights reconciled with group rights? are few of the questions that need to be addressed by the constitution?

Finally, when we come to the question whether the public should be involved in the constitution making, it seems quite obvious to see public participation as much as possible. This depends very much on the method of constitution making. The open process of decision-making and referendums are optimal methods for ensuring public participation.

As to the question what goes into a constitution: It has to establish the main organs of a government and ensure appropriate power division among them and it has to set standards against which governmental actions could be measured. It has to limit the power of the government.

It should also reflect or take good account of the country's geography and history, its legal system, and existing form of government and the culture of the people (homogeneous or multi-ethnic). What are the units of social organization and the importance given to customary rights? And how are individual rights reconciled with group rights? Are few of the questions that need to be addressed by the constitution? A constitutional text that requires that its officials support it can forge a moral bond. Much of the text may thus become part of the nation's custom. Children may learn about it in school as the "proper" way of politics, and later on, as prescribing rules for a just society.

The inner driving force of an existing political culture might have its roots in history. Anyway, the desire and the actual set-up of a state presuppose an acceptance of some basic rules and procedures on the part of any society, which serve it as the common denominator of its constituting elements. This is what we commonly and broadly designate as a *constitution - i.e. a law that constitutes a polity and society.*

4.3 The making of the Constitution

? Dear Students, do you think that a special procedure and approach is mandatory in the making of a constitution? why?

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Generally, countries make a new constitution when they wish to make a fresh start, mostly for compelling political reasons. This can be evidenced from the fact that the making of a new constitution or amendment of the existing ones usually, if not always, involves a significant re-allocation of political or other powers. A constitution is special document which incorporates both legal and political matters. As it is special document its making and amendment needs special attention or procedure than other ordinary laws does.

In order to address the 'how can a country make constitution?' it is imperative that we refer to the question of how politics are founded as the manner in which the constitutions will be made hinges on the nature of the polity. Political scientists identify three basic models of political founding and organization, namely, polities founded by conquest in which political organization is hierarchical; politics which evolved organically out of more limited forms of human organization and which over time concretize power centers which govern their peripheries and polities founded by design through covenant or compute in which power is shared through a matrix of centers formed by the government of the whole, on the basis of federal principles.

Here, a constitution is not taken to mean a document. It rather signifies here the embodiment and existence of agreement as to what constitutes power and who does what and how. Where the agreement relates to "what", we say this is an agreement on substantive matters. When it relates to "how", we qualify it as an agreement on procedural matters. More often than not a constitution embodies agreement on both; the what and the how. Using these as yard-sticks one can formulate three broad sets of paradigms of political culture.

i. Where society has reached a very comprehensive, stable agreement on both of these questions, one can characterize it as a consensual society which means "nationhood" has been attained by that state.

ii. Where the agreement is fragile, not wide-spread and of temporary nature, we may characterize the society either as non-consensual or one with low-level of consensus; again depending on the depth, width and strength of the two criteria of agreements. Such a society, though has a state, is not yet a nation it is at developmental stage.

iii. Where conflict is sharp, prevailing or erupting often times, one may well be justified to designate these types of societies, as outright dissensus though there is some sort of a state, there is clearly no ground for nationhood.

Constitutional making follow different rules and procedures in different political systems. ***In hierarchical polities*** constitution making is essentially a process of

handing down a constitution from the top, the way medieval kings granted charters. ***In organic polities*** the process of constitution making is also an organic one, consisting of a series of acts negotiated among the established bodies that share in the governance of the polity. In such polities constitutions are rarely written and are even more rarely replaced. Rather constitutional making and change come in bits and pieces - on a piecemeal basis. ***In polities founded by convent or compact*** the process of constitution making involves a convention of the partners to the pact, or their representatives. The American and Swiss models are perhaps the best examples of the constitution as covenant.

Making of the constitution affects the level of legitimacy that constitution have. Legitimacy in turn affects authority. This in turn affects its implementations**.** Who are the makers of the constitution? Who make the polity is also a question in constitutional making. Making of the constitution is more than mechanism of writing. The making of the constitution asks more about who, not about what, is behind the constitution. Making of the constitution demands answer who we are as polity**.**

4.3.1 Level /Procedures/ of constitutional making

1. **Drafting:** Drafting must be inclusive (political parties, people), must be participatory in debating room, take the mentees seriously, decisions have to be consensus oriented, the drafting body must be neutral, impartiality is difficult but must be representative of the all.
2. **Deliberation:** This stage is made: to engage the public consensus and to raise civic culture. This stage is a time for dialog and political education.
3. **Adoption:** Mostly done among the negotiators and it must be done by the representative through the assembly and majority.
4. **Ratification:** Made directly by the people through referendum(people +vote). It also can be done through intermediate (state representatives).

❖ **Note:** Make sure that all level or steps of the constitutional making is: Inclusive, Participatory, Democratic /minimum freedom? Representative and Consensuses oriented.

As “Daniel Alazar” states constitutional making is the “Per-eminently political act”. This is to say that, Constitution is conceived in the political party’s policy or mind and come to its birth when the political party comes to power by any means.

4.4 Amendment of the Constitution

Amendment iscorrection. It is rectification of errors. It is not revolution, nor is it revision. It is a mild form of reform. It is a means of injecting changes in to the document or provisions of the constitution. It is a measure taken to introduce change to the text of constitution. The Latin term *“a-mendre”* relates to correction. Amendment is mostly done by altering, modifying a term or provision/s of a constitutional text. It can also be done by adding an entirely new provision or by excluding some provisions. All this must be done in a way that it resonates with the sprite, purport and objective of the constitution. Any inclusion of a new values will be taken as valid only if the founding fathers would have allowed have allowed it had they foreseen its necessity.

In jurisdictions with "rigid" or "entrenched" constitutions amendments require a special procedure different from that used for enacting ordinary laws. A flexible constitution is one that may be amended by a simple act of the legislature, in the same way as it passes ordinary laws. The 'uncodified' constitution of the United Kingdom (UK) consists partly of important statutes, and partly of certain unwritten conventions. The statutes that make up the UK constitution can be amended by a simple act of Parliament. UK constitutional conventions are held to evolve organically over time. The Basic Laws of Israel may be amended by an act of the Knesset.

The constitutions of a great many nations provide that they may be amended by the legislature, but only by a special, extra large majority of votes cast (also known as a supermajority, or a "qualified" or "weighted" majority). This is usually a majority of two-thirds the total number of votes cast. In a bicameral parliament it may be required that a special majority be achieved in both chambers of the legislature. In addition, many constitutions require that an amendment receive the votes of a minimum *absolute* number of members, rather than simply the

support of those *present* at a meeting of the legislature which is in quorum. For example, the German 'Basic Law' (the *Grundgesetz*) may be amended with the consent of a majority of two-thirds in both the Bundestag (lower house) and Bundesrat (upper house). The constitution of Brazil may be amended with the consent of both houses of Congress by a majority of three-fifths. An amendment to the Australian Constitution requires both a majority of the voters nationally and a majority of the voters in a majority of the States, i.e. the measure must be carried in four of the six States as well as nationally.

Some constitutions may only be amended with the direct consent of the electorate in a referendum. In some states a decision to submit an amendment to the electorate must first be taken by the legislature. In others a constitutional referendum may be triggered by a citizen's initiative. The constitutions of the Republic of Ireland, Denmark, Japan and Australia are amended by means of a referendum first proposed by parliament. The constitutions of Switzerland and of several States of the United States may be amended through the process of popular initiative.

Some jurisdictions require that an amendment be approved by the legislature on two separate occasions during two separate but consecutive terms, with a general election in the interim. Under some of these constitutions there must be dissolution of the legislature and an immediate general election on the occasion that an amendment is adopted for the first time. Examples include the constitutions of Iceland, Denmark, the Netherlands and Norway. This method is also common in sub national entities, such as the US states of Wisconsin and Vermont.

An amendment to the United States Constitution must be ratified by three-quarters of either the state legislatures, or of constitutional conventions, especially elected in each of the states, before it can come into effect. In Canada, different types of constitutional amendments have different requirements to be enacted. There are five amendment formulas included in the Constitution of

Canada, each relating to different elements of the constitution. In referendums to amend the constitutions of Australia and Switzerland it is required that a proposal be endorsed not just by an overall majority of the electorate in the nation as a whole, but also by separate majorities in each of a majority of the states or cantons. In addition, if an Australian referendum specifically impacts one or more states then a majority of the electorate in each of those states must also endorse the proposal.

In practice, many jurisdictions combine elements of more than one of the usual amendment procedures. For example, the French constitution may be amended by one of two processes: either a special legislative majority or a referendum. On the other hand, an amendment to the constitution of the U.S. Commonwealth of Massachusetts must first be endorsed by a special majority in the legislature during two consecutive terms, and is then submitted to a referendum. Some states such as Wisconsin use the same process but do not require supermajorities.

Some constitutions provide that their different provisions must be amended in different ways. Most provisions of the constitution of Lithuania may be amended by a special legislative majority but a change to the status of the state as an "independent democratic republic" must be endorsed by a three-quarters majority in a referendum. Unlike its other provisions, a referendum is required to amend that part of the constitution of Iceland that deals with the relationship between church and state.

There are two modes of effecting amendment. Formal amendment is an amendment done by an institution that is explicitly given the task of amending the constitution. Non-formal amendments is an amendment that is done by institution or person who have no formal mandate and platform to do so. Such amendment is mostly done by the legislature, by the executive, or even by the in the process of discharging their day-today responsibilities.

Amendments may be formal and Informal. Formal amendment involves A formal, deliberate conscious process which includes setting of an agenda for amendment and meeting for that some purpose, while the non-formal amendment does note. The first involves a more stringent set of rules to govern the steps toward the procedure while the second does note. Mostly, the informal one is favored as it is more flexible and one that passes without attracting much attention of the public.

Like its making there are four major steps that formal constitutional amendment goes through: Initiation**,** Deliberation**,** Adaption**,** and Ratification. And those institutions involved in the amendment of the constitution are;

1. Constitutional conventions: Convened for the specific purpose of amending the constitution.
2. Legislature: Upper house, Lower house
3. People in referendum: Although they can hardly called an institution

4.4.1 Methods of amendment

The methods that are mostly used in the amendment of the constitution are one or/and more of the following:

a. Unanimous/qualified/absolute majority vote in the two house of bicameral legislature.
b. Qualified majority vote in a legislature plus a popular referendum.
c. Qualified majority vote in a legislature twice in certain period of time.
d. Majority vote in sub-national legislatures
   - Especially in federal policies.
e. Simple majority vote in such legislature
   - Two house of the federal and state legislature
f. Direct popular referendum

❖ Note that the more the difficult the amendment process is the more rigid the constitution is, and the more entrenched its values are.

4.5 Amendment under the FDRE Constitution

The 1995 FDRE constitution, in much the same way as its predecessors, is a written and codified document having 106 articles. Just like the PDRE constitution, the incumbent constitution provides for a republican form of government although the former provides for a unitary single-party system and the later provides for a federal multi-party system. The 1995 constitution establishes a parliamentary democracy. The constitution also provides for a bicameral/two-chamber parliament, namely the House of Peoples' Representatives and the House of Federation both of which are federal houses.

It also provides for a one chamber State Council at State level which is the highest organ of State authority as much as the House of Peoples' Representatives is the highest authority of the federal government. The other chamber, i.e., the House of Federation which is composed of representative of nations, nationalities and peoples is entrusted with the power to interpret the constitution and to decide on serious constitutional concerns such as the right to secession.

When we come to the amendment procedure of the constitution, we find it to be a rigid constitution as it puts in place a stringent requirement for amendment. Just like any other federal system, the FDRE constitution's amendment procedure involves both regional and federal legislative organs. Thus the initiation could be made by either of the two tiers of governments. Where the initiatives come from the regions, one third of the state council must support the proposal by simple majority vote

Amendment under the FDRE constitution is categorized into two: that is, ordinary constitutional amendment which requires two-third majority vote in a joint meeting of the federal houses as well as a majority vote in two-thirds of state councils and amendment dealing with provisions related to fundamental rights and freedoms enshrined in the constitution for which a more stringent requirement is put in place as the Federal Houses must each accept the proposal

by a two-thirds majority and all State Councils must pass the draft by majority vote.

4.6 Fundamental principles of the constitution: the FDRE constitution

The constitution as a document that govern the system of government and a means that form the polity, it contains basic and fundamental principles and ideals that are used as a building block of the document. The FDRE constitution also contain the following basic principles;

Principle of poplar sovereignty: Popular Sovereignty is defined as "a doctrine in political theory that government is created by and subject to the will of the people". Meaning and implication of the poplar serenity: Principle of democracy, embodies the right to make, run and break once government. Type of democracy: Inter sectoral democracy, Constitutional democracy. Mode of exercise can be Direct or Indirect. As per article 8 of the constitution all sovereign power resides in the Nations, Nationalities and Peoples of Ethiopia. This Constitution is an expression of their sovereignty. Their sovereignty shall be expressed through their representatives elected in accordance with this Constitution and through their direct democratic participation

Principle of constitutionalism and Supremacy of the Constitution: *Constitutional supremacy* suggests that the constitution is at the top in the hierarchy of the law**.** All other laws are subordinate to the Constitution. They are of no effect to the extent they contradict with the constitution i.e. they are mute even if extent.

As per article 9 of the constitution the Constitution is the supreme law of the land. Any law, customary practice or a decision of an organ of state or a public official which contravenes this Constitution shall be of no effect. All citizens, organs of state, political organizations, other associations as well as their officials have the duty to ensure observance of the Constitution and to obey it. It is prohibited to assume state power in any manner other than that provided under the Constitution. All international agreements ratified by Ethiopia are an integral part of the law of the land.

Constitutionalism suggests that power is legitimate only to the extent that it is assumed in accordance with the latter and sprite of the constitution. Outlaws the traditional source of legitimacy in Ethiopia Force tradition and religion

Principle of Human Rights: Human rights and freedom are made inviolable and inalienable. Theory of Natural Right /Natural law/ seems to be invoked. Human right emanates from the very nature of mankind. As per article 10 of the constitution, Human rights and freedoms, emanating from the nature of mankind, are inviolable and inalienable. Human and democratic rights of citizens and peoples shall be respected.

Title is interesting Human and Democratic RightsArt 10/2/ takes it for guarantee. That there is a division of right in to two Categorieseven if it does not elaborates upon it. The term shall be respected is very interesting.

Principle of Secularism /Separation of State and Religion: Religion and state are separate. The Goal is to protect religion from state. Elements in Ethiopia: State and religion are separate. Meaning, no state religion, no preferred religion, the state has no religion, Mutual non interference. Religion is protected from the state and State is also protected from religion. Freedom of Individuals to religion suggests that, right to believe and disbelief is fully protected. Inter religious equality is also part of this dimension of right.

Principle of Transparency and Accountability of Government: ***Transparency*** is about doing thing under the scrutiny of the public. It is the attempt to respect the right to know of the public. No secrecy in public office. Make information as available as you can. The right to information. It is about accessibility of public office physically and in terms of making information available. ***Accountability*** is double pronged. One aspect of it is responsibility i.e. the duty to bear liability for malfunctions of government. Accountability is ensured through the existence of service. Strong culture and infrastructure auditing of money, character, and time.

Another aspect of it is responsiveness i.e. the capacity to respond to the demands of public in times of need. the duty to give answer to the quest of public for public goods and service such as peace and security, social justice, economic welfare etc. It is mostly associated with the capacity of the government to manage risk. Its test is usually the occurrence of accidents, epidemic disease break down of law and order, etc. Responsiveness might sometimes be only the matter of **s**howing sympathy (otherwise called solidarity responsiveness). As per article 12 of the constitution the conduct of affairs of government shall be transparent. Any public official or an elected representative is accountable for any failure in official duties. In case of loss of confidence, the people may recall an elected representative. The particulars of recall shall be determined by law.

Note: *The beauty of democracy is note that government deliver all the goods and service it promise to deliver, But rather that it gives reason, it gives an explanation for its failure to do so whenever it fails deliver service.*

4.7 Status of International Instruments under Ethiopian Constitutional Framework

Coming back to the disruption of the topic, Article 9(1) of the FDRE constitution provides that the constitution is the supreme law of the land and any law contradicting with the constitution is null and void. Article 9/4 f the constitution also declares that International agreements which are ratified by Ethiopia will become an integral part of the law of the land. So, if international instruments are regarded as part and parcel of the law of the land, what is their hierarchy in the Ethiopian legal system? The phrase “any law” under article 9/1 of the constitution includes international treaties, from this one can have the courage to conclude that international treaties are subordinate to the constitution as much as other subsidiary law are.

But, it is provided in Article 13(2) of the FDRE Constitution that the third chapter shall be interpreted in a manner conforming to the principle of the Universal Declaration of Human Rights, International Conventions on Human Rights and International instruments adopted by Ethiopia.

As, the result, what one can discern from the above article is that international instruments are not always subordinate to the constitution, at least, partly. Pursuant to the aforementioned article, Whenever, there arises the need for interpretation of any of the provisions under the third chapter of the constitution, resort should be made to relevant international instruments. Thus, as long as the application of any of the provisions of the constitution Interpretation shall be made with the spirit of those international instruments.

Concerning the issue of the publication, Art 9(4) of the FDRE constitution makes, international agreements ratified by Ethiopia are integral part of the law of the land. Is the publication of such treaties in the federal Negarit Gazette by virtue of Art 71(2) of the FDRE constitution a requirement? In fact, some people argue that international treaties are not laws, unless they are published in the federal Negarit Gazette by virtue of Art 71(2) of the FDRE constitution. But this agreement doesn't hold true that international treaties not published in the Negarit Gazette is invalid. This is because the provision doesn't clearly state that international treaties will not become laws unless published. It only tries to indicate the formal requirements, the non-fulfillment of which doesn't necessarily render that particular instrument non-binding as much as the failure and/or refusal of the president to put his signature on the draft bill doesn't stop it from becoming a binding law.

Questions that matter

1. ✍ Discuss different Policy objectives under the FDRE Constitution.
2. ✍How you can interpret article 9/4 and 13/2 of the constitution?
3. ✍Is publication a requirement for international threats to become law?

4. ✍ International instruments ratified by the Ethiopia: Is it supreme to the constitution? Or subordinate to the constitution? Or equal to the constitution? Give reason to your answer.
5. ✍How states in Ethiopia made? **/**through covenant or contract or force/.

UNIT V

FORMS OF THE GOVERNMENT AND ELECTORAL SYSTEM

5.1 Introduction

For the sake of effective and efficient administration and management of a government affair countries may chose different form of government. Now a days there are mainly three types of government; Presidential, Parliamentarian and mixed/Semi-presidential system/. Under this chapter we will see each type of governmental system in detail with their merits and demerits by relating to the notion and the type of electoral system.

5.2 Presidential System of Government

In the presidential form of government, the President is both the chief executive and the head of state. The President is unique in that he or she is elected independently of the Legislature directly by the people. This means the Legislature is not involved in the election of the head of government unlike that of parliamentary system of government which the parliament or where Legislature is actively involved in the appointment and approval of the head of the government. However, the Legislature may override the President's veto if they can muster enough votes, especially where the party of the president could not win the majority seat of the parliament.

Among many countries having the presidential form of government as their system of government, the typical example of the presidential system of government is United States of America. In this system of government, the presidents. power includes administrative and political affairs. This means, he is the symbol of the sovereign states and execute government policy. The president has the power to receive and appoint diplomatic invoices, to conclude international treaties, to declare war, conclude peace and commissioning all officials, civil and military. He is also empowered to appoint the members of his cabinet and some other government officials. However, this power of president is shared by the Congress as it requires a congressional endorsement. Thus, the president enjoys ultimate power decision and, therefore, has complete political responsibility for all executive actions. This means, members of the cabinet serve

at the pleasure of the president and must carry out the policies of the executive and legislative branches. As a result the control function over the members of the executive is resides on the president and the Legislature.

In most of the presidential systems either the president or any of his ministers/secretaries can be a member of the legislative organ. However, a member of the legislative can join the executive only after resigning his membership in the Legislature. Therefore, unlike the case in parliamentary forms of government, the relationship of the legislative and executive in presidential form of government is so loose and there is no fusion of power between the executive and Legislatures. It is therefore believed that the Congressional Oversight in presidential system seems more effective because of loose party discipline and executive-legislative relation. Presidential systems, on the contrary, are less disciplined and legislators are free to vote their conscious with fewer repercussions from their party. In addition, in presidential system, the executive branch, headed by the president, is distinct from other branches of the government which are all independent from one another. This separation of power serves to check and balance the powers of the three branches of government effectively. A presidential system of government is a single executive system whereby a man or woman is both the head of state and the head of government. Examples of countries with presidential constitutions are: USA, Spain, Philippines and Nigeria.

5.2.1 Features of a Presidential System of Government

1. All executive power is vested in the president.
2. There is a clear cut separation of power.
3. The system of checks and balances are pronounced (defined).
4. The president and ministers are not members of the legislature.
5. The president can appoint some of his minister outside the party.
6. The president can be removed through impeachment.
7. The party discipline is weak.

8. It is not compulsory for the president to come from the party which has majority in the legislature.

5.2.2 Merits of Presidential System of Government

1. The president is the symbol of unity since the whole country is his constituency.
2. Presidential system of government facilitates quick decision making and provides effective leadership.
3. The president receives praises and blames for the activities of his administration.
4. It allows the president to make use of the needed experts outside the party system.
5. The principle of separation of power can prevent the government from becoming a dictator.
6. Individual ministers are accountable for their deeds and misdeeds.

5.2.3 Demerits ofPresidential System of Government

1. The presidential system appears to be "autocratic, irresponsible and dangerous." It is autocratic because the President is empowered to act more or less as he pleases.

2. Its failure to ensure the co-operation between law-makers and administrators. Frequent conflicts between the legislature and the executive may lead to deadlocks.

3. There is no continuous accountability of the executive to the representatives of the people in the legislature. The fixed term of office of the executive also curtails responsiveness to public opinion.

4. The popular election of the President is criticized for a number of reasons.

- It is contended that the choice by the voter is apt to result in the election of good politician rather than an efficient administrator.
- Election is uncertain and the mass is often unpredictable. Therefore, competent and qualified persons do not like to contest in elections.

5. The final demerit of this system is that it is inelastic structure and uncertain in fixing up the final responsibility. It is inelastic because, once the President has been elected, the nation must continue with him, no matter whether it likes or dislikes his policies.

5.3 Parliamentary System of Government

Parliamentary systems owe their name to their founding principle, namely, that Parliament is sovereign. Thus parliamentary systems do not permit insulation of power between Parliament and executive: they are all based on legislative executive power sharing, and, as such, there is separation of power. This is also to say that all the systems that we call parliamentary require that, governments (executives) to be appointed, supported and as the case may necessitate, be discharged by parliamentary vote.

The fact is that 'parliamentarism' does not denote a single entity. If the performances of parliamentary systems are as different as they are, this is because they relate to, and result from, very different kinds of executive-legislative linkage. Indeed the English-type of premiership or cabinet system, in which the executive practically prevails over parliament; at the other extreme the French (III and IV Republic) type of assembly government that makes governing a near-impossibility; and a middle-of- the –way formula of party- controlled parliamentarism.

The underling, common problem of all parliamentarism, is to have parties that do not cross, in voting on the floor of the Houses, party line. In the American case, party indiscipline is always and necessarily a liability. Parliamentary-fit parties are parties that hold together in supporting the government (generally, also if in coalition); that is their appointees keep the line. Therefore, the understanding of parliamentarism assumes an understanding of who controls the parties, how, and-in-turn, what it is that parties control.

The premiership system, or cabinet system, at its best is illustrated by the British system of government. As everyone knows, the British premiership system assumes single party government (it would founder with coalition government), which in turn assumes a single member district system that engenders a two-party system. Let it also be underscored that it is single party government that calls for a strict party discipline that obtains in Westminster; for there to vote against one's own government would imply handing it over to the opposition.

Thus as indicated, the Westminster system of government rests on three major conditions. These conditions build on each other in this order: i) Plurality elections, ii) Two-partyism, and iii) Strong partisan discipline. This implies that if the first condition is altered, a domino effect will follow – a domino effect that presses for the adoption of some kind of premier system and, in any case, for the rejection of the winner-take-all system. So, the British premiership system can easily get disrupted, while, on the other hand, is not easily obtainable.

Therefore, any country that adopts a single member district system on the argument that a premiership system of government would follow may be severely disappointed. Remember, also, that the winner-take-all system is inadvisable when a polity is polarized and/or characterized by a heterogeneous political culture.

Moving on, as the United Kingdom and accordingly modeled countries illustrate, the strong case of premiership parliamentarism, Germany illustrates the weak, or weaker case of the category. The German Federal Republic has never had a two-party system, and only for a short time single party government. It has long been, instead, a three-party system (some say a two-and–a-half), has always displayed two-member coalition governments, and does not employ a majoritarian electoral system.

In much of the literature 'stability' is the major indicator of working democracy. The reasoning is that if a parliamentary system obtains stable government, then it

equally obtains effective government. Conversely, unstable governments attest to inefficient government. Let us begin with 'governability', effectiveness or efficiency in governing. The preliminary admonishment is that these notions do not address actual performances but structural capabilities. Performances depend on performers just as driving depends on capability of drivers. Moreover, drivers need roads and, similarly, performers need structures that allow them to perform. So we cannot get decisive government without a decisive effective government.

Second point is this: that we should not confuse 'effective government' with 'activist government' and 'ineffective government'. The former is a government that has the capacity of implementing the policies that it pursues; but it may expound a non-activist philosophy of government and therefore choose, whenever it so decides, to remain inactive.

The difference between 'effective' and 'ineffective government' is that the former is capable to execute its duties (even when it decides against doing something for other reasons), whereas the latter cannot do what it would like to do. In parallel fashion the difference between 'effective' and 'activist government' is that while the first may be effective in executing policies, strategies .. and dismantling things, an 'activist government' is a presumptuous government; one assumed to be a 'doer' for it assumes that there is no problem that politics cannot accomplish or solve.

5.3.1 The Office of the Prime Minister

The prime minister derives his authority in large measure from the chairmanship of the Council of Ministers (CoM), both when it is meeting and even when it is not. Therefore, he should provide to the Cabinet a leadership which is firm, highly visible and yet approachable. The agenda of CoM meetings is prepared by his secretary under his own guidance, in which the PM has the last word on the sequence of events and issues of the agenda. He presides over the meetings as well as guides and controls the discussions. His role is to see that some sort of agreement emerges out of the disagreements. Harmony, rather than discord,

should be the key word. During the discussions he encourages, advises, instructs and even admonishes the ministers.

The office of the prime minister took a very crucial role in the parliamentary system of government. In Ethiopia, the Office of the Prime Minister (PM) occupies a position of great importance as the real executive. It is his relationship with the CoM, party in Parliament, the HPR, the public and the world at large, which have the potential to influence the course of events in FDRE government. While the OPM is the steering wheel of the ship of the state, while it is the PM who is the steering man. As per Article 74 of the FDRE constitution the prime minister is the chief executive, the chairman of the Council of Minister, and the commander-in-chief of the National Armed Forces.

When a new HPR is constituted after a general election, the leader of the majority party in HPR takes over as the PM-ship. In respect of this, three situations can be identified: the first is when the majority party is left without a leader during the tenure of the Parliament for its leader has resigned, the second situation arises when no party has a majority in the HPR and a coalition government has to be set up the leader of the party, which has the largest vote may take OPM. Lastly, a situation may arise where among parties there is such a split that even a coalition cannot be formed.

5.3.2 Features of a Parliamentary System

1. All ministers are chosen from the legislature.
2. Prime minister and key ministers are directly responsible to the legislature for any policy initiated by them.
3. The party that has majority in the legislature forms the government.
4. There is the principle of collective responsibility.
5. There is a strong party discipline.
6. There is fusion of powers.

5.3.3. Merits of Parliamentary System of Government

1. It encourages a great working relationship between the legislature and the executive.
2. Cabinet system makes the executive indirectly responsible to the people through the legislation.
3. It encourages team spirit among the cabinet ministers.
4. The official opposition serves as effective watchdog on the government.
5. Party discipline facilitates quick decision making.

5.3.4. Demerits of Parliamentary System of Government

1. Parliamentary system is often unstable when a coalition government is formed.
2. The principle of collective responsibility makes it difficult to allocate praises and blames on a particular minister.
3. The fusion of power may lead to dictatorship.
4. Party discipline kills individual initiative of the ministers and the legislature.

Generally the major difference between these two systems is that:-

In a Presidential system: The executive leader, the President, is directly voted upon by the people Or via a body elected specifically for the purpose of electing the president, and no other purpose,and the executive leader of the Parliamentary system, the Prime Minister, is elected from the legislative branch directly.

In the Presidential System: It is more difficult to enact legislation, especially in the event that the President has different views than the legislative body. The President only responds to the people, the legislative branch can't really do anything to threaten the President. as a result, he can make it more difficult for the legislative body to do anything.

In the Parliamentary system: if the Parliament doesn't like the Prime Minister, they can cast a vote of no confidence and replace him. This tends to make the executive leader subservient to the Parliament.

Bottom line is: if you believe that government should have more checks and balances, then a Presidential system will give you that. If you believe that it should have the power to enact laws quickly, then you should go for a Parliamentary system.

5.4 Semi-presidential system/semi-presidentialism/

The concept was first used by Maurice Duverger in 1970s. He defines that for the political system to considered as semi-presidential the constitution which establish such system must combines three elements:-

- The president of the republic is elected by universal suffrage,
- The president has to posses considerable power (foreign relation)
- A prim-Minister and Ministers who posses executive and government power can stay in office if the parliaments does not show its opp0se even if the president oppose him/them

Semi-presidential system is also defined as the situation where the popularly elected fixed-term president exist alongside a prim-minister and cabinet who are responsible for parliament.

Presidential parliamentary

- The president can fire the PM
- The president is dominant executive

Semi-presidential system

Primir-presidential

- Prime-minster has upper hand
- Prime-minister is only accountable to the parliament

It is different from parliamentary republic in that: It has popularly elected head of state that is more than purely ceremonial figure head. It is different from presidential system in that, Cabinet name by the president is responsible to the

legislature. The legislature can fire the cabinet through the motion of no confidence**.**

When the president and prim-minister comes from opposite party: The president is responsible for foreign affairs and the prim-minister is responsible for domestic affairs. This creates a cohabitation government. The system and term cohabitation first originated in France in 1980s. Cohabitation government creates effective check and balance, or periods of bitter and tense stonewalling, depending on the attitudes of the two leaders and ideology of their party or demands of their constitution.

Some particulars of the semi-presidential system: Both the president and the legislature are popularly elected independently. The government head by the prim-minister who nominated by the president and get confidence of the parliament. The president is elected for fixed term as the result, his survival does not dependent on the parliament (separation of power). The president has the right to dissolve the parliament. Parliament survival is dependent on the president. (modified separation of power).The survival of the prim-minister is dependent on parliament and not on president.

5.4.1 Strength of semi-presidential system

Solve the problem of “temporal rigidity” of the presidential system. Since the president elected for fixed term is not head of the government, the parliament can dismiss unpopular cabinet by voting no confidence. Unlike the presidential system the president may dissolve the parliament pre-term and call for new election. Alleviates the problem of “winner-take-all” in the presidential system. Since the cabinet survival needs/requires/ confidence of the parliament. Transform the problem of dual legitimacies in to cohabitation. Presidential system dual legitimacy (parliament Vs president in policy making).Semi-presidential system competing legitimacy. (P Vs prim-Minister = cohabitation). This Provides power

for check and balance: In presidential system the president may have power to veto/and/or of referring the bills for constitutional review for its constitutionality. Semi-presidential system allows for modified check and balance.

Generally the Advantages of the Semi-presidential System are;

• Combines positive characteristics of presidentialism and parliamentarism

• it «encompasses the advantages of direct democratic elections and stability, which is linked to the status of the president, to the flexibility of the parliamentary governance and the prime minister.»

• There are better chances for coalitions than it is the case in the presidential system

• «Dual leadership»

• President can act as an extra-partisan mediator. France is an example. The French semi-presidential system, therefore, does not mean either merging of parliamentary and presidential forms of governance nor a transitional category between these two. It means succession of parliamentary and presidential periods, depending on the fact whether the president's party does or does not have majority in the legislative body.

5.4.2 Disadvantage of the semi-presidential system

Potential for cabinet instability if there is no one party or stable coalition party in the parliament. Create different chains of delegation: In parliamentary system of the government there is only one/single chain of delegation(downward form the government to the parliament and the electorate). There may be jurisdictional dispute between the president and the prim-minister. In presidential system president alone is responsible for all policies. In parliamentary system government alone is responsible for all policies. No jurisdiction but in semi-presidential system since activities are divided b/n President and PM there may be dispute as to the jurisdiction.

Generally;

• Surpassing the role of the government and the head of government

• Mounting to the level of a pure presidential system (the case of Croatia in 1922-2000)
• Pushing the parliament in a shadow, in some cases, are the main ones.

5.5 Election and Electoral systems

? what is electoral system Mean? How many electoral systems exist in the world? Which electoral system is preferable and why? Which system exists in Ethiopia?

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5.5.1 Meaning and features of election

To begin with the meaning of election, it refers to a procedure whereby all or some of the members of a given nation choose a smaller number of persons or one person to hold office of authority in the nation. An election is a decision making process by which a population chooses an individual to hold formal offices. It is the usual mechanism by which modern democracy fills offices in the legislature, sometimes in the executive and judiciary, and for regional and local governments.

As Montesquieu points out in Book II, chapter 2 of “The spirit of Laws”, in the case of elections in either a republic or a democracy, voters alternate between being the rulers of the country as well as being the subjects of the government. By the act of voting the people operate in a sovereign (or ruling) capacity, acting as “masters” to select their government’s “servants”. The unique characteristic of democracies and republics is the recognition that the only legitimate source of power for a government of people, by the people and for the people is the consent of the governed-the people themselves.

In order for an election to be democratic the authority of the government in democracies should derive solely from the consent of the governed which will be translated into government authority through election. According to Jean Kirkpatrick, scholar and former United States Ambassador to the United Nations, “Democratic elections are not merely symbolic…..they are competitive, periodic,

inclusive, definitive elections in which the chief decision makers in a government are selected by citizens who enjoy broad freedom to criticize government, to publish their citizens' criticism and to present alternatives.

Democracy Watch (international) website, further defines fair democratic elections as "Elections in which great care is taken to prevent any explicit or hidden structural bias towards any one candidate, aside from those beneficial biases that naturally result from an electorate that is equally well informed about the various assets and liabilities of each candidate. "This was more formally stated in 2000 by Chief Justice Marry Gleeson of the High court of Australia as "the democratic and lawful means of securing change if change be necessary, is an expression of the will of an informed electorate".The question of who may vote is a central issue in election as the electorate doesn't generally include the entire population: for instance, many countries prohibit insane (incapable) persons from voting and most countries require a minimum age for voting.

History also has it that some people have been excluded from voting. For instance, the democracy of ancient Athens, where elections are claimed to have been practiced in the 5^{th} and $6^{th}{}_{C}$ BC, disallowed women, foreigners, or slaves to vote, and the original United States Constitution left the topic of suffrage to the states: usually only white male property owners were able to vote. Much of the history of elections involves the effort to promote suffrage for excluded groups and it will continue to be a significant goal of voting rights advocates.

In a nutshell, suffrage is destined for citizens of the country so long as they meet the criteria for election. Some countries such as Argentina, Australia, Belgium, Brazil, China, Democratic Republic of Congo, Ecuador, Fiji, Lebanon, Liechtenstein, Nauru, Peru, Singapore, Switzerland (compulsory in the canton of Schaffhausen only), Turkey, and Uruguay, go to the extent of making voting compulsory on their subjects thereby making liable a citizen legible to vote but fails to cast a vote. In general, most countries have a citizenship requirement, age

requirement, residency requirement, and perhaps, a non-felon requirement for legibility to cast votes.

5.5.2 Electoral System

In the past, electoral systems have usually proved one of the most stable democratic institutions. Minor tinkering with the rules and regulations concerning the administration of elections has been common, including amendments to the laws governing election broadcasts, financial disclosure, or constituency redistricting. In the post-war period countries have occasionally switched electoral formulas between 'Hondt and LR-Hare, adjusted the effective threshold for election, and expanded their assembly size. Yet until recently wholesale and radical reform of the basic electoral system meaning the way votes are translated into seats has been relatively rare. The most significant exception to this rule is France, which has vacillated between proportional and majoritarian systems. In their classic work on electoral cleavages Lipset and Rokkan described the party system in Western Europe in the 1960s as "frozen" in the mould established at the turn of the century with the enfranchisement of the working class. In a similar way, until recently electoral systems in liberal democracies seemed set in concrete. The parties in government generally favored and maintained the status quo from which they benefited. The critical voices of those parties or out-groups systematically excluded from elected office rarely proved able to amend the rules of the game.

This stability suggests that electoral systems are inherently conservative. Nevertheless institutions have the capacity to experience a radical breakdown following shocks to their external environment. In Krasner’s model of 'punctuated' equilibrium, institutions are characterized by long periods of stasis, which are interrupted by intermittent crisis, which may bring about abrupt change, after which inertia again reasserts its grip. Where radical reforms are implemented these may unexpected results. For example the widespread adoption of primaries in the United States in the late sixties produced unintended consequences, or failed to achieve their initial objectives.

In the last decade significant challenges to government legitimacy fuelled the issue of electoral reform. The issue of electoral reform has become the subject of serious debate in Britain, with all the parties except the Conservatives favoring alternative systems to first-past-the-post for different levels of government. In 1993, after almost a century and a half of first-past-the post, New Zealand switched to a mixed-member system (MMS). New Zealand had long experienced a two-party system. In contrast 34 parties, resulting in the election of six and a coalition government, contested the first contest under MMS, held in 1996.

The United States has experienced growing interest in electoral reform, generated by increasing concern about the representation of women and ethnic minorities, and the obstacles to third parties symbolized by Perot's run for the presidency. Yet dissatisfaction has not been confined to majoritarian systems. In 1992 Israel introduced direct elections for the prime minister while the following year Italy, long seen as an exemplar of proportional representation, adopted a mixed system after prolonged debate. At the same time there has been a wave of constitution-building following the explosion of new democracies in Central and Eastern Europe, Latin America, Asia, and Africa. In these states the choice of an electoral system generated heated debate, which needed to be resolved before other constitutional issues could be settled.

Newer democracies like Ecuador, Hungary, Russia, and Taiwan have adopted 'mixed' electoral systems, believed to combine the best of both proportional and majoritarian systems. Therefore during the 1990s, debate about the electoral system moved from margin to mainstream on the political agenda. This shift produced growing awareness that electoral rules are not neutral: the way votes translate into seats means that some groups, parties, and representatives are ruled into the policymaking process, and some are ruled out. The core debate concerns whether countries should adopt majoritarian systems which priorities government effectiveness and accountability, or proportional systems, which

promote greater fairness to minority parties and more diversity in social representation.

The 'electoral system' includes many different components, such as the regulation of candidacies, the facilities for registration and voting, and the funding of party campaigns. But the heart of the electoral system is the process of translating votes into seats, and this will therefore be the primary focus.

5.5.3 The Classification of Electoral Systems

Electoral systems vary according to a number of key dimensions including district magnitude, ballot structures, effective thresholds, mal-apportionment, assembly size, and open/closed lists, but the most important variations concern electoral formula.

Electoral formula determines how votes are counted to allocate seats. There are four main types of Electoral systems. these are;

- Majoritarian formulas (including plurality, second ballot, and alternative voting systems);
- Semi-proportional systems (such as the single transferable vote, the cumulative vote, and the limited vote);
- Proportional representation (including open and closed party lists using largest remainders and highest averages formula); and,
- Mixed systems (like the Additional Member System combining majoritarian and proportional elements).

1. Majoritarian electoral systems

A worldwide survey found that 83 out of 150 countries were found to use majoritarian systems. This is the oldest electoral system, dating back at least to the 12th Century, and also the simplest. This category can be subdivided into those requiring candidates to win a plurality, or an absolute majority (50+ percent) of votes to be elected.

A. Plurality Elections

Plurality systems, otherwise known as 'first-past-the-post, is used for election to the lower chamber in 43 countries including the United Kingdom, Canada, India, the United States, and many Commonwealth states. The aim of plurality systems is to create a 'manufactured majority', that is to exaggerate the share of seats for the leading party in order to produce an effective working parliamentary majority for the government, while simultaneously penalising minor parties, especially those whose support is spatially dispersed. In 'winner take all', the leading party boosts its legislative base, while the trailing parties get meager rewards. The focus is effective governance, not representation of all minority views. The basic system of simple plurality voting in parliamentary general elections is widely familiar: countries are divided into territorial single-member constituencies; voters within each constituency cast a single ballot (marked by a X) for one candidate; the candidate with the largest share of the vote in each seat is returned to office; and in turn the party with an overall majority of seats forms the government.

One feature of this system is that single-member constituencies are based on the size of the electorate. The United States is divided into 435 Congressional districts each including roughly equal populations with one House representative per district. Boundaries are reviewed at periodic intervals, based on the census, to equalize the electorate. Yet the number of electors per constituency varies dramatically cross-nationally: for example India has 545 representatives for a population of 898 million, so each member of the Look Samba serves about 1.6 million people, while in contrast Ireland has 166 members in the Dial for a population of 3.5 million, or one seat per 21,000 people.

The geographic size of constituencies also varies substantially within countries, from small, densely packed inner-city seats to sprawling and more remote rural areas. Under first-past-the-post candidates usually do not need to pass a minimum threshold of votes, nor do they require an absolute majority to be elected, instead all they need is a simple plurality i.e. one more vote than their closest rivals. Hence in seats where the vote splits almost equally three ways, the winning

candidate may have only 35% of the vote, while the other contestants get 34% and 32% respectively. Although two-thirds of voters supported other candidates, the plurality of votes is decisive.

In this system the party share of parliamentary seats, not their share of the popular vote, counts for the formation of government. Government may also be elected without a plurality of votes, so long as they have a parliamentary majority. In 1951, for instance, the British Conservative party was returned to government with a sixteen seat majority in parliament based on 48.0 percent of the popular vote, although Labour won slightly more (48.8 percent) of the vote. In February 1974 the reverse pattern occurred: the Conservatives won a slightly higher share of the national vote but Labour formed the government.

Moreover under first-past-the-post governments are commonly returned with less than a majority of votes. No governing party in the UK has won as much as half the popular vote since 1935. For example in 1983 Mrs. Thatcher was returned with a landslide of seats, producing a substantial parliamentary majority of 144, yet with the support of less than a third of the total electorate (30.8 percent). For minor parties, and for minority social groups, the spatial concentration of votes in this system is critical to the outcome. Parties like the Greens with shallow support spread across a wide range of constituencies do far less well than those like nationalist parties with a strong concentration in key regions. Hence, for example, in the 1993 Canadian elections the Progressive Conservatives won 16.1 percent of the vote but suffered a chronic meltdown to only two MPs. In contrast the Bloc Quebecois got 18.1 percent of the vote but a solid phalanx of 54 MPs. The New Democratic Party won even less votes (6.6 percent) but emerged with 9 MPs, far more than the Conservatives. In a similar way social groups who can concentrate their support spatially, like African-American or Latino voters in urban areas, can prove relatively more effective in getting their representatives into the US Congress than groups which are widely dispersed across legislative districts.

B. Second Ballot Majority-Runoff Systems

Other systems use alternative mechanisms to ensure that the winning candidate gets an overall majority of votes. In France the second ballot 'majority-runoff' system is used in elections for the Presidency. Candidates obtaining an absolute majority of votes (50 percent+) in the first round are declared elected. If this is not the case a second round is held between the two candidates who got the highest number of votes.

This system is used in 15 of the 25 countries with direct presidential elections including Austria, Columbia, Finland and Russia. In the 1996 Russian Presidential election, for example, 78 candidates registered to run for election, of which 17 qualified for nomination. Boris Yeltsin won 35.3 percent of the vote in the first round, with Gennadii Zyuganov, the Communist candidate; close behind with 32 percent, and Alexander Lebed third with 14.5 percent of the vote. After the other candidates dropped out, and Lebed swung his supporters behind Yeltsin, the final result was a decisive 53.8 percent for Yeltsin against 40.3 percent for Zyuganov. A majority-runoff is also used in legislative elections in Mali and the Ukraine, and a plurality-runoff is used for the French National Assembly. The aim of runoff elections is to consolidate support behind the victor, and to encourage broad cross-party coalition building and alliances in the final stages of the campaign.

C. Alternative Vote

Another majoritarian system is the Alternative Vote, which is used in elections to the Australian House of Representatives and in Ireland for Presidential elections. Australia is divided into 148 single member constituencies. Instead of a simple 'X', voters rank their preferences among candidate (1,2,3...). To win, candidates need an absolute majority of votes. Where no one gets over 50 per cent after first preferences are counted, then the candidate at the bottom of the pile with the lowest share of the vote is eliminated, and their votes are redistributed amongst the other candidates. The process continues until an absolute majority is secured. In the 1996 Australian elections, for example, there was a close call on the first preferences, with both the Australian Labour Party and the Liberal party getting 38.7 percent of the vote. In the final preferences however the ALP won 46.4

percent compared with 53.6 percent for non-ALP candidates. Again this process translates a close lead into a more decisive majority of seats for the leading party. This systematically discriminates against those at the bottom of the poll in order to promote effective government for the winner.

D. Semi-Proportional Systems

Semi-proportional systems provide another option, including the cumulative vote where citizens are given as many votes as representatives, and where votes can be cumulated on a single candidate (used in duel-member seats in 19th Century Britain and in the State of Illinois until 1980). The limited vote is similar, but voters are given fewer votes than the number of members to be elected (used in elections to the Spanish Senate). In Japan, until 1994, voters used the Single Non-Transferable Vote where electors cast a single vote in a multi-member district.

E. Single Transferable Vote

The system in this category, which continues to be used, is the 'Single Transferable Vote' (STV) currently employed in legislative elections in Ireland, Malta, and the Australian Senate. Each country is divided into multi-member constituencies which each have about four or five representatives. Parties put forward as many candidates as they think could win in each constituency. Voters rank their preferences among candidates (1,2,3,4...). The total number of votes is counted, and then the number of seats divides this total in the constituency to produce a quota. To be elected, candidates must reach the minimum quota. When the first preferences are counted, if no candidates reach the quota, then the person with the least votes is eliminated, and their votes redistributed according to second preferences. This process continues until all seats are filled.

2. Proportional Representation: Party Lists Systems

Where majoritarian systems emphasize governability, proportional systems focus on the inclusion of minority voices. Proportional electoral systems based on Party Lists in multimember constituencies are widespread throughout Europe, and worldwide 57 out of 150 countries use PR (Inter-Parliamentary Union 1993). The

principle of proportional representation is that the seats in a constituency are divided according to the number of votes cast for party lists, but there are considerable variations in how this is implemented in different systems.

Party lists may be open as in Norway, Finland, the Netherlands and Italy, in which case voters can express preferences for particular candidates within the list. Or they may be closed as in Israel, Portugal, Spain and Germany, in which case voters can only select the party, and the political party determines the ranking of candidates. The rank order on the party list determines which candidates are elected, for example the top ten to fifteen names. Party Lists may also be national as in Israel, where all the country is one constituency divided into 120 seats. But most Party Lists are regional, as in Belgium where there are seven regions each sub-divided into between 2-34 seats.

The electoral formula varies among systems. Votes can be allocated to seats based on the highest averages method. This requires the number of votes for each party to be divided successively by a series of divisors, and seats are allocated to parties that secure the highest resulting quotient, up to the total number of seats available. The most widely used is the d'Hondt formula, using divisors (such as 1,2,3 etc). The 'pure' Saint-Laguë method divides the votes with odd numbers (1,3,5,7 etc). The 'modified' Saint-Laguë replace the first divisor by 1.4 but is otherwise identical to the pure version.

An alternative is the largest remainder methods, which uses a minimum quota, which can be calculated, in a number of ways. In the simplest with the Hare quota, used in Denmark and Costa Rica, the total number of valid votes in each constituency is divided by the total number of seats to be allocated. The Droop quota, used in South Africa and Greece, raises the divisor by the number of seats plus one, producing a slightly less proportional result.

3. Mixed Systems : Additional Member System

Lastly many newer systems, such as those recently adopted in Italy, New Zealand and Russia, use mixed systems, although with a variety of alternative designs. The Additional Member System used in Germany combines single member and party list constituencies. Electors have two votes. Half the Members of the Bundestag (328) are elected in single-member constituencies based on a simple plurality of votes. The remaining MPs are elected from closed party lists in each region (Land). Parties, which receive, less than a specified minimum threshold of list votes (5 per cent) are not be entitled to any seats.

The total number of seats, which a party receives in Germany, is based on the Niemeyer method, which ensures that seats are proportional to second votes cast for party lists. Smaller parties which received, say, 10 per cent of the list vote, but which did not win any single member seats outright, are topped up until they have 10 per cent of all the seats in Parliament. It is possible for a party to be allocated 'surplus' seats when it wins more district seats in the single-member district vote than it is entitled to under the result of the list vote.

5.5.4 Reflection on the Ethiopian Legal Regime

Although Ethiopia had written constitution as early as 1931, members of two chambered parliament established by the constitution did not assume their seats by election. Members of the upper chamber- the senate were handpicked/appointed by the emperor from among the nobility (*mekuanint*) and local chiefs (‘*shumoch*’) who served the empire as ministers, judges or military officers. Members of the lower chamber, on the other hand, were elected by the nobility and local chiefs. It was only in 1955 that the idea of election was introduced by the revised constitution as members of the lower chamber begun to assume seats through election. Since the coming into existence of the revised constitution, various laws meant to regulate the country election procedure were issued.

The first electoral law was issued on the 27th day of August, 1956. This law established a National Board for registration and elections and determined the powers and duties of the Board. Later on, subsequent electoral proclamations

were amended and consolidated into a new proclamation, proclamation No. 264/1969 which regulated elections in Ethiopia until the 1974 revolution. Then Proclamation No. 314/1987 which was meant to govern the process of election for the formation of the National Shengo was adopted.

In 1992, another electoral law ,a proclamation to provide for the establishment of the National, Regional, and Woreda council members election commissions, Proc. No. 11/1992, followed by Proc. No. 64/1993 was issued. In those electoral laws, a tendency of decrease in the age of voters and candidates was seen. The age of voters was reduced from 21 to 18 and that of candidates was reduced from 25 to 21.

Yet, another proclamation, Proc. No. 111/1999 as amended by Proc. No. 187/1999, was adopted with a view to make the country's electoral laws conform to the FDRE constitutions. The proclamation defines election as popular elections held at representative levels for the formation of national and regional organs of state power and their corresponding substitutes. The proclamation established the National Electoral Board, which is accountable to the Council of Representatives of the transitional Government of Ethiopia or its successor, i.e. the House of People's Representatives.

Review Question: *It is provided under Art. 102(1) of the FDRE constitution that the National Election Board shall be established independent of any influence to conduct in an impartial manner free and fair election. On the other hand, it is provided under Proc. No. 111/1995 that the National Board is accountable to the House of Peoples' Representatives. Does such accountability jeopardize the board to the influence of the House? Does it in any way compromise the integrity of the Board? If so, does the proclamation violate the constitution?*

Finally, when we come back to the system of election followed by Ethiopia, we find on Art. 13 of the Proclamation that:

1. Any election shall be based on free, direct, and popular suffrage.

2. A candidate with more votes received than that by other competitors within the constituency shall be declared the winner.

What one can easily discern from the reading of sub Article 2 of the above article is that the proclamation endorses the First-past-the-post system of election where in a candidate with plurality of votes will be returned to office.

Question That matter

1. ✍Do you think the proportional representation system is a fairer, more flexible, more modern electoral system than the winner-take-all majoritarian system?

2. ✍Do you think the proportional representation system is a fairer, more flexible, more modern electoral system than the winner-take-all majoritarian system?

3. ✍Do you think this system is ideal to the situation of countries like Ethiopia with multi ethnic groups? Do you consider the proportional representation as an alternative, given the virtues it has?

UNIT VI

HORIZONTAL AND VERTICAL DIVISION OF POWER

Unit Objectives:

Dear learners, after reading this unit, you will able to:

- Understand the definition and concept of separation of powers,
- Appreciate horizontal and vertical division of powers in parliamentary, presidential and semi-presidential systems of the government,
- Understand Separation of powers under the FDRE Constitution,
- Realize the structure, composition and functions of Federal Organs (The Executive, the Legislature and the Judiciary),

Unit introduction

Dear learner, this unit explores the concept of the separation of power, the development of separation of power and separation of power in different system of the government, the pros and cons that each system of the government has and the division of power under each system of the government and in Ethiopia.

6.1 The Concept and Development of Separation of Powers

? Dear student, what comes to your mind, when you hear the word separation of power?

_____

_____

_____.

The theory of separation of powers in its simplest form implies that all these three functions should be entrusted to three different authorities. The three organs of the government should be kept separate and distinct. One organ should be independent of the control of others.

Each organ should be supreme in its own sphere of authority. The theory further states that combination of any two or all the three powers in a single person may result in tyranny and loss of individual liberty. The theory was the direct outcome of reaction against despotism of Middle Ages when kings combined in their person all three powers of the government and enjoyed the authority of life and death over their subjects.Each of the three branches would have defined powers to check the powers of the other branches.

The idea of threefold division of state functions may be traced back to the writings of Aristotle and Cicero**.** According to Aristotle, a state should have three functions:- deliberative, magisterial and judicial. Bodin, a French philosopher, further emphasized the necessity of separating these three powers. He was especially in favour of separation of the judicial functions from the other two functions. This philosophy heavily influenced the writing of the United States Constitution, according to which the Legislative, Executive, and Judicial branches of the United States government are kept distinct in order to prevent abuse of power.. The three branches are distinct and have checks and balances on each other. In this way, no one branch can gain absolute power or abuse the power they are given.

The separation of powers often imprecisely used interchangeably with the *trias-political principle,* is a model for the governance of a state (or who controls the state). The model was first developed in Ancient Greece and Rome. Under this model, the state is divided into branches, each with separate and independent powers and areas of responsibility so that the powers of one branch are not in conflict with the powers associated with the other branches. The normal division of branches is into a legislature, an executive, and a judiciary.

According to the doctrine of the separation of powers divides the institutions of government into three branches: legislative, executive and judicial: the legislature makes the laws; the executive put the laws into operation; and the judiciary interprets the laws. The powers and functions of each are separate and carried out by separate personnel. No single agency is able to exercise complete

authority, each being interdependent on the other. Power thus divided should prevent absolutism (as in monarchies or dictatorships where all branches are concentrated in a single authority) or corruption arising from the opportunities that unchecked power offers. The doctrine can be extended to enable the three branches to act as checks and balances on each other. Each branch's independence helps keep the others from exceeding their power, thus ensuring the rule of law and protecting individual rights.

Under the separation of powers, each branch is independent, has a separate function, and may not usurp /take over/ the functions of another branch. However, the branches are interrelated. They cooperate with one another and also prevent one another from attempting to assume too much power. This relationship is described as one of checks and balances, where the functions of one branch serve to contain and modify the power of another. Under the system of checks and balances, each branch acts as a restraint on the powers of the other two.

The powerful exponent of this theory was Montesquieu (1689- 1755). He developed this theory in his book The Spirit of Laws published in 1748. Montesquieu lived in France during the tyrannical rule of Louis XVI, who was an absolute monarch having authority over the life and death of the people. According to Montesquieu, 'when the legislative and executive Powers are united in the same person or in the same body of persons, there can be no liberty, because they make tyrannical laws and execute them in tyrannical manner. Again, if judicial authority is combined with legislative, the life and liberty of the subjects would be subject to arbitrary control. If judiciary is joined with executive, the judge might behave with violence and oppression'.

Obviously under the Westminster System – the parliamentary system of government Australia adopted and adapted from England – this separation does not fully exist. Certainly in Australia the three branches exist: legislature in the form of parliaments; executive in the form of the ministers and the government departments and agencies they are responsible for; and the judiciary or the

judges and courts. However, since the ministry (executive) is drawn from and responsible to the parliament (legislature) there is a great deal of interconnection in both personnel and actions. The separation of the judiciary is more distinct.

6.2 Historical Development of Separation of Power

States throughout history have developed concepts and methods of separation of power. In England, parliament from its origins at least seven centuries ago was central to an struggle for power between the original executive (the monarch) and the councils of landowners, church leaders and commons. Similarly judges, originally representing the executive, developed increasing independence. Parliament was a significant force in an increasingly mixed form of government by the time of the Tudors and soon afterwards was directly challenging the doctrine of the divine right to power of the Stuart monarchs. The English Civil War (1642-60) between parliament and monarchy resulted in the monarchy continuing but under an arrangement which established not only parliament's legislative authority but also opened the way to the development of cabinet government.

In the sixteenth century, John Calvin favored a system of government that divided political power between democracy and aristocracy (mixed government). Calvin appreciated the advantages of democracy: "It is an invaluable gift if God allows a people to elect its own government and magistrates." In order to further reduce the danger of misuse of political power, he suggested setting up several political institutions which should complement and control each other in a system of checks and balances. In this way, Calvin and his followers resisted political absolutism and furthered the growth of democracy. Calvin's aim was to protect the rights and the well-being of ordinary people.

In 1620, a group of English separatist Congregationalists and Anglicans, who later became known as Pilgrim Fathers, founded Plymouth Colony in North America. Enjoying self-rule, they established a bipartite democratic system of government. The "freemen" elected the General Court, which functioned as legislative and judiciary and which in turn elected a governor, who together with his seven "assistants" served in the functional role of providing executive power.

Massachusetts Bay Colony (founded 1628), Rhode Island (1636), Connecticut (1636), New Jersey, and Pennsylvania had similar constitutions. They all separated political powers.

Except for Plymouth Colony and Massachusetts Bay Colony, these English outposts added religious freedom to their democratic systems, an important step towards the development of human rights. Books like William Bradford's History of Plymoth Plantation were widely read in England. So the form of government in the colonies was well known in the mother country, also to philosopher John Locke. He deduced from a study of the English constitutional system that political power was to be divided into the legislative, which should be distributed among several bodies, for example, the House of Lords and the House of Commons, on the one hand, and the executive and federative, responsible for the protection of the country and prerogative of the monarch, on the other hand. England had no written constitution.

6.3 Vertical and Horizontals division of power: The case of Ethiopia

By forms of division of legislative power we are referring to the ways in which these powers are constitutionally allocated between the federal government and the states, while the scope of legislative powers refers to the areas and amount of jurisdiction assigned to each order of government. In other words, with the latter we refer to the substance of power allocated, while with the former we refer to the technique of allocation.

The Ethiopian Constitution in general follows the United States' and Swiss' forms of distribution of powers. According to Article 50(2) the federal government and the states shall have legislative, executive and judicial powers. We have earlier noted the point that the Ethiopian federal system appears to reflect some aspects of coming together as well as holding together. Although it is a fact that none of the constituent states existed as autonomous entity, owing to the aggregate nature of the federation, the federal government appears to be one with enumerated and limited powers and the federation is based on the

accommodation of diversity within the various Ethiopian Nations, Nationalities and Peoples existent at the time of ratification by the Constituent Assembly.

It is the states that hold residual powers as per Article 52(1), excepting the power of taxation, for undesignated powers of taxation are as per Article 99 left to the determination of HPR and HoF. Thus Article 99 should logically be treated as an exception to Article 52(1). The Constitution also comprises a brief account of some state powers under Article 52(2) in addition to reserve power, which should only be understood as illustrations of the powers bestowed to states in general terms, as referred to above; i.e. Article 51(1).

It is worth noting that the powers granted to the federal government are not limited to the list under Article 51. It might appear that by virtue of the reserve clause, any power not mentioned under article 51 belongs to the states, but other provisions of the Constitution also indicate additional powers entrusted to the federal government .as can be gathered from the Minutes of the Constitutional Assembly. In general it appears that Article 51 was intended to cover a whole list of powers conferred on the federal government, while others were meant to allocate these lists of power to each federal departments of the federal government and other bodies akin to it like that of the Office of the President. Yet, what appeared as final product did not reflect this intention, for we find powers seem to be additional; i.e. under Article 55, 74 and 77, for instance. Some of the exclusive federal powers not mentioned under Article 51 but indicated elsewhere, include the power to enact labor, commercial, penal code, approval of federal appointments submitted by the executive, and the establishment of federal institutions. Article 51 has therefore failed short of incorporating all powers that the Constitutional Assembly sought to have endowed to the federal government. So the reserve power of the state only applies after discounting all power of the federal government distributed throughout the Constitution.

It is also worth noting that the Ethiopian Constitution provides neither for the 'necessary and proper' clause nor for any express comprehensive list of shared powers.

The Constitution empowers the federal government to *"formulate and implement the country's policies, strategies and plans in respect of overall economic, social and development matters…Establish and implement national standards and basic policy criteria for public health, education, science and technology.."*. One may state that this is perhaps more than the 'necessary and proper' clause for it grants the federal government with wide powers on economic, social, health and education aspects. This express coverage looks as those economic and social issues that were federalized during the 1930's in the United States. There is no doubt that these powers cover the bulk of concurrent power on a vast field of social and economic affairs as stated in other federations. However it is also possible to argue with equal force that if one follows the terms closely, the powers of the federal government even in these vital areas do not seem exhaustive. The same Constitution also empowers the states, among other things, *"to formulate and execute economic, social and development policies, strategies and plans for the state.*" The big question is to draw the borderline between the two, but certainly there is no doubt that this makes most of the policy-making areas concurrent.

Despite the whole range of variation among the federations, a common pattern of sorts emerges. The general principle, on which allocation of responsibilities has usually been based is the vague concept that matters of national importance should be reserved to the federal government, while matters of regional importance should devolve to the states. But the principle does not tell us much about the specifics of what powers should go to the federal government and which one to the states. Besides, it has not been possible to avoid the provision of a wide range of shared powers. What is of national or of local importance cannot be decided on any *priori* basis and federal Constitutions show variations in this regard.

Broadly speaking, the exclusive federal power includes: defense, foreign affairs, immigration, major taxation powers, currency and foreign exchange, foreign and interstate trade, maritime shipping, inter-regional communication, postage and matters physically transcending state boundaries such as high-way transport services and key aspects of economic activities, for which uniform regulation is deemed important. Some of these powers are justified on the ground that it would mean unnecessary multiplication of authority, creation of inconsistent directives and creating chances of friction.

The field of defense is considered mostly an exclusively federal power. It is the essence of federalism to accommodate diversity but war-like circumstances require centralized power to discharge effectively. Besides, the history of older federations indicates that one of the reasons to join the federations was to have a common defense. Furthermore, the centralization of defense is supposed to back foreign relations. For these reasons the control of armed forces, control of land, naval and air forces, were not only believed to reinforce political influence in international politic but also to minimize armed conflicts Yet while maintaining the basic principle that defense remains federal, the states have in many cases been involved one way or another with at least the police force of their own for maintaining law and order within their respective territories.

Traditionally it is the need for centralization of foreign powers in the hands of the federal government that among other things was the driving force among older federation in their bid to transform themselves from a confederation to a federal polity. In fact, one of the reasons for establishing a federation was the need for a unified foreign policy. As a result, in many cases foreign relations are the exclusive domains of the federal government. In some federations, however, the states have obtained formal representation in international forum, particularly when the matter concerns the interest of the states. The other two aspects of power distribution in federal systems are shared powers and concurrent powers,

of which the most important aspect of power allocation is that of shared legislative power.

The notion of intergovernmental relations, executive federalism and co-operative federalism defines the conditions under which a federal system functions; i.e. whether it is dual versus executive or it is a functional kind of federalism. Intergovernmental relation refers to a broad concept by which the federal and state governments interact on common programs. Executive co-operative-federalisms also refers to the two levels of governments, but differ from one another in that executive federalism is restricted to cooperation between and among the executives, while co-operative federalism encompasses both presidential and parliamentary federations.

Similar to the Constitution of US America, the FDRE Constitution states that *"[t]he federal government and the states shall have legislative, executive and judicial powers.",* it seems that both levels of executive organs will have two parallel (not overlapping) functions; i.e. each implementing that which it is entitled to perform by law. Partly because of this and partly because the FDRE Constitution assigns residual powers to the states without making any reference that states are obliged to execute federal laws and administer accordingly in their respective territories, there is an apparent gap in enforcing federal laws in the respective states, this automatically leads the two levels of government to organize and setup their respective executive organs, institutions and assign to the other level of government. But experiences of other federal countries such as Swiss, which heavily depend on the federal government for execution of federal laws, have managed to devise and implement another simple mechanism by which state executive organs perform duties referred to the federal government together with theirs.

Whether the federalism under consideration is a dual or executive (functional) type, intergovernmental relations (vertical and horizontal) become either 'competitive' or 'co-operative'. Either model might intermittently be witnessed in

federal systems, which might signify overwhelming state of condition in the particular state.

Generally speaking, competitive federalism is an indicator of the fact that it is inherent in the development of constitutional governance and the federal and constituent states compete for one can only gain power at the expense of the other. Yet, this can easily be remedied by lubricating the cog and wheels of each joint of power linkages by employing such as delegation of power, co-operating through executive organs, cooperating through party channels, cooperating through policy making. In order to make co-operative federalism functional efforts at all three, executive (policy-making), law-making and adjudication (interpretation included), should be directed, in particular.

6.3.1 General Constitutional Methods in Division of Tax Powers

The entire revenue sources in Ethiopia can be given either to the centre or to the states, or can be divided between them, theoretically speaking. The aim of any federal taxation principle is to enable each level of government to be autonomous on matters assigned to each by the Constitution; i.e. enable federal and state governments become financially secure and each level undertake functions assigned to it by the Constitution. This being the fact, in practice there can be serious problem in balancing revenue sources and expenditure needs of the respective state governments of a federation. This is because distribution of tax powers between federal and state governments feature, or considered to demonstrate competing political interests of centralization and decentralization; i.e. centripetal and centrifugal trends. Accordingly, those who promote diversity advocate a greater devolution of tax powers to the state governments as a reflection of regional autonomy and local self-rule. On the other hand, those who argue in favor of proportional development and lesser diversities recommend the concentration of tax powers at the federation.

There are several reasons for the latter argument, some of which are: the problem of tax administration, tax duplications, macroeconomic considerations,

the uneven distribution of tax resources and disparity in expenditure performance capacity. For a country like Ethiopia, which is marked by the asymmetry that exists in tax soliciting ability between the regional states in light of the existence of heterogeneous community groups, appropriate care should be taken so as division of tax powers should not increase the disparity that exists between the regions. This may be achieved by carefully sorting out the types of taxes that are local in character and, thus can be raised by local governments, and by allocating sufficient revenue for the constituent units, while leaving the rest to the centre. This adjustment seeks to balance the revenue sources and the expenditure needs of each level of government.

6..3.1.1 Structure of Allocation of Taxation Power in Ethiopia

Division of taxation powers is a principal aspect of Ethiopia's Constitution as it is provided in the legal foundation. The FDRE Constitution divides taxation power into three categories, namely:- federal power of taxation, state power of taxation, and concurrent power of taxation.

? Under the FDRE constitution: Can the states individually determine the tax rate (do they have power to change tax rates and to set the tax base? exempt taxpayers or determine tax relief?)

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A. The Exclusive Power of Taxation of Federal and Regional State Governments

The most important question in the discussion of the exclusive power of taxation is whether each level of government can determine its own tax basis and tax rates. The general approach in revenue assignment does not stop at assigning a specific tax to either of the levels of government. It ranges from complete autonomy to determine both tax rates and tax bases to short of discretion as regards the administration and collection of taxes. In most cases, it is argued that

states should have the power to determine the tax rate if the power of taxation is exclusively given to the states.

In Ethiopia, the FDRE Constitution declares that the Federal Government shall levy taxes and collect duties on sources reserved to it, and the states, likewise, exercise the same power with respect to sources that fall under their jurisdiction. Thus, the two levels of government exercise their legislative and administrative powers within their respective spheres of taxation. As a result, the revenue generated from the respective sources belongs exclusively to each level of government. Each level of government is bound to respect the powers of the other.

Thus, the FDRE Constitution does not explicitly limit the power of the states to alter tax rates or to influence the tax bases. In Article 100 it only provides general "directives on taxation"; i.e. conditions they must consider prior to exercising their powers taxation. Both the states and the federal governments have the obligation to ensure that any tax is related to those revenue sources specified to them by law. They should also ensure that the tax is determined with proper consideration and that the tax imposed by them does not adversely affect their relationships. If any tax imposed by a state affects interstate commerce, the central government intervenes, as this power is reserved for central government. This being the case, in practice, however, tax legislation is uniform throughout the country.

The FDRE Constitution provides exclusive revenue sources under the title "federal power of taxation" and "state power of taxation". In general, the division of revenue-raising power in Ethiopia is mainly structured according to the categories of taxpayers or particular things considered as sources of revenue. The exclusive domain of each level of government is not the tax base but the tax source. Thus, both levels of government do and should not levy tax on the same income, transaction or thing. Customs duties including import/export taxes are exclusively reserved for the centre. The revenue sources assigned by Constitution

to the Federal Government, thus, are import/export taxes, income tax, sales and excise tax, property taxes and charges and fees.

B. Concurrent Power of Taxation

It is appropriate to begin by elucidating the concept of "concurrent power". Conventionally, concurrency of power signifies that the centre as well as each state has the right to enact laws concerning the subject-matter under its jurisdiction. This occurs when a general power of taxation is conferred on each jurisdiction, while the actual assignment of particular taxes is left to each jurisdiction to be sorted out in practice. This system follows the general division of legislative power including the division of broad and general tax powers between the federal government and the states.

When the FDRE Constitution came into force, several issues arose regarding the exercise of the concurrent power of taxation. Article 98 of the Constitution states that regional states shall jointly levy and collect revenue. The main issue raised was: How can both the centre and states jointly levy and collect taxes at the same time? Is it similar to the concept of concurrent power of legislation? Would it enable each state to enact its own tax law on sources listed under concurrent taxation? Do all states benefit from these taxes irrespective of the place where the sources of the tax are located?

The power of taxation comprises of two specific powers: the power to set a tax rate and the power to collect the tax paid. The Federal Government and the states exercise independent powers to determine the rate and to collect the tax paid in areas exclusively assigned to each level of government. If we pursue this principle, a concurrent power of taxation likewise presupposes the determination of the rate and collection of taxes to be decided independently by the Federal Government and the state concerned. This could have led to tax competition between the two; the main issue is which law prevails? As the Constitution does not explicitly express that the federal law is supreme over that of the regional

states, even in the case of concurrent legislation, it should be raised as an issue for constitutional adjudication.

On the other hand, the literal interpretation of the provision (Article 98) *"the federal government and the states shall jointly levy and collect"* would mean that legislation would be enacted by a joint meeting/agreement of the federal and state legislatures. Meaning, agreements would be reached with each regional state according to the specific circumstance of the regional state concerned. For instance, a specific type of mining operation may be found in one region, if the case falls within the concurrent power of federal and state governments. Wouldn't such a case by case negotiation, agreement ... approach lead to adoption of different tax rates on identical business practices? Likewise, as long as the same tax source is subject of both levels of government, close cooperation and adequate information exchange should be in place so as to avoid tax evasion.

Taxes imposed upon mobile companies working in several regions, diverse economic activities ... all can involve a multitude of factors from different jurisdictions. That is, factors of production (capital, labour, land) may be used from several states and products and sales are going back to these and other regional states. In such cases, power of taxation seems appropriate if assigned to the centre.

According to Article 98(2) of the Ethiopian Constitution *"the profits of companies and dividends due to shareholders' are sources of concurrent taxes."* The English version of this Article only specifically refers to revenue from company profit tax and tax on dividends due to shareholders. The Amharic version, however, includes sales tax; as the latter prevails over the former version it is consistent with the practice. Excise tax is not mentioned in both versions, but is actually levied on products or the sale of companies. The exclusion of excise taxes seems to be "a slip of pen" as there cannot be any reason to exclude the imposition of excise taxes on some products locally produced or sold by private companies.

The allocation of company tax is basically seen from the mobility factor of the economic activities of the companies. Usually they operate in more than one state. But in Ethiopia, it is not mobility that primarily distinguishes this issue. Rather it is the type of the enterprise that matters, irrespective of its mobility. Except for sole proprietorship, private enterprises such as a partnership and private limited companies are taxed by the Federal Government. However, if these companies are not engaged in businesses, in several regions (say in the case of a laundry or a beauty salon), allocating them to the Federal Government serves little or no purpose. Thus, it is prudent to assign such kinds of businesses to the regional states although they might be registered as a PLC seen from the perspective of augmenting states' tax capacity.

In most federal systems disparities concerning the fiscal capacities of states can arise from their wealth in natural resources. Tax on natural resources is therefore not exclusively reserved to the states, because it may aggravate the gap between resource-rich and poor states. Thus, Federal Governments deal unequal distribution of natural resources through mechanisms of transfer of revenue. In Ethiopia, too, issues concerning equitable distribution of revenue mechanisms of transfer of revenue generated from natural resources might become a challenging factor when it plays a significant role in the national economy, if not properly clarified and addressed.

In Ethiopia, revenue from incomes generated from large-scale mining such as gold, petroleum, gas, etc.., and the mechanisms by which royalties collected from these operations are transferred from the coffer of the Federal Government to that of the corresponding regional state. Thus, the administration of these incomes and royalties generated from such operations in useful, accountable and transparent manners could be a challenging task. Mining operations of these kinds are qualified as large-scale, while small-scale, low-income generating operations are left to the regional states; i.e. land rentals and income taxes of the latter ones are left to the states, as these have been designated as mining

activities of small-scale by the Minister of Mines and Energy, who is entitled to do so.

C. Residual Taxes

Article 99 of the Ethiopian Constitution reads: *"the house of Federation and the House of Peoples' Representatives shall, in a joint session, determine by a two-thirds majority vote on the exercise of powers of taxation which have not been specifically provided for in the Constitution".* An interesting aspect of this provision is the distinction it creates with residual power of legislation. As per Article 52 of the Constitution, all powers not exclusively given to the Federal Government alone or concurrently with the states are reserved for the states. The former provision is specific to taxation while the latter refers to all powers and functions of both levels of governments. Therefore, it implies that states necessarily have a residual power concerning matters other than taxation. With regard to exercising residual tax, either level of government can only acquire the power of taxation after a decision is reached by the joint meeting of the two Houses of Federation.

It has to be noted that the joint session of both Houses is to determine which level of government can exercise the power of taxation. The Constitution allocates independent powers of taxation to the states and the centre, and taxes shared by both levels of governments. The joint session, therefore, determines the residual tax to be shared by both levels of governments or to be assigned to either of them. Therefore, one can argue that the power over residual taxes is not linked to residual powers of legislation.

But the most significant factor concerning the scope of residual power of taxation is the system which the Constitution follows in dividing taxation powers. It does not only allocate the type of taxes. The type of taxes is allocated in relation to the taxpayer or in relation to the object upon which a tax is to be imposed. For example, it is not income tax in general that is given to the centre, rather income from employees of the Federal Government or from enterprises owned by the

same. Income from business profits of rail and air transport goes to the centre, while profit from state enterprises goes to the states. Thus, if the sources of income or the payer of income tax is not found in the taxation powers of either government, an issue of residual tax could arise.

Sometimes the issue of residual taxes may arise with regard to the problem in demarcating the precise scope of the constitutionally assigned tax powers. For example, Article 97(6) mentions the power of a state *"to levy and collect taxes on income derived from private houses and other properties within a state"*.

The concurrent power of taxation, as it originally has appeared in the Constitution, could lead to inter-jurisdictional competition (centre-state, or state-state) or conflicts concerning a better control of taxes. It might as well create a serious inconvenience to taxpayers, a greater possibility of tax evasion and inefficient administration which may have dire consequence upon the limited revenue source of the country. In fear of ensuing controversies, some countries that do not have a well developed tax administration system avoid complicated approaches and rather prefer to leave the subject to the central government.

Questions that matter

1. Discuss the fundamental concept of separation of powers.
2. Base on the system of the government discussed under this unit, to which system of the government Ethiopia belongs?
3. What is the difference between horizontal and vertical division /separation/ of powers?
4. Write the three basic principles of separation of power.
5. Discuss the structure, composition and functions of Federal Organs in Ethiopia (The Executive, the Legislature and the Judiciary),
6. Despite the fact that it has its own drawbacks, discuss how the semi-presidential system of the government tries to strict a balance between the parliamentary and presidential system of the government.

UNIT VII

FORMS OF STATE

Unit Objective

Dear students, after reading this unit, you will able to:

- Understand the definition, characteristics and concept of unitary state, federation and confederations
- Appreciate common features of federations
- Understand enumerated Powers (Express Powers), reserved Powers, concurrent Powers and delegated Powers (The Sphere of National Authority).

Introduction

Different countries of the world are structured and formed their state following different approaches. conventionally, there are three types of state structure. these are a unitary form of state, Federal form of state structure and a nonfederal form of state structure. Each have its own historical development and associated with the history of the nation and the type of polity they incorporate.

? What is meant by unitary, federations, confederation and Empire state? Describe their distinguished features?

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7.1 Unitary state, federation and confederation

7.1.1 Unitary states

A unitary state is sometimes one with only a single, centralized, national tier of government. However, unitary states often also include one or more self-governing regions. The difference between a federation and this kind of unitary state is that in a unitary state the autonomous status of self-governing regions exists by the sufferance of the central government, and may be unilaterally revoked. While it is common for a federation to be brought into being by agreement between a numbers of formally independent states, in a unitary state self-governing regions are often created through a process of devolution, where a formerly centralized state agrees to grant autonomy to a region that was previously entirely subordinate. Thus federations are often established voluntarily from 'below' whereas devolution grants self-government from 'above'.

7.1.2 Federations

A federation (Latin: *foedus, foederis,* 'covenant'), also known as a federal state, is a political entity characterized by a union of partially self-governing states or regions under a central (federal) government. In a federation, the self-governing status of the component states, as well as the division of power between them and the central government, are typically constitutionally entrenched and may not be altered by a unilateral decision of either party, the states or the federal political body.

The governmental or constitutional structure found in a federation is known as federalism. It can be considered the opposite of another system, the unitary state.

Federations may be multi-ethnic and cover a large area of territory (e.g. India), although neither is necessarily the case. The initial agreements create a stability that encourages other common interests, reduces differences between the disparate territories, and gives them all even more common ground. At some time this is recognized and a movement is organized to merge more closely. At other times, especially when common cultural factors are at play such as ethnicity and language, some of the steps in this pattern are expedited and compressed.

In a federation the component states are in some sense sovereign, insofar as certain powers are reserved to them that may not be exercised by the central government. However, a federation is more than a mere loose alliance of independent states. The component states of a federation usually possess no powers in relation to foreign policy, and so they enjoy no independent status under international law. However, German Lander do have this power which is beginning to be exercised on a European level. A federation often emerges from an initial agreement between a numbers of separate states. The purpose can be the will to solve mutual problems and to provide for mutual defense, or to create a nation state for an ethnicity spread over several states.

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Some federations are called asymmetric because some states have more autonomy than others. An example of such a federation is Malaysia, in which Sarawak and Sabah entered the federation on different terms and conditions from the states of Peninsular Malaysia.

A federation often emerges from an initial agreement between a numbers of separate states. The purpose can be the will to solve mutual problems and to provide for mutual defense, or to create a nation state for an ethnicity spread over several states. The former was the case with the United States and Switzerland, the latter with. However, as the histories of countries and nations vary, the federalist system of a state can be quite different from these models. Australia, for instance, is unique in that it came into existence as a nation by the democratic vote of the citizens of each state, who voted "yes" in referendums to adopt the Australian Constitution. Brazil, on the other hand, has experienced both the federal and the unitary state during its history. Some present day states of the Brazilian federation retain borders set during the Portuguese colonization (i.e. previous to the very existence of Brazilian state), whereas the latest state, Tocantins, was created by the 1988 Constitution for chiefly administrative reasons.

7.1.3 Confederation

A confederation, in modern political terms, is usually limited to a permanent union of sovereign states for common action in relation to other states. The closest entity in the world to a confederation at this time is the European Union. While the word "confederation" was officially used when the present Canadian federal system was established in 1867, the term is recognized to be a misnomer since Canadian provinces are not sovereign and do not claim to be. In the case of Switzerland, while the country is still officially called the Swiss Confederation (Confoederatio Helvetica, Confédération suisse) this is also now a misnomer since the Swiss cantons lost their sovereign status in 1848.

In Belgium, however, the opposite movement is under way. Belgium was founded as a centralized state, after the French model, but has gradually been reformed into a federal state by consecutive constitutional reforms since the 1970s. Moreover, although nominally called a federal state, the country's structure already has a number of confederational traits (ex. competences are exclusive for either the federal or the state level, the treaty-making power of the Federating

units without almost any possible veto of the Federal Government). At present, there is a growing movement to transform the existing federal state into a looser confederation with two or three constitutive states and/or two special regions.

By definition, the difference between a confederation and a federation is that the membership of the member states in a confederation is voluntary, while the membership in a federation is not. A confederation is most likely to feature these differences over a federation: (1) No real direct powers: many confederal decisions are externalized by member-state legislation. (2) Decisions on day-to-day-matters are not taken by simple majority but by special majorities or even by consensus or unanimity (veto for every member). (3) Changes of the constitution, usually a treaty, require unanimity.

Over time these terms acquired distinct connotations leading to the present difference in definition. An example of this is the United States under the Articles of Confederation. The Articles established a national government under what today would be defined as a federal system (albeit with a comparatively weaker federal government). However, Canadians, designed with a stronger central government than the U.S. in the wake of the Civil War of the latter, use the term "Confederation" to refer to the formation or joining, not the structure, of Canada. Legal reforms, court rulings, and political compromises have somewhat decentralized Canada in practice since its formation in 1867.

7.1.4 Empire

An empire is a multi-ethnic state or group of nations with a central government established usually through coercion (on the model of the Roman Empire). An empire often includes self-governing regions, but these will possess autonomy only at the sufferance of the central government. On the other hand, a political entity that is an empire in name, may in practice consist of multiple autonomous kingdoms organized together in a federation, with a high king designated as an emperor. One example of this was Imperial Germany.

7.2 Comparison with other systems of autonomy

7.2.1 Federacy

A federacy is essentially an extreme case of an asymmetric federation, either due to large differences in the level of autonomy, or the rigidity of the constitutional arrangements. The term federacy is more often used for the relation between the sovereign state and its autonomous areas.

7.2.2 Devolution

A federation differs from a devolved state, such as the United Kingdom and the Kingdom of Spain, because, in a devolved state, the central government can revoke the independence of the subunits(Scottish Parliament, Welsh National Assembly, Northern Ireland Assembly in the case of the UK) without changing the constitution.

7.2.3 Associated States

A federation also differs from an associated state, such as the Federated States of Micronesia (in free association with the United States) and Cook Islands and Niue (which form part of the Realm of New Zealand). There are two kinds of associated states: in case of Micronesia, association is concluded by treaty between two sovereign states; in case of Cook Islands and Niue, association is concluded by domestic legal arrangements.

In general:

d. **In a federal system,** powers of governments are divided between government for the whole and governments for parts of the country.In such a way thateach government is independent and none is subordinate to the other and legislature in both cases have limited powers.

e. **In a unitary system** on the other hand, the legislature of the whole country is the supreme law-making body and it has the mandate to allow other legislatures to exist and exercise their powers while reserving the right to overrule them as they are subordinate to it.
f. **In confederate form of government,** the government of the whole country is rather subordinate to the governments of the parts.

7.3 Federalism: a brief overview

? dear learners, What are the distinguishing characteristics of federalism?

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Definition and Characteristics: The term "Federalism" "federation," "federal union," or "federal system" refers to a federated sovereign state formed by establishment of a closely-knit, or tightly-knit, union of two or more smaller political communities, which, after formation of the union, are no longer sovereign (completely independent) but do retain a significant degree of autonomy (partial self-government). The smaller political communities that are members of the larger federal union possess and exercise a substantial amount of home rule, but, at the same time, are bound by the constitution and constitutionally valid laws of the national government, or central government i.e., the general, or common, government over the entire federation and country.

There are important features which distinguish federalism from unitary government on the one hand and from confederal government on the other characteristics that distinguish a federal union from a governmental system characterized by a very high degree of political centralization as well as from a governmental system that is almost completely decentralized. The distinguishing features of federalism, as a set of constitutional power relationships between a country's central government and the governments of its local or regional political

subdivisions, place the federation somewhere in between the high level of centralization that characterizes the unitary state and the thoroughgoing decentralization that defines the confederation..

Unlike a confederation, the general government of a federation -- the national, or central, government of the federated sovereign state has unchallenged constitutional authority to speak, decide, and act for the entire country in its relations and dealings with foreign governments. In this sense, the national government is the sole possessor and exerciser of sovereignty. Only the national government can operate as the government of a completely independent political community with absolute power to chart its course in the arena of international relations.

The smaller regional or local political communities comprising the larger, federated sovereign community the member "states" or "provinces" of the federal union -- are not sovereign states (as they would be in a confederation). That is, the smaller communities are neither completely nor virtually independent. Instead, they are semiautonomous i.e., partially self-governing. They possess autonomy, not sovereignty. However, the degree of autonomy, or self-government, is substantial.

In the case of a federation, the national constitution /the constitution over the whole country/ divides and distributes the constitutional powers of government between the national government and the constituent political units the smaller communities comprising the larger community. The national constitution recognizes the existence of two levels of government in the country: (1) the national, or central, government and (2) the governments of the smaller regional communities. And the national constitution grants substantial authority to each of the two levels of government -- national and regional. Each level of government is given the right to make final decisions on at least some governmental activities and services.

In a federal system, the national constitution protects the right of each level of government to exist. Legally, neither level of government can destroy the other level. The U.S.A., for example, has been referred to as "an indestructible union of indestructible states."

In a federal union, the national constitution gives the central government control over matters of general, or common, concern to the country as a whole and permits the constituent political communities to regulate matters of more regional or local concern.

Neither level of government in a federation receives its powers from other. The constituent communities do not receive their powers from statutes enacted by the national legislature. And the national government does not receive its powers from decisions and actions of the regional legislatures. Both levels of government national and regional receive their respective sets of powers from a common source, and that common source is the national constitution.

Both levels of government in a federal union operate through their own agents and exercise power directly over individuals. In a given geographic, or territorial, region within the country, two different governments one national, and the other regional -- simultaneously govern the same land and people.

Under ordinary conditions within the country, neither level of government in a federal system is dependent upon the other for enforcement of its decisions within its own constitutional sphere of authority.

7.4 Common features of federations

1. Written and Rigid Constitution

A federation must have a written constitution. A federation is a political partnership of various states and consequently there must be a written constitution.

The constitution of a federation should be better rigid so that it could be regarded as a sacred agreement, the spirit of which should not be easily violated. A flexible constitution allows scope to the central government to curtail the autonomy of the federating states.

2. Special Judiciary

In a federation there are possibilities of constitutional disputes arising between the federal centre and the units or between one unit and another or between the citizens and the government. All these disputes are to be adjudicated in the light of the constitution.

For this purpose a special judiciary with wide powers must be established. It should act as the custodian and guardian of the constitution. It should be vested with powers of declaring any law, national or local, ultra virus if it is at variance with the articles of the constitution.

3. Division of Powers

In a federal government, the powers of administration are divided between the centre and the units. The powers may be distributed in one of the two ways. Either the Constitution states what powers the federal authority shall have or leaves the remainder to the federating units, or it states what powers the federating units shall possess and leaves the remainder to the federal authority.

The remainder is generally known as residuary powers. The first method was employed in America and the second in Canada. The federal government in U.S.A., for example, is weak in relation to the states and reverse is the case with Canada.

4. Supremacy of the Constitution

The constitution is the supreme law in a federation. Neither the central government nor the government of the units can go against its spirit.

5. Double Citizenship

Citizens in a federal state have dual interests and they should be given rights of double citizenship citizenship of the state wherein they are domiciled and citizenship of federal state as a whole.

7.5 Allocation of competence in federations (The Scheme of Power Distribution)

1. Delegated Powers (The Sphere of National Authority):

The delegated powers are the powers granted to the national government by the Constitution. The delegated powers are the powers of government which the states gave up when they ratified the Constitution and which were vested in the central government by the Constitution.

For example, there are two categories of powers delegated to Congress by the U.S. Constitution: (1) the enumerated, or express, powers and (2) the implied powers.

2. Enumerated (Express) and Implied powers:

a. Enumerated Powers: The enumerated powers, or express powers, of Congress are those powers enumerated listed or mentioned in so many words in the Constitution as grants of authority to Congress. Particular clauses in the Constitution explicitly delegate these powers to Congress.

b. Implied Powers (Powers Implicit in the Constitution): The implied powers of Congress are those powers which are not listed or mentioned in the Constitution, but are deemed by Congress and the U.S. Courts to be reasonably implied from the enumerated, or expressly delegated, powers of Congress.

3. Inherent Powers of the National Government:

The inherent powers of the national government are powers that do not depend on the constitutional delegations of power, neither delegation by enumeration nor delegation by implication. The national government's inherent powers in foreign

affairs inherent in the national government as the sole spokesman and representative of a sovereign state,

Examples of the inherent powers of the U.S. national government include: authority to acquire by discovery and occupation territory outside the existing boundaries of the U.S.A. and authority to make and enforce immigration laws regulating, limiting, and prohibiting the entrance of aliens into the U.S.A.

4. Reserved Powers: Residual Powers (The Sphere of State Authority):

The reserved powers, or residual powers, make up the sphere of political authority allocated to the states by the U.S. Constitution. The reserved powers of the states are the powers which the Constitution neither delegates to the national government nor denies to the states. The Constitution reserves these powers to the states, or the people. The reserved powers are original, general, inherent, and largely undefined.

Examples of the reserved powers include state authority to adopt and change state constitutions and organize state governments; Organize and establish local governments; Exercise the general police power the power to protect the public health, public safety. public morals, and public welfare within the borders of a state; (The general police power of a state is the power to regulate the conduct of individuals within the borders of that state in order to protect the health, safety, morals, and welfare of the citizens of the state. In short, it is the power of the state to act in the public interest within the state power to regulate human conduct to safeguard and promote the general welfare, or common good of the state.)Protect life and property and maintain order within a state, under ordinary conditions; Set up tax-supported systems of public education, e.g., state-supported elementary and secondary schools and state-supported colleges and universities.

***5*. Concurrent Powers (The Sphere of Shared Authority):**

The concurrent powers constitute the sphere of authority shared by the states and the national government under the U.S. Constitution. The concurrent powers can be exercised by the central government and the states concurrently, i.e., simultaneously (at the same time).

Examples of the concurrent powers include an authority to lay and collect taxes, spend public funds in the public interest, i.e., spend the taxpayers' money to provide for the general welfare, or common good, borrow money on the public credit, charter banks and other corporations, make and enforce laws, Establish courts, exercise the power of eminent domain, i.e., the right to take private property for public purposes, and Regulate intrastate commerce, i.e., regulate trade and other economic activities carried on within the borders of a state.

7.6 Salient Features of Ethiopian federation

1. Unicameral Legislature

The 1995 Ethiopian Constitution provides for a two house federal parliament: (HoPR) and (HoF). But this is in some sense misleading because the second/upper chamber (HoF) is not part of the law making process at federal level. When we are talking about a genuine federal system, we are referring to the system, which guarantee autonomy to the states and incorporate the states in the central decision-making process..

2. Federal comity (No federal supremacy clause)

In many federations, the constitution has provision, which regulates the potential for conflict between the centre and state law. In case of overlap of a matter between the three lists, for instance in India, predominance has been given to the Union legislature. The Ethiopian Constitution is silent as far as the thorny issue of regulating.

3. Intergovernmental relation

In federal systems, central and constituent units are linked in a mutually interdependent political relationship. Governments usually find that their collective interests are best served when they seek cooperative solutions through intergovernmental channels. The nature and scope of intergovernmental cooperation in federations depends on a variety of factors. Countries with deep linguistic and ethnic cleavages coinciding with jurisdictional boundaries sometimes experience greater difficulty in securing harmonious intergovernmental relationships than countries whose social cleavages do not coincide with jurisdictional boundaries

The successes and failures of federations during the past half century point to five major lessons, First, federations combining shared-rule and self-rule. Thus, failure to combine both shared rule and self-rule entails failure of federations. Second, the degree to which federations have been effective has depended upon the wide degree of public acceptance of the need to respect constitutional norms and structures and the rule of law. Third, equally important for the effective operation of federations has been the development of mutual faith and trust among the different groups within a federation and an emphasis upon the spirit of tolerance and compromise. Lack of creating mutual understanding among the people may considered as a factor of failure. Fourth, lack of democratic institutions is another factor. It should be noted that all these cases of failed federations have occurred where democratic institutions were weak or lacking. Their failure may be attributed more to their undemocratic character than to their federal character. This suggests that fully democratic processes are a fundamental prerequisite to effective federation. Fifth, the extent to which a federation can accommodate political diversity is likely to depend not just on the adoption of federal arrangements, but upon whether the particular form or variant of federation that is adopted or evolved gives adequate expression to the desires and requirements of the particular society in question.

4. The Role of HoF in Intergovernmental Relations

Intergovernmental relations are one of crucial aspect of federal system. It is option for enhancing the participation of states on matters shared between the federal and states. The Ethiopian second chamber, unlike the upper houses in many federations, has no law-making power. Constitutional adjudication, secession issues and the transfer of revenue are the major functions assigned to the House of Federations. It is the HoF that determines the criteria for the allocation of concurrent tax (Article 98) as well as on the subsidies that the states receive from the federal government.

The HoF has also the powers to decide on issues related to self-determination promoting the equality of the peoples; to decide on disputes or misunderstandings that may arise among states; to exercise concurrent powers together with the HoPR, and this includes the residual power on tax, election of the federal president, and constitutional amendment under Articles 104 and 105.

Questions that matter

1. ✍Describe the main difference of the unitary state, federation, empire, associated state, devolution federacy and confederations.
2. ✍List out the common features of federations and compare with the Ethiopian present federal situations.
3. ✍The 1995 FDRE constitution is lacking federal supremacy clothes. If this is the reality in the present situation of the Ethiopia, what if the law of the center is in conflict with the law of the regions? Which law is given priority? Why?
4. ✍Discuss the difference between enumerated Powers (Express Powers), reserved Powers, concurrent Powers and delegated Powers (The Sphere of National Authority) and the principle in which those powers designed to each tires layers of the government.
5. ✍If we look at Its powers critically, does the House of the Federation seems an indirect representative of the Regional States of Ethiopia? Discuss.

UNIT VIII
CONSTITUTIONAL INTERPRETATION

8.1 Unit Objectives:

Dear learners, after reading this unit, you will able to:

- Understand the concept of judicial review,
- Appreciate The underlying principle of judicial review is that,
- Understand the need for constitutional interpretation, who should be empowered to adjusted constitutional issues and models of constitutional interpretation
- Realize the powers and organs of constitutional interpretation, reasons to have constitutional court, and principles of constitutional interpretation

8.2 Introduction

Constitutions are unique legal documents in any legal system. As a result their interpretation requires an extra-care just as much as their making and amendment does. In most systems, interpretation of the constitution requires an extra-ordinary power vested in the interpreter. In the systems where the courts are mandated to interpret the constitution, (USA, or India, or Canada) the courts have the extra-ordinary powers of judicial review.

In other systems, (e.g., in Germany, Australia, most of the courtiers of the East and Central Europe, or South Africa), has the special court which deals with the exclusive task of the constitutional interpretation, is established. Such institutions are known so far by the name constitutional court. In yet other system where other institutions other than the courts are entitled to interpret the constitution, we have what might be called political (or better, legislative) interpretation. In systems such as that of Ethiopia we have a mixture of what is essentially political, or legislative, interpretation with the semblance of what might be called special interpretation done by a council of constitutional inquiry. Thus the ultimate interpreter of the constitution is the HOF assisted by CCI an institution composed by largely of legal experts-albeit not entirely of constitutional law.

? Dear learner, What initiates the need for constitutional interpretation? When constitutional interpretation is to be done? Who should be empowered to adjusted constitutional issues? What are the models of constitutional interpretation? What are the Principles of constitutional interpretation?

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8.3 The concept of judicial review

The principle of judicial review was first introduced in 1800. It was in the famous case Marburg Vs Madison that the federal Supreme Court asserted its power to review the conformity of legislation with the constitution and disregard a law held to be unconstitutional. The principle of separation of power is supplemented by an equally important concept of 'check and balance', the constitutionality of the legislative acts are supervised by the judicial branch of government.

In Marbury Vs Madison case, chief justice Marshall set the precedence of judicial review and explained the logical justification of judicial interpretation of

constitution and court's power to annul legislative acts in contradiction with the constitution as follows:

> *"The constitution is either a superior, paramount, unchangeable by ordinary means, or it is on a level of ordinary legislative acts, and like other acts, is alterable when the legislature shall Pleased to alter it. Between the alternatives there is no middle ground. If the former part of the alternative be true, then a legislative act contrary to the constitution is not a law; if the latter parts to be true, then written constitution are absurd attempts, on the part of the people to limit a power in its own nature illimitable. Certainly all those who have framed written constitutions contemplate them as forming the fundamental and paramount law the nation, and consequently the theory of every such government must be that an act of the legislature, repugnant to the constitution, is void. If a law is in opposition to the constitution; if both the law and the constitution apply to a particular case, the Court must decide conformable to the constitution disregarding the law. This is of the very essence of duty. It is emphatically the province and duty of the judicial department to say what the law is.*

Judicial review is the power of courts to pass judgment upon the constitutionality of the legislative acts which fall within their normal jurisdiction. Courts can refuse to enforce a legislative which are unconstitutional and hence void. Judicial review was first introduced in the US. There is no express provision empowering the court to adjuster constitutional issues in the US constitution. The judiciary was the weakest of the three branch of government before the, chief justice Marshall.

The underlying principle of judicial review is that, a constitution is part of the law and it therefore falls within the power of the judge to interpret it. It is the duty of the judges to apply and interpret the law and in doing so if a judge finds contradiction and inconsistency between two laws of different hierarchies; **i**t is the duty of the judge to apply the higher law. Judges decide the meaning not only of the rule of ordinary law but also of the law of the constitution. Judges, who

given the security of life tenure, are neutral officials who will simply interpret and enforce the constitution according to its spirit.

In order to safeguard the supremacy of the constitution, a special organ checking the constitutionality of laws is indispensable. The assertion that the constitution is a supreme law would have no meaning unless there is some authority to safeguard the constitution against violation.

When constitutional interpretation is to be done? It is done when the text is unclear**.** Generality is one of the distinctive characteristics of constitution. Constitutional provisions are intended to stay long period and accommodate changing circumstances of the country. Constitutions by their nature are stated vaguely so that they will serve for generations. Due to their generality, constitutions have loopholes or may be over vague; when a justifiable issue is presented before the interpreter in order for it to be initiated to the task. Refers to the claimable interest to be articulated /is called concrete review of constitution/.

Who should be empowered to adjusted constitutional issues is a source of controversy among politicians and constitutional lawyers. Should this power be granted to the Courts? If so, should it be any court or a special constitutional court? Should be left to the legislature, a political body? Or should the people be directly empowered to interpret the Constitution?

8.4 Models of constitutional interpretation

The question of who shall interprets the constitution raise the issue of tension between democratic theory and constitutionalism theory as well. Who shall we trust? Who is the worth custodian of the constitution? Who best preserve and protect the integrity of the constitution? This leads to the opinion between

democratic institution or judicial institution? The funders have a better wisdom/understanding/.The funders have a better character. The funders created a special constitutional movement and mobilized people and then can interpreted in a precedent manner b/c special democratic experience was there.

8.4.1 Court model:

a. Constitutional/special/ court model (Centralized model) e.g. Germany, Austria, European countries.

Reasons to have constitutional court are;

1. Nature of legal system: In continental law we do not have principle of stare decision (non applicability of past decision). As the result, non uniformity of the decision may arise on the same constitutional issue and this leads to unstable governance.

2. The strong existence of parliamentary supremacy in Europe: If the judge nullifies the decision of the parliament it is unacceptable, because parliament works towards the interest of the public.

3. The nature of civil law judges: Their relations to parliament training are not suitable for constitutional interpretation. Because civil law judges are not trained to make police and law but simply to interpret and apply laws made by the parliament. So, ordinary courts lack independency, legitimacy, authority to declare the decision of the parliament unconstitutional.

b. Ordinary court model (Decentralized model): e.g.US, India, Australia…

If a law is in opposition to the constitution; if both the law and the constitution apply to a particular case, the Court must decide conformable to the constitution disregarding the law. Courts can refuse to enforce a legislative which are unconstitutional and hence void.

c. Mixed model : (e.g. South Africa)**:-** constitutional court and ordinary court. A case of constitutional interpretation starts from high court and final decision given by constitutional court. However there are some cases which are out of jurisdiction of the ordinary court.

8.4.2 Non court model

A. China model: It is the legislature national people congress which is empowered to interpret the constitution.

B. Switzerland model: federal laws are interpreted by referendum, and state laws by federal courts. The reason is parliamentary supremacy.

C. French model: They have the body known constitutional council. It is composed of 9 members,3 appointed by the president, 3 by speaker, and 3 by the senate. They do not have the nature of constitutional court. They involved in pre-screaming matters. They participate in law passing by parliament(pre-control).

8.4.3 Hybrid model

The Ethiopian: The FDRE constitution is peculiar to these four trends. It has empowered the House a Federation, a non legislative but yet a political chamber, to resolve constitutional dispute and to interpret the constitution.

8.5 Principles of constitutional interpretation

Constitutional interpretation, or constitutional construction, the term more often used by the Founders, is the process by which legal decisions are made that are justified by a constitution, although not necessarily correctly. Constitutional controversies are about whether an official act is consistent with, and authorized by, a constitution or constitutional statute or court decision. Since a constitution is a law, and the supreme law within its domain, and authorizes statutes and other official acts which have a textual expression, the principles of constitutional interpretation are essentially the same as the principles of statutory or judicial interpretation.

Most legal scholars recognize six main methods of interpretation*: **textual, historical, functional, doctrinal, prudential, equitable,*** **and** ***natural,***

although they may differ on what each includes, and there is some overlap among them.

1. **Textual**: Decision based on the actual words of the written law, if the meaning of the words is unambiguous. Since a law is a command, then it must mean what it meant to the lawgiver, and if the meaning of the words used in it have changed since it was issued, then textual analysis must be of the words as understood by the lawgiver, which for a constitution would be the understanding of the ratifying convention or, if that is unclear, of the drafters. Some Latin maxims: *A verbis legis non est recedendum*. From the words of the law there is not any departure. Meaning of words may be ascertained by associated words.
2. **Historical**: Decision based less on the actual words than on the understanding revealed by analysis of the history of the drafting and ratification of the law, for constitutions and statutes, sometimes called its legislative history, and for judicial edicts, the case history. A textual analysis for words whose meanings have changed therefore overlaps historical analysis. It arises out of such Latin maxims as *Animus hominis est anima scripti.* Intention is the soul of an instrument.
3. **Functional**: Also called structural. Decision based on analysis of the structures the law constituted and how they are apparently intended to function as a coherent, harmonious system. A Latin maxim is Nemo aliquam partem recte intelligere potest antequam totum perlegit. No one can properly understand a part until he has read the whole.
4. **Doctrinal**: Decision based on prevailing practices or opinions of legal professionals, mainly legislative, executive, or judicial precedents, according to the meta-doctrine of stare decisis, which treats the principles according to which court decisions have been made as not merely advisory but as normative. Some Latin maxims are: *Argumentum à simili valet in lege.* An argument from a like case avails in law. *Consuetudo et communis assuetudo... interpretatur legem scriptam, si lex sit generalis*. Custom and common usage... interpret the written law, if it be general. *Cursus curiæ est lex curiæ.* The practice of the court is the law of the court. *Judiciis posterioribus fides est*

adhibenda. Credit is to be given to the latest decisions. *Res judicata pro veritate accipitur.* A thing adjudicated is received as true.

5. Prudential: Decision based on factors external to the law or interests of the parties in the case, such as the convenience of overburdened officials, efficiency of governmental operations, avoidance of stimulating more cases, or response to political pressure. One such consideration, avoidance of disturbing a stable body of practices, is also the main motivation for the doctrinal method. It also includes such considerations as whether a case is "ripe" for decision, or whether lesser or administrative remedies have first been exhausted. A Latin maxim is *Boni judicis est lites dirimere.* The duty of a good judge is to prevent litigation.

6. Equitable: Also called ethical. Decision based on an innate sense of justice, balancing the interests of the parties, and what is right and wrong, regardless of what the written law might provide. Often resorted to in cases in which the facts were not adequately anticipated or provided for by the lawgivers. Some scholars put various balancing tests of interests and values in the prudential category, but it works better to distinguish between prudential as balancing the interests and values of the legal system from equitable as balancing the interests and values of the parties. It arises out of the Latin maxim, *Equitas est perfecta quædam ratio quæ jus scriptum interpretatur et emendat; nulla scriptura comprehensa, sed sola ratione consistens.* Equity is a sort of perfect reason which interprets and amends written law; comprehended in no code, but consistent with reason alone.

7.Natural: Decision based on what is required or advised by the laws of nature, or perhaps of human nature, and on what is physically or economically possible or practical, or on what is actually likely to occur. This has its origin in such ancient Latin maxims as: *Jura naturæ sunt immutabilia.* The laws of nature are unchangeable. *Impossibilium nulla obligatio est.* There is no obligation to do impossible things. *Lex non cogit ad impossibilia.* The law does not compel the impossible. *Lex neminem cogit ad vana seu inutilia peragenda*. The law requires no one to do vain or useless things. *Legibus sumptis*

desinentibus, lege naturæ utendum est. Laws of the state failing, we must act by the law of nature.

8.Precedent:this is the doctrine of *stare decisis* (let the decision stand) which means that the Supreme Court looks at its own past decisions. Technically, all courts are bound to follow the rule of law in all previous decisions by higher courts (the Supreme Court being no exception), in what is called the holding. The holding of a case is the opposite of dictum, what is irrelevant to decide a case. For example, if a case involves overturning a confession police obtained from a mentally retarded person, the part about the person being mentally retarded would be the dictum, and the rule that police should not obtain confessions from any mentally challenged person would be the holding. Advocates claim that precedent serves as a clear-cut guide, makes interpretation predictable, and keeps the Court from reversing itself. Critics claim that precedent is used as a weapon rather than guide, justices often pick and choose which precedents they like, and that the Supreme Court has generated so much precedent that support for any conclusion is possible. Precedent is often used as a rationale to limit the rights of criminal defendants. The leading proponents of precedent today are Justice Rehnquist and to a lesser extent, Justice O'Connor. Precedent was present in the reasoning behind the famous desegregation case of Brown v. Board of Education (1954), although that case also involved social scientific testimony that Justices who follow precedent don't always favor.

9.Logical: this is the approach that justices ought to engage in formal reasoning, usually in the form of a syllogism, a type of logic which draws a conclusion from a major and minor premise. Advocates claim that it gives legal reasoning a scientific justification. Critics claim that minor premises are often faulty and lead to invalid conclusions. Currently, there are no Supreme Court justices that use this method. The most famous case to use logical reasoning is Marbury v. Madison (1803) which created the right of judicial review.

10. Structuralism: this is a Constitution as "living document" approach which looks at each and every case as unique, and is more concerned with remedy-making than rule-making. More case specific than philosophical, this method

usually results in a balancing test, matching the powers of government on one side and the rights of individuals on the other side. It's unknown how many Supreme court justices use this method, but it's assumed the logic behind the famous abortion case Roe v. Wade (1973) is the idea of a living constitution.

11.Originalism: is a principle of interpretation that tries to discover the original meaning or intent of the constitution. It is based on the principle that the judiciary is not supposed to create, amend or repeal laws (which is the realm of the legislative branch) but only to uphold them. The term originated in the 1980s but the concept is a formalist theory of law and a corollary of textualism. Today, originalism is popular among some political conservatives in the U.S., and is most prominently associated with Antonin Scalia, Clarence Thomas and Robert Bork. However, some liberals, such as Justice Hugo Black and Akhil Amar, have also subscribed to the theory.

Originalism is an umbrella term for two major theories, principally; *The original intent theory,* which holds that interpretation of a written constitution is (or should be) consistent with what was meant by those who drafted and ratified it. *The original meaning theory,* which is closely related to textualism, is the view that interpretation of a written constitution or law should be based on what reasonable persons living at the time of its adoption would have declared the ordinary meaning of the text to be. It is with this view that most originalists, such as Justice Scalia, are associated. The framework theory, which seeks to blend the living constitution principle with original meaning, is the view that the Constitution is an initial framework; which set politics in motion and makes politics possible.

8.6 Purposive Interpretation

In constitutional interpretation, “objective purpose is most important. But subjective purpose is useful in deciding among conflicting objective purposes”. The goal of interpretation according to Barak is “to achieve the purpose of law, in general, and of the individual legal text as part of it, in particular”. Therefore, the core of the enterprise is to provide a theory of what constitutes the rule of law in an age when all law is constructed. We see this in Barak’s

listing of some of the fundamental assumptions of this book: 1) “There is no true interpretation, because the reader accesses a text only after interpreting it” Thus, the goal should be to find the best system of interpretation so that texts and the system as a whole achieve their goals; 2) “Human beings are complicated creatures, and…no one explanation, no one theory, and no one system can encompass the full complexity of the human condition.

Questions that matter

6. ✍Discuss each model of constitutional interpretations.
7. ✍Discuss the Principles of constitutional interpretations.
8. ✍What are underlying principles of judicial review?
9. ✍Innumerate the rationale behind for constitutional interpretation.
10. ✍Who is the best custodian of the constitution? Whom we shall trust?
11. ✍What is rational to have special constitutional court?
12. ✍Based on the FDRE constitution articles 9, 13/2, 83. 84 and 106 of the Amharic version and proclamation No. 200/2001 and 201/2001 argue for and against whether the Ethiopian courts have the power to interpreter constitution.

UNIT IX

FUNDAMENTAL RIGHTS AND FREEDOMS UNDER THE FDRE CONSTITUTION

9.1 Unit Objective

After reading this unit, students will able to:

- Appreciate the difference and similarities in individual and group rights,
- Appreciate the human Rights institution and how human Rights can be enforced,
- understand ground for state of emergency and human rights during state of emergency and
- understand derogable and non-derogable rights during state of emergency.

9.2 Unit introduction

Dear learner, under this unit you will learn what group and individual rights are how they can exist, the relation that they have in common and their difference. Also this unit explores conditions to declare state of emergency, the protection of human rights during state of emergency in other words you will understand derogable and non-derogable rights under the states of emergency.

? Dear student, what is a human right? who gave that right?

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9.3 Human Rights: International Perspective

At the end of WW-II, there was a concern that the atrocities and destructions caused by the war wouldn't happen again, for that, an international organ was deemed necessary. As a result the UN was established by a charter adopted in 1945 by the San Francisco Conference. At the time of the preparation of the Charter, there were suggestions for the incorporation of a Bill of Rights, though

there were some who opposed the idea. As a result, the Charter didn't incorporate bill of rights. However, the document contains a number of important references to the promotion of Human Rights, which are worth considering.

9.3.1 The Universal Declaration of Human Rights (UDHR)

Immediately after the coming into force of the Charter, a recommendation calling the Economic Social and Cultural Committee of the UN (ECOSOC) to establish a Commission on Human Rights and direct it to prepare an International Bill of Rights was adopted by the General Assembly in February 1946. The Council acted on it immediately, and the Commission on Human Rights was established. It was recommended by majority vote that since the Council consisted of representatives of governments, the members of the Commission should be elected by the Council from a list of nominees submitted by governments, but serve in an individual capacity. Some States opposed this proposal, notably the former USSR, and the Council decided the Commission should consist of eighteen members, appointed by the governments which were selected by the Council. Finally the Council decided to leave it to the governments concerned to decide whether to appoint government officials or independent persons. So governments are members of the Commission, while its members, in fact, attend as representatives of governments. (Membership has increased over a period of years).

In 1947, the Commission assumed its first task, i.e., the drafting of bill of Rights in three parts; a Declaration, a Convention containing legal rights and obligations and measures of implementation – a system of international supervision and control. A committee composed of eight members prepared and submitted through the ECOSOC a draft declaration to the General Assembly, and the Declaration was adopted on 10 December 1948. The Commission got established, headed by Eleanor Roosevelt and by the Modern Human Rights Movement. The Universal Declaration of Human Rights (UDHR) by Resolution 217 (III), with forty eight votes in favor, none against and eight abstentions.

The Universal Declaration of Human Rights is not the product of one over a night; it is a cumulative effect of many acts that had taken place before 1948. In other words, major historical acts pertinent to the UDHR include the following;

1. Magna Cartha known as the Great Charter, signed in 1215 by King John of England. The two most important legal clauses of Magna Cartha included are:
    a. Clause 40 promises *"to no one will we sell, to no one will we deny or delay right of justice"*. This clause establishes the principle of equal access to Court for all citizens without exorbitant fees.
    b. Clause 39 promises *"no freeman shall be taken or imprisoned or dismissed except by lawful judgment of his peers or by the law of the land"*. This clause establishes that the King would follow the legal procedure before he punishes someone. Because of this departure it is considered as a corner stone for democracy; it became the first step leading to codifying human rights laws.

2. The second act that had an effect on the codification of Human Rights is the declaration of rights of citizens. The declaration was adopted by the French Revolution. The declaration stated that men are born free and equal with the rights to liberty, property and security. All people are guaranteed equality before the law, granted of freedom, unlawful arrest, freedom of speech, press, religion... etc. This concept of the declaration served as the main point in the declaration of Human Right.

3. The American Declaration of Independence in 1776. This Declaration laid two facts, namely:
    a) The natural equality of man and have certain inalienable rights,
    b) The purpose of the government is to secure those inalienable rights, and
    c) Of man the government gets the power; i.e. from the consent of the governed people.

All these declarations contributed a lot to the development of UDHR. The concept of the International Human Rights owes its recognition beginning to the end of the Nazi times (1939-1945) as millions of people – specially the Jews – were unlawfully exterminated by the Nazis. Allied Forces that won the war set out the UDHR to ensure that such a thing could never happen again.

The outline of the Universal Human Right Declaration includes the right of life, liberty, security of person, freedom of conscience, religion, opinion and expression, association and assembly, and freedom from any arbitrary arrest. The Socialist Countries placed a higher emphasis on the right to work and adequate housing, while many liberal Capitalist Nations believe on the freedoms from government control on matters such as the right to privacy, fair trial and free press as more important. In some societies the concept of Human Rights is shaped by religion such as Llama, but despite these differences, there is wide agreement in the content of the Declaration, on the adoption on the Fundamental Rights such as protection against arbitrary arrest, torture, and summary execution.

Having stated these facts, would like to mention that there are some scholars now which argue that UDHR does not possess a legally binding force; that is to say it cannot create any obligation against member states which might say no, pointing that there are no mechanisms set for the implementation of the articles set forth in the declaration; i.e. the UDHR is simply a statement of intent and principles, nothing more. Why? Because it simply is a Declaration, it is not a Treaty or Convention.

Nevertheless, a number of states immediately included selected portions of UDHR in to their domestic laws or in to their respective Constitutions. This shows that the UDHR has got quite a significant recognition by UN member governments. Due to its age, the UDHR got the name Customary International Law and now constitutes a standard to all – applicable to all nations whether or not they have expressed their consent or not.

The Rights Protected

The Declaration is the first comprehensive International Human Rights instrument incorporating civil, political, economic, social and cultural rights in one document. However, as its name implies, it neither was intended to neither impose legal obligations on states, nor establish supervisory organ. As a result, some critics have questioned its significance. Its defenders state that apart from and in addition to establishing goals for states to work towards, its adoption by the UN General Assembly without a dissenting vote reflects the international moral commitment of states; it imposes a moral obligation which states may not ignore. The operative part of the Preamble reads as follows:

> *"The General Assembly proclaims this universal declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of member states themselves and among the peoples of territories under their jurisdiction."*

9.3.2 International Convention on Civil and Political Rights (ICCPR)

After the adoption of the UDHR, the Commission on Human Rights embarked on the second part of the Bill of Human Rights, namely the development of norms that were indisputably binding **t**o those states to adhere to. The Commission proposed in 1950 to keep all rights in one Convention. However, USA and some other Western Countries argued against this proposal and in 1951 they succeeded in persuading the General Assembly not to follow the recommendation of the Commission. Instead it was decided that two separate conventions be adopted: one on civil and political matters the other on Economic, Social and Cultural. In hind sight, one can question whether this decision has well served the cause of Human Rights. Today, most proponents find it essential to emphasize the

interrelationship and mutually reinforcing nature of all these various rights. The tendency in the subsequent development of standards, starting already in the sixties with the convention on the Elimination of Racial Discrimination has been to both bring up a particular subject and regulate it in greater depth; protection of particular needs. Concerning the substantive rights dealt with in treaties or instruments of later times such as the kinds on refugees, against racial discrimination, against the discrimination on women, on children, on minorities; this approach has been followed.

It should also be noted that although the rights dealt within the Covenants are contained in the two different documents, it has often been emphasized in UN resolutions and documents that the Conventions belong together and should be seen as a whole. As of January 2001, 146 states have become parties to the Covenant on Civil and Political Rights, while 142 to the Covenant on Economic, Social and Cultural Rights. Both Covenants contain some identical provisions such as the right to self determination and the principle of nondiscrimination. In addition they have clauses that safeguarding rights should not be used as a pretext for violation of other rights.

The Rights Protected

The ICCPR lists down the rights which the Covenant is designed to protect under Articles 6-27. One can also include the right to self-determination to the list. Generally, these rights can be summarized as follows:

- The right to life
- Freedom from torture and inhuman treatment
- Freedom from slavery and forced labor
- The right to liberty and security
- The right of detained persons to be treated with humanity
- Freedom from imprisonment for failure to pay debt
- Freedom of movement and of choice of residence
- Freedom of aliens from arbitrary expulsion

- The right to fair trial
- Protection against retroactivity of the criminal law
- The right to recognition as a person before the law
- The right to privacy
- Freedom of thought, conscience and religion
- Freedom of opinion and of expression
- Prohibition of propaganda for war and incitement to national, racial or religious hatred
- The right of assembly
- The right to marry and found a family
- The right of the child
- Political rights
- Equality before the law
- The right of individuals belonging to linguistic, cultural, or religious minorities

The normative content of these rights is elaborated by the Human Rights Committee, which provides the most authoritative interpretation of the Covenant. Thus, one is required to consider the general comments of the Committee on each right, because the Human Rights Committee is the main organ supervising the implementation of the Covenant's provisions, though not binding, are the most authoritative interpretations.

9.3.2.1 Enforcement Mechanisms

As already noted one of the controversial issues during the drafting process was the measures of implementation to be included in the Covenant. Finally, an agreement has been reached for the establishment of a Human Rights Committee. Article 28 of the Covenant provides for the establishment of this Committee which thus becomes the principal organ of implementation of the ICCPR. The Committee consists of eighteen (18) members. As regards the qualifications of members of he Committee, in the first place they must be nationals of states which are parties to the Covenant; secondly, they must be persons of high moral character and

recognized competence in the field of Human Rights and, thirdly, consideration shall be given *'to the usefulness of the participation of some persons having legal experience'*. According to Article 29 and 30 of the Covenant, members are elected by secret ballot by state parties from among the nominees submitted by state parties themselves. The Covenant also provides that the Committee may not include more than one national of any state and that consideration shall be given to the principle of equitable geographical distribution and the representation of the different forms of civilization and the principal legal systems. Article 28(3) of the Covenant provides that the members of the Committee shall serve in their personal capacity. It means that though they were nominated by state parties, once they are elected they are not government (state) representatives. This is intended to ensure their independence and impartiality in discharging the duties entrusted to them by the Covenant. The Covenant deals also about term of office, working procedure, voting, etc ... The Committee monitors the implementation of the Covenant in the following two ways: a) by considering state reports, and b) by considering communications ("complaints").

A. Considering State Reports

The Covenant adopted reporting procedure as the principal means of implementation. Article 40 of the Covenant imposes on states the duty to submit reports (initial and periodic). The reports shall indicate:

a) the measures states have adopted to give effect to the rights recognized in the Covenant,
b) the progress made in the enjoyment of those rights, and
c) the factors and difficulties, if any, affecting the implementation of the Covenant.

These reports shall be transmitted to the secretary general of the United Nations, who shall transmit them to the Committee for consideration. Some criticize the reporting procedure, in general, as not effective by pointing out that reports prepared by state (government) officials would naturally not give the real Human

Rights situation in their countries. Besides, some states fail to submit reports properly and/or timely.

Though it has been acknowledged that these reports by themselves do not constitute an effective measure of control, they open an opportunity for critical examination, for drawing attention to gaps or inaccuracies in the information provided, and for comparing official statements with other sources of information on the same subject.

It has been suggested that in order for any reporting system to be effective, the following elements shall exist; (a) the cooperation of governments in providing full information, (b) the possibility of obtaining further information from other responsible sources, (c) the examination of information obtained by independent persons who are not government officials, and (d) the right of some organ or body taking part in the procedure to make suitable recommendations with the view to induce improvements in the law, procedure or practice of the country concerned.

One of the effective procedures of international monitoring and control of states' behavior vis-à-vis Human Rights is the complaint procedure. This is a procedure by which one may submit complaints to and obtain remedy from the appropriate organ alleging that a state party has not discharged its obligation; i,e. violated the rights recognized in the Covenant. Does the ICCPR provide for such procedure? The Covenant doesn't use the world 'complaint'. As state parties seem to have deliberately avoided the use of this term, which appears to make them sensitive in fear of being accused for violation of rights before any international organ, the Covenant rather uses 'communications' as a moderating term. The Covenant recognizes two types of communications, namely: inter-state and individual communications,

A. Inter-State Communications

As cited earlier, during the drafting process of the Covenant, one of the controversial points was the mechanism of international control and supervision. By 1950 the Commission on Human Rights had decided that there should be a

permanent body of independent persons to examine alleged violations; normally – non-governmental organizations. Also, since the Covenant provides for a procedure by which inter-state disputes can be submitted and considered under Articles 40, 41 and 42, the Human Rights Committee has the power to entertain inter-state communications if the conditions necessitate. Here, one of the most important conditions is whether a state has recognized, by a separate act, the competence of the Committee to consider inter-state disputes. A separate declaration recognizing this competence, in addition to the act of ratification, is a prerequisite. Meaning, the mere act of ratification of the Covenant does not amount to recognizing the competence of the Human Rights Committee to consider inter-states communications. So, the Committee can examine communications only if (1) the state alleged to have committed violation of human rights has made a declaration recognizing the competence of the Committee, and (2) the complaining state, the state that have submitted the communications, have made similar declaration.

Ever if the above conditions are fulfilled, a state party has to first follow certain procedure before it can submit its communications to the Committee (see Art. 41(1a-b). These procedures are meant to enable the states concerned to adjust the matter by themselves. The Covenant envisages, in the first place, bilateral communications and negotiations between the two states concerned. If the two states fail to solve the matter, either of the states may then refer the matter to the Committee by a notice submitted to the Committee and to the other state. The Covenant outlines the time within which the different steps may be taken.

The Committee examines the communications in closed sessions (meetings). Before dealing with the merits of the case, the Committee has to first ascertain whether the communications are admissible or not. One important notion in this regard is the principle of exhaustion of local remedies. It holds that one should not seek or obtain remedies at an international level without exhausting available local remedies. Article 41(1c), thus, provides that the Committee shall deal with a matter only after it has ascertained that all available domestic remedies have

been invoked and exhausted in the matter. However, the last paragraph states that exhaustion of local remedies shall not be a prerequisite if the application of such remedies is unreasonably prolonged. In such cases, the committee may proceed by calling for all relevant information and the state parties may be represented, make oral and written submissions. The Committee, however, cannot pass its opinions on violations. It is to make its good offices available with a view to a friendly settlement is not achieved; the committee is required to submit a report which shall be confined to a brief statement of the facts, with the functions of the committee, under Article 41, in relation to inter-state communications are very much limited. However, Article 42, of the covenant provides, another procedure. If the matter referred to the Committee under Article 41 is not resolved, the committee may, if those States consent, appoint and ad hoc conciliation commission. The Commission cannot pass binding decisions. Its activities are more or less similar to that of the Committee.

B. By Considering Communications ("Complaints").

This is a procedure by which individuals may submit communications, with a view to obtain remedy/remedies, to the Human Rights Committee claiming that a State party has violated their rights recognized by the Covenant. As we have seen earlier, one of the controversial questions during the drafting process of the covenant was on mechanisms of enforcement. Arguments for & against the idea of individual petition system were raised. Finally, the 1966 Covenant didn't recognize the individual communications procedure because States were not ready to accept it. The first Optional Protocol provides for such procedure to the Covenant, which is a separate instrument. Thus the individual communications procedure applies only in respect of those States that have ratified the Optional Protocol.

It has been commented that ...*the real test of the effectiveness of an international system for the protection of human rights is whether it permits and individual who believes that his rights have been violated to seek a remedy form an international institution....* According to the classic conception, international law

is the law that governs relations between States and the individual has no place. His interests are supposed to be protected by the State of which he is a national, and he has no *locus standi* before international tribunal or international organization. However, this conception of international law has changed over years. As a result of change of mind of States, a move towards providing individuals of the mechanism of submitting complaints was made. Thus, the Optional Protocol allowing individual communications procedure was adopted separately but in the same year as the ICCPR and entered in to force on 23 March 1976.

Article 1 of the Optional Protocol stipulates that a state party to the Covenant that becomes a Party to the present protocol recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that state Party of any of the eri8ghts set forth in covenant. Articles 2 & 3 of the protocol introduce the rule of exhaustion of local remedies and provide that communications shall be considered inadmissible if they are anonymous, abusive or incompatible with the provisions of the Covenant. Article 5, paragraph 2, introduces a further condition of admissibility, excluding communications which relate to a matter which is being examined under another procedure of international investigation or settlement. Thus, the covenant embodies the principle of pendency, which is found in many national laws/ jurisdictions.

Paragraph 2 of Article 5 also repeats the rule of exhaustion of local remedies, adding that the rule shall not apply if the domestic remedies are unreasonably prolonged. Article 4 & the remaining paragraphs of Article 5 deal with the procedure of the Committee when dealing with individual communications. According to Article 4(2), the communications must be communicated to the State Party concerned, which shall within six months submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State. Communications are to be examined in closed

sessions (Art.5(3)), and pursuant to Article 5(4) the Committee shall forward its views to the State Party concerned and to the individual.

9.3.3 The International Convention on Economic, Social and Cultural Rights (ICESCR)

One of the points of controversy during the drafting process of International Bill of Rights was whether to include Civil, Political, Economic, Social and Cultural Rights in one International Covenant. Finally, it was decided that Economic, Social and Cultural Rights should be included in a separate one. Consequently, this was agreed upon (entered into force on 3 January 1976) and the International Covenant on Economic, Social and Cultural Rights came into being upon the approval of the General Assembly of the UN on 16 December 1966. The rights contained in the ICESCR are similar but different from those found in the ICCPR except for some rights. For example, the right of all peoples to self-determination is common to both Covenants (See Article 1 of both Covenants).

The Covenant of Human Rights consists of 31 Articles of which the first 15 are of a normative character and the last 16 of are a procedural nature. In its part III, it sets out many of the fundamentals for the well being and prosperity of the individual. Each state party is under an obligation to undertake steps *"to the maximum of its available resource to with a view to achieving a progressively the full realization of the right recognized in the present covenant by appropriate means's including particularly the adoption of legislative measures."*

The obligations assumed by state parties and the international control under the ICESCR is also different from that found under the ICCPR. A core provision in Article 11, recognizes the right of every one to an adequate standard of living, including adequate food, clothing, and housing and to the continuous improvement of living conditions.

Based on this provision, some people argue that the obligation assumed by state parties is not intended to be of immediate application. They hold that the Covenant doesn't require states to implement the rights immediately, it rather lists standards which they undertake to promote and which they pledge themselves to secure progressively, to the extent possible, having regard to their resources in order to achieve progressively the full realization of this rights.

Therefore the difference between these two major covenants lies in the method of implementation. The protection of most Civil and Political Rights require few economic recourses if any. With minor exceptions, little more than legislation and a decision not to engage in certain illegal practices, not to torture people, not to imprison them arbitrarily etc… seems ton suffice.

Guaranteed Rights: The Covenant sets out a longer list and more detailed definitions of Economic, Social and Cultural Rights than those contained in the UDHR. The Economic, Social and Cultural Rights protected by the Covenant include the following:

- The right to work and rights inn work;
- The right to social security, including social insurance;
- The right to protection of the family, including special assistance for mothers and children;
- The right to an adequate standard of living, including adequate food, clothing and housing, and the continuous improvement of living conditions;
- The right to the highest attainable standard of physical and mental health;
- The right to education;
- The right to participate in cultural life and enjoy the benefits of scientific progress.

The contents of these rights are well elaborated by the Committee on Economic, Social and Cultural Rights. This Committee was created by the ECOSOC to assist it in the supervision of the implementation of the Covenant. One of the

distinguished works of this Committee is to interpret the provisions of the Covenant through what is referred to as General Comment. For a better understanding of the normative content of these rights and corresponding state obligations, you are required to look at the respective General Comments. One such comment on the right to work is provided at the end of this section.

The Covenant clearly imposes duties of some kind on states parties. It becomes necessary that states parties discharge their duty. The main system of control and supervision provided by the Covenant is a system of reporting, which the state parties have the duty to submit periodically to the Secretary-General of the UN, specifying the measures they have adopted and the progress made in achieving the observance of rights listed. The Secretary-General will send all reports to ECOSOC for its consideration. The ECOSOC may make arrangements with the specialized agencies to obtain reports on the progress made in achieving the observance of those provisions of the Covenant, falling within the scope of their activities. This is intended to enable the ECOSOC obtain relevant information from the Specialized Agencies while considering state reports. The ECOSOC may also transmit the reports of states to the Commission on Human Rights for study and general recommendation; and the state parties may then submit to the Council their comments of their general recommendations. Finally, the Council may submit a summary of the information it has received, together with its reports and recommendations of a general nature to the General Assembly and at the same time draw appropriate matters to the attention of other organs of the United Nations and the specialized agencies concerned.

It is clear that the Covenant doesn’t establish a new organ of implementation. It rather delegates the supervision of its implementation to an already existing UN organ; i.e. ECOSOC. This has been criticized by some, on the pretext that members of the ECOSOC are state representatives and not independent experts and on the grounds that the ECOSOC has other duties under the Charter.

In 1985, the ECOSOC set up a committee consisting of eighteen experts elected in their personal capacities and on the basis of equitable geographical distribution. This Committee is known as the United Nations Committee on Economic, Social and Cultural Rights. The role of this Committee is to assist the ECOSOC in supervising the Covenant.

Unlike the ICCPR, this covenant does not recognize communications procedure. For that matter, NO communications procedure is recognized yet, officially. It is important to compare this with the European Social Charter, which is intended to safeguard Economic, Social and Cultural Rights at the continental level. Though, the Charter as adopted in 1961, it also didn't recognize communication's procedure. The third Optional Protocol to the Charter adopted in 1995 provides for a system of collective complaints.

As stated earlier, the Committee on Economic, Social and Cultural Rights provides an authoritative interpretation of the provisions of the Covenant. By so doing, it explains the contents of the rights and the corresponding obligations of state parties. Because such explanations are too many to be reproduced here, you are required to look at them. Then find an example of what the Committee has to state under General Comments. This particular comment explains the content of the right to work and the obligation of the State and even non-state actors.

Despite it is problematic to evaluate and has weaknesses in gathering communications, implementation of the ICESCR directly relates to a state's economic strength and institutional capacity. It is problematic due to the complexity of defining the minimum acceptable standard; i.e. what is adequate and acceptable vary among countries and groups within countries. Since state parties have different economic, cultural, social standards, it was not possible to formulate consistent indicators of progressive realization in addition to furnishing monitoring body. This implies that the ESC Committee is supposed to devise a mechanism and value the incremental changes as to the quality of life of different societal groups. Lack of operational standards, translating abstract legal norms

into minimum standards to be followed by state parties is as well difficult to set and asses their own performance.

And, so, without effective monitoring mechanisms in place, state parties can not be strictly held responsible for their non-proper implementation or even violation of rights. This problem partly occurred due to the wordings of the provision; the Covenant's Article 2/1 made state parties to take steps according to available recourses such as to achieving full realization of rights, progressively. This, for one, seems to create ambiguity in evaluating the full realization of those rights of the Covenant vis-à-vis available resources. The other problem is that this Covenant imposes only programmatic obligations upon governments, whereas the rights to be fulfilled incrementally through ongoing programs were presumed to be obligations.

From the major reasons stated above, we can say that there are loopholes in setting a minimum standard with regard to certain rights as there are several state parties which cannot meet minimum standards. This makes us note the existence of a very wide gap between aspired set standards in the Covenant and prevailing situations in the different countries of the world. For example the covenant states for the right to work, right to medical care, and right to education. These rights, when being implemented, are directly related to the economic resource of any state party. All the same, it is not quite a defense for state parties to state that *"this is the maximum available resource we can give to our subjects."* as long as it cannot prove that it really is so. Due to this and the other factors mentioned like lack of consistent parameters, eligible 'communication' mechanisms, etc.., it is difficult to put the infringer accountable and make it receive the consequences thereof.

Despite all this, when Limburg Principles were adopted by the ESC Committee, it tried to elaborate principles for understanding and determining what constitute violations of ICESCR, but provided little guidance on how to identify and actually measure concrete violations in social and political contexts especially in the

violations resulting from specific state actions related to patterns of discrimination and taking place due to state's failure to fulfill the core minimum obligations contained in the Covenant. In general, as the Covenant's implementation depends upon the specific countries context, it will remain controversial to come-up with a universal evaluation and condemning violators mechanisms.

9.3.4 Difference between ICESCR and the ICCPR

The differences offered clarity to the UN Human Rights Charter by showing how easily it can be violated and is not specific enough. On the other hand it provided detailed rights by making the instrument binding. But it also contains 'Derogable Rights' in Article 4, which made state parties to set aside those rights for the duration of public of emergency, which is proclaimed as '*a time which threatens the life of the nation which have of temporary nature*' with the exception of the rights stated under Articles 6,7,8, paragraphs 1,2,11,15,16 and 18.

This Convention on part VI deals with institutions and procedures of supervision and control. One of the controversial issues during the drafting process was the measures of implementation to be included in the Covenant. Human Right Article 28 of the Covenant provides for the establishment of this Committee which thus becomes the principal organ of implementation of the ICCPR. The Committee consists of eighteen (18) members – persons of high moral character and recognized competence in the field of Human Rights. (As regards to the qualifications of its members, election procedures, etc .., similar to ICESCR.)

The committee monitors the implementation of the Covenant in two ways: a) by considering State reports, and b) by giving general comments. As most of the procedures employed here are similar to that outlined above, we mention only the different, important ones.

1. State reporting: this procedure is adopted as the principal means of implementation. As per Article 40 of the Covenant, state parties have the duty to submit reports (initial and periodic) as mentioned above. And in order for any reporting system to be effective, the following elements shall exist: (a) the

cooperation of governments in providing full information, (b) the possibility of obtaining further information from other responsible sources, (c) the examination of the information obtained by independent persons who are not government officials, and (d) the right of some organ or body taking part in the procedure to make suitable recommendations with a view to improvements in the law or practice of the country concerned. Also the information given by state is verified by asking information from NGO's, individuals.

2. The General Comment: since the committee is interested in the proper implementation of the Covenant, it gives comments on the reports presented when found appropriate. It could be general and specific comment. The General Comment of the Committee focuses on how that state tried to implement the Covenant, while the Specific Comment deals with the report of the state and might suggest and give recommendations by expressing its satisfaction or by stating the area of concern which that state party should improve. In addition, due to the facts that ICCPR has optional protocol and has separate implementation mechanisms, it empowers individuals to 'communicate' to the committee provided that they have exhausted their local remedies. From this we can presume that it has diverse, intangible, evasive or strong allegation as well as supervision mechanisms.

The language and terminologies used are also different in this covenant it has terms like every one has right to, no one shall be, everyone, all persons … etc this indicates that this Covenant is focusing for individuals who are subject to violation of Human Right rather than sates who are signatory to the covenant. This Covenant, in addition, doesn't depend on the resource availability of a state rather a good will to be a signatory and be obligatory on the wordings of the Convention.

Thus, to summarize:-

1. Signatories of this Covenant, since they are state parties, have obliged themselves to undertake the appropriate steps to achieve the realization of

the rights enshrined in the document. From the provision of Article 2 it's understandable that states are not compelled to provide the rights to its subjects more than what it can supply and subjects can not ask those rights as of rights; i.e. state can only provide to the extent of the maximum resource available which, by it very nature, is not uniform throughout the world. And it is difficult to set minimum standard which can be followed by every state. This allows each respective state party to be evaluated and monitored with regard to its economic, social and cultural standards. It is also clear that the Covenant doesn't establish a new organ of implementation. It rather delegates the supervision of its implementation to ECOSOC.

2. The Covenant sets out a longer list and more detailed definitions of Economic, Social and Cultural Rights than those contained in the UDHR from Article 1 to 15, which has loopholes, seems non-binding, etc...
3. The language and terminology employed is different from that of ICCPR in that it makes state parties rather than individuals involved responsible. With regard to availability of resources, particularly, any government can use it as its defense as long as it can prove the same.

9.4 Human Right under FDRE Constitution

Human rights prescribe the basic freedoms that every individual is entitled to simply because he or she is a human being. No further criteria apply in this regard. Human rights are not benefits or privileges subject to the charitable whims of any person or entity including states. They owe no allegiance to any source. The recognition of these rights in several instruments is therefore mere reiteration and reaffirmation than a fresh prescription. The Ethiopian Constitution does not pretend to originally prescribe the rights therein. The Constitution reaffirms that it is merely codifying the human rights that every person has simply because they are human beings (article 10(1)).

Human Rights and Freedoms can be categorized in number of ways using various criteria. In view of how our Constitution has arranged the provisions on Human

Rights, it leaves no option but to follow the following approach. Article 10, which deals about Human and Democratic Rights, as one of the fundamental principles of the Constitution (see title of Chapter two) breaks the whole notion into two categories: Human Rights and Democratic Rights. This same Article goes on to stipulate two provisions under it. Here is how they read:-

> *"1. Human rights and freedoms, emanating from the nature of mankind, are inviolable and inalienable."* (Emphasis added.)
>
> "2. *Human and democratic rights of citizens and peoples shall be respected*." (Emphasis added.)

Both are mandatory, but their tones are different; i.e. that of the first is strict, while that of the second is loose. The difference in the tones reminds us of the deep division between the Western approach and that of the collective approach of "the socialist camp of the Third World", during the time of signature of UDHR and thereafter. It was due to this very reason that the Treaty had to come out as a Declaration rather than a Convention. It took a long time and effort to categorize these two approaches into two basic Conventions; i.e. ICCPR and ICESCR, respectively. It must have been that the Commission and the Assembly framed the above cited two sub-articles accordingly.

Following the same scheme Chapter Three of the FDRE Constitution captioned as Fundamental Rights and Freedoms creates to catalogues of the entire bundle of Human Rights as part one and two. Part one is captioned as Fundamental Rights and part two is captioned as Human Rights: the former consisting of Articles 14-28, the latter, consisting Articles 29-44; i.e. each pertaining to the two respective Conventions.

Since each and every provisions of the FDRE on Human Rights are to be interpreted pursuant to Article 13(2) *".. in a manner conforming to the principles of the Universal Declaration of Human Rights, International Covenants on Human Rights and international instruments adopted by Ethiopia."* Part one (Articles 14-28) has to therefore should be interpreted in line with ICCPR in general, and

each Article vis-à-vis the corresponding provisions of ICCPR. The same should hold to the second part (Article 29-44) vis-à-vis ICESCR. The Developer believes that the part herein underscored is a crucial issue in understanding and implementing the entire provisions of Human Rights embodied in the Ethiopian Constitution

Among all categories of International Law, International Human Rights Law is noted for having a variety of international mechanism for ensuring their implementation in a better way. In this regard, one could mention the Commission on Human Rights, the Human Rights Committee, the Sub-Commission on the Promotion and Protection of Human Rights and others.

However, the protection and enforcement of International Human Rights Norms depends primary on the national institutions. The fine words and sentiments of International Human Rights Norms and Jurisprudence respect for Human Rights begins and ends at home, as (per Article 2 of ICCPR and its analogous article in ICESCR) imposes the obligations on the state parties themselves to respect and ensure the rights affirmed in this instruments. State parties are obliged to adopt legislative and other pertinent measures to undertake the obligations they assumed under International Law and to apply them in good faith.

The Ethiopian Constitution forcefully emphasizes the themes of democracy and respect for Human Rights; i.e. the 1995 FDRE Constitution gives Human Right Norms prominent position. It affirms the right giving it one full chapter under the title “Fundamental Rights and Freedoms”, sub-dividing it in to Human Rights /Articles 14-28/ and Democratic Rights /Articles 29-43/. Ethiopia accepted the two International Covenants on June 11, 1993. Ethiopia is not a party to the two optional protocols of the ICCPR, but is a party to CERD, CEDAW, Child Convention; i.e. conventions against torture and other cruel and inhuman or degrading treatments, on the political rights of women. It also became member to African Charter on Human and Peoples’ Rights of 1998, African Charter on Human and Welfare of the Child in 2001.

Catalogue of Rights

Classification of Human Rights in the Constitution and International Covenant on Civil and Political Rights incorporation under Ethiopian Constitution

Human Rights in the Constitution and in the International covenant on Civil and Political Rights of 16 December 1966

Topic	**Article of the Ethiopian Constitution**	**Article of the International Covenant on Civil and Political Rights**
Rights of Nations, Nationalities, and People	Article 39	Article 1 (1)
The Right to Property	Article 40	Article 1 (2)
Economic, social, and Cultural Rights	Article 41	Article 1 (2)
Rights of Women	Article 35	Article 3
Emergency Proclamation	Article 93	Article 4 (1)
Right to Life, Liberty, and the Security of the Person	Article 14	Article 6 (1)
Right to Life	Article 15	Article 6 (1)
Prohibition of Retroactive Criminal Law	Article 22	Article 6 (2)
Crimes Against Humanity	Article 28	Article 6 (2)
Right to Humane Treatment	Article 18	Article 7
Right to the Security of the Person	Article 16	Article 7
Right to Liberty	Article 17	Article 8 (1)
Rights of Labour	Article 42	Article 8 (3a)

Right to the Security of the Person	Article 16	Article 9 (1)
Right to Liberty	Article 17	Article 9 (1)
Rights of Persons Arrested	Article 19	Article 9 (2)
Rights of Persons Arrested	Article 19	Article 9 (3)
Rights of Persons Arrested	Article 19	Article 9 (4)
Rights of Persons Arrested	Article19	Article 9 (5)
The Rights of Persons Detained	Article 21	Article 9 (5)
The Rights of Persons Detained	Article 21	Article 10 (1)
Rights of Persons Accused	Article 20	Article 10 (2)
The Rights of Persons Detained	Article 21	Article 10 (3)
Freedom of Movement	Article 32	Article 12 (1-3)
Right of Access to Justice	Article 37	Article 14 (1)
Rights of Persons Arrested	Article 19	Article 14 (2)
Rights of Persons Arrested	Article 20	Article 14 (2)
Rights of Persons Arrested	Article 19	Article 14 (4)
Rights of Persons Arrested	Article 20	Article 14 (4)
Prohibition of Retroactive Criminal Law	Article 22	Article 15 (1)
Human and Democratic Rights	Article 10	Article 16
Right to Privacy	Article 26	Article 17
Right to Honor and Reputation	Article 24	Article 17
Right of Freedom of Religion, Belief and Opinion	Article 27	Article 18
Right of Thought, Opinion and Expression	Article 29	Article 19

Right of Thought, Opinion and Expression	Article 29	Article 20
The Right of Assembly, Demonstration and Petition	Article 30	Article 21
Freedom of Association	Article 31	Article 22
Marital, Personal and Family Rights	Article 34	Article 23 (1&2)
Marital, Personal and Family Rights	Article 34	Article 23 (3)
Rights of Women	Article 35	Article 23 (3)
Rights of Children	Article 36	Article 24
Rights of Children	Article 36	Article 25
Right to Equality of Citizens	Article 25	Article 26
Rights of Nations, Nationalities, and Peoples	Article 39	Article 27
Economic, Social and Cultural rights	Article 41	Article 27

9.5 Individual and Group Rights

? Dear learner, what is individual Rights and group Rights? Is there any difference and similarities between Individual and group Rights?

_____

_____

_____.

A prominent issue in human rights is the between collective rights and individual rights. Collective rights protect a group of people, while individual rights protect the individual. Group rights are rights held by a group qua group rather than by its members severally; in contrast, individual rights are rights held by individual

people. Group rights have historically been used both to infringe upon and to facilitate individual rights, and the concept remains controversial.

In Western discourse Individual rights are often associated with political and economic freedom, whereas group rights are associated with social control. This is because in the West the establishment of individual rights is associated with equality before the law and protection from the state. Examples of this are the Magna Carta, in which the English king accepted that his will could be bound by the law and certain rights of the King's subjects were explicitly protected.

By contrast, much of the recent political discourse on individual rights in the People's Republic of China, Particularly with respect to due process rights and rule of law, has focused on how protection of individual rights actually makes social control by the government more effective.

For example, it has been argued that the people are less likely to violate the law if they believe that the legal system is likely to punish them if they actually violated the law and not punish them if they did not violate the law. By contrast, if the legal system is arbitrary then an individual has no incentive to actually follow the law.

Group rights may have a negative connotation in the context of colonialism and legalized racism. In this context group rights award rights to a privileged group. For example, in South Africa under the former apartheid regime, this classified inhabitants and visitors into racial groups (black, white, colored and Indian). Rights were awarded on a group basis, creating first and second class citizens. In the United States individual rights for all by virtue of being human were only established after the Civil War. The Fourteenth Amendment was intended to secure rights for former slaves and amongst others includes the Due Process and Equal Protection clauses.

? Dear learners, Is there any relation between group rights and affirmative action?

Affirmative action: in the modern context, 'group rights' are argued for by some as an instrument to actively facilitate the realization of equality. India has an extensive system of affirmative action quotas or reservations intended to redress historical inequalities of opportunity, especially the legacy of caste system. Government programs of reverse discrimination or positive discrimination exist in a number of countries: Group rights in such a context may aim to achieve equality of opportunity and/or equality of outcome. Such affirmative action can be controversial as they are in conflict with the absolute application of the right to equality.

Skepticism about group rights: Criticism of group rights can take a case-by-case form. The critic might argue that close inspection of particular rights that are commonly claimed as group rights reveals either that they are not rights at all or that they dissolve into individual rights.

Group rights and individual rights: co-existence and complementarily? A number of things might be said in response to these worries. First, very much depends upon the content that we give group rights. It is possible to invest individual rights with a content that would make them unsavory, but that would not discredit the very idea of individual rights; similarly, the possibility that we might find some group rights objectionable is no reason to dismiss group rights altogether. Secondly, it would seem strangely arbitrary, given the moral significance that we give to rights, to insist that the objects of rights can be only goods that individuals can enjoy as independent individuals and never goods they can enjoy only in association with others. Thirdly, there is no reason why individual rights and group rights should not both figure in our moral thinking. Indeed, they commonly do.

For example, it would be entirely commonplace to hold that a people, as a political unit, has a collective right to be self-determining but only within the limits set by individuals' human rights. Group rights do not have to clash with individual rights and a complete moral theory would articulate individual rights and group rights so that they formed a coherent set. Group rights and individual rights can, then, co-exist more or less peacefully, but it is also possible for them to enjoy a more positive and mutually supportive relationship. Indeed, it may sometimes be an individual right that makes the case for a group right. We might argue, for example, that some of the goods to which individuals have rights depend for their realization upon the health of the communities and cultures to which those individuals belong, so that there is a case for individuals sharing in group rights because those rights serve their individual rights or their individual freedom.

Group rights and human rights: Can we go still further and incorporate group rights within human rights? The preambles to the UN's Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights Characterizes the rights set out in each Covenant as human rights. The first articles of both Covenants ascribe to all “peoples” the right of self-determination, the right freely to dispose of their natural wealth and resources, and the right not to be deprived of their means of subsistence.

Rights of peoples would seem to be group rights and yet they also figure in the UN Covenants as human rights. In addition, as human rights have been given an increasingly inclusive content, an idea of a “third generation” of human rights has emerged. Political and civil rights constituted the first generation and socio-economic rights the second; both sorts of right focused on individuals as their bearers.

Third generation or ‘solidarity’ human rights include rights to goods such as development, peace, a healthy environment, communication, humanitarian assistance, and a share in the common heritage of mankind. They are rights to goods that are collective in nature and rights that are often more intelligibly

borne by groups than by individuals. Another area in which the issue of collective human rights has arisen is that of the rights of indigenous peoples (sometimes described as a “fourth generation” of human rights).

Here there has been a long-standing debate over whether the rights the UN should recognize or establish are those of indigenous people (individuals) or of indigenous peoples (groups).For some, human rights are necessarily the rights of human individuals so that, even if groups have rights, those cannot be human rights Others insist that some of the goods that are fundamental to human life and human well-being can be enjoyed only collectively and that, if we ignore that fact, our conception of human rights will not match the reality of the human condition. This debate encompasses a number of distinct if related issues. One is whether the practical effect of extending human rights to groups will be to corrode the protection that human rights afford individuals, in ways already indicated. Another is whether the idea of rights has itself become over-extended. Goods such as a world peace, a healthy environment, and efficient communications, may be better understood as ideals or policy objectives for the human race rather than objects of human rights. Moreover, some third generation human rights seem to be conceived as the group rights of all humanity as a single entity, which makes puzzling who bears the corresponding duties. A further issue concerns what it is that makes a right “human”. If it is enough for a right to be a human right that the relevant international authority declares it to be so, there is no obstacle to group rights being human rights. But we normally conceive human rights as rights that human beings hold in virtue of being human and that are universal to, identical for, and possessed equally by, human beings. That sets a more discriminating test for the group rights that might qualify as human rights.

? Discuss with your friends as to which rights (group or individual) rights, the 1995 FDRE constitution gives more guarantee? Reason out your answerer.

_____

_____

_____.

9.6 Enforcement of Human Rights

Since two human rights treaties: the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights were created instead of one, the enforcements of human rights is much more complicated than originally envisioned. There are two separate processes for implementing the human rights for each of the two covenants. Both processes can be ineffective, and they are often criticized since many people still feel that human rights is a domestic concern, not one that should be dealt with on the international stage.

Economic, Social and Cultural Rights: Article 2 of the ICESCR declares that a state only has to realize the economic, social, and cultural rights "to the maximum of its available resources". Each State Party to the Covenant undertakes to take steps to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized by taking all appropriate means, including particularly the adoption of legislative measures.

Since the covenant uses the financial state of a country to gauge its ability to provide the right, a democratic nation may argue that its capital should be better spent on democracy instead of the economic, social and cultural rights of its people. Consequently, a state that should provide more of these rights can simply point to the covenant and argue that its money can be used in other and more important ways.

In addition, States are required to submit reports every six years on the progress they have taken to achieve the rights in the ICESCR. If there is a valid reason for why the rights were not provided properly, the United Nations Committee on Economic, Social and Cultural Rights can help the state by arranging for financial assistance from other international organizations. Other reasons for lack of monitoring and enforcement include the ambiguousness of the duties in the CESCR, and that nongovernmental organizations tend not to dwell upon violations of the economic, social, and cultural rights. The Promotion and Protection of

Human Rights has the authority: to review "situations which reveal a consistent pattern of violations of human rights" and present recommendations to the Economic and Social Council (ECOSOC).

Since 1970, the Sub-Commission on the Promotion and Protection of Human Rights can consider individual communications, The 1503 Procedure enables two UN bodies, the Sub-Commission on the Promotion and Protection on Human Rights and the Commission on Human Rights to investigate specific types of complaints- those which appear to show consistent or widespread patterns of gross and reliably attested human rights abuses. The 1503 Procedure, however, applies broadly to any country in the world, not only UN members.

There are three ways in which International Laws can be applied in National Courts. The first two always call upon National Courts to apply International Human Rights as a source of binding obligation. The third way is invoked not as binding obligation but rather as a means of aid in interpreting national law.

International Human Rights Law can be applied in National by Courts. If a state is a party to the treaty concerned, and if the treaty became the integral part of the domestic law, then interested parties may call upon the Court to apply the treaty directly. The Court considers applying the treaty, since it has been incorporated into the domestic law. The two well know theories of incorporation of international instruments into domestic law are the *monist* and the *dualist* theories. The *monist* model is subject to international law. As a result they must be governed by a superior law applicable to all; i.e. applicable to the international laws superior over the national laws.

On the other hand, the dualist theory provides that: International laws and municipal laws are two separate regimes; i.e. neither International Law nor municipal law can create or invalidate the other. Also dualist argues international law to become part of national law they shall have special legislative acts that transform it into the national law.

Apart from applying International Human Rights Laws through direct incorporation of same through Treaty, Courts can also apply it by way of interpreting the National Law. These constitute indirect incorporation and is said to have a great impact on interpretation of relevant laws as would the method of direct incorporation. Ethiopia, Courts would be expected to interpret the Human Rights chapter along the lines of International Law. The international stand can be presented in support of desired interpretation of the domestic law or as a source of legally binding obligation. The international stand can be presented in support of desired interpretation of the domestic law or as a source of legally binding obligation.

9.7 Limitations on Human Rights

The guarantees that human rights outline are however not unfettered. Most, if not all, human rights are not absolute. Indeed, ‘it is a myth that rights are 'absolute trumps' over majority preferences, aspirations or desires’. There are therefore cases where states may justifiably encroach upon the recognized rights of individuals or groups. The two notable instances where states may abridge human rights and freedoms are cases of limitation of rights and derogation from rights in cases of emergency. The limitation of and derogation from human rights is therefore an essential component of almost all human rights instruments, be it domestic constitutions, regional charters or international conventions.

Justifiable limitations underlie the perception that certain public interests should be given preference to the exercise of individual rights. The proper application of limitations helps to reconcile and balance contesting rights, interests and values. Limitation clauses preclude cases where the exercise of the right prejudices other more ringing interests worth cherishing and safeguarding. Limitations are however acknowledged to be exceptions. They are therefore subject to rigorous scrutiny for their validity and acceptance. Whenever possible within particular circumstances, interpretations should prefer to uphold a right against a limitation.

Although limitation clauses allow states a certain degree of authority and discretion over the rights and may be understood as abridging a right, in fact they are meant to limit the circumstances under which rights may be restricted. They therefore still impose further restrictions on the exercise of discretion by states while at times exceptionally tolerating the prevailing of matters of public interest at the expense of rights. The limitation provisions serve the dual purpose of protecting individuals from arbitrary limitations on the one hand and of tolerating acceptable constraints on rights that serve the general public interest and welfare of the society on the other hand.

Different instruments follow different approaches to limitations. Such limitations are in addition to what are called definitional limitations whereby a provision may qualify a right through different adjectives. The most frequently employed definitional limitations are ‘fair’, or ‘reasonable’, ‘arbitrary’. In some instruments, limitations are internal to each provision guaranteeing a right without an overall generally applicable limitation clause; others only contain a general limitation clause that permeates all the provisions in the instrument; still others may include both internal limitations as well as sweeping general limitation clauses; some others may not have express limitation clauses whether internal or external.

The inclusion of a general limitation clause generally implies that all the rights recognized in a particular instrument are potentially limitable so long as the prerequisite caveats are fulfilled. In cases where an instrument only recognizes internal limitations on the other hand, at least at first sight, those rights which do not include internal limitations are absolute guarantees. The absence of a general limitation clause may also be understood to imply an absolute discretion to states to limit the rights without having to justify the limitations. This will depend on the position to be taken by the entity established to ensure the enforcement and integrity of the instrument.

9.7.1 State of emergency and Grounds for state of emergency,

A state of emergency /Justitium in Roman law/ is a governmental declaration that announces that the country is in a state of emergency. This means that the government can suspend and/or change some functions of the executive, the legislative and or the judiciary during this period of time. It alerts citizens to change their normal behavior and orders government agencies to implement emergency plans.

Grounds for state of emergency: A government can declare a state of emergency during a time of natural or man-made disaster, during a period of civil unrest, or following a declaration of war or situation of international/internal armed conflict, rebellion, natural disaster, economic or financial breakdown which call for immediate measure to be taken by the government to safeguard the stability of the country or the safety of the citizens, which, in order to be adequate, must be different from or in addition to the normal system of administration.

Generally political disturbance and armed conflict present major challenges for the implementation and protection of human rights. Economic, social and cultural rights may not be derogated from during states of emergency, but civil and political rights are subject to such derogations. Under Article 4 of the Covenant on Civil and Political Rights, states may derogate in times of emergency from the rights they have otherwise agreed to respect. However it also stipulate a prohibition of discrimination even at the time of state of emergency.

In determining what was ‘strictly necessary’, the Court would no doubt have to weigh the facts and circumstances of each case and then apply the objective standard of reasonableness, giving due appreciation for the determination by the State which was responsible for maintaining the organized life of the community. In judging whether a measure was *strictly necessary*, the European Court took the following factor into consideration-

i) The gravity of the situation;

ii) The safeguards taken for preventing abuse of the extraordinary powers;
iii) The extent of invasion of human rights and liberties;
iv) The manner in which the measure were applied.

However, if these factors are taken into consideration, the standard of 'strictly' necessary virtually becomes the test of '*reasonably*' necessary. One thing is clear, viz., that the determination by the State concerned as to what was strictly necessary is not final, but is subject to judicial review. ..Under all such Constitutions the standard of 'strictly necessary' should be adhered to, in order to conform to the international standard in Art. 4(1) of the International Covenant.

9.7.2 Human rights during a state of emergency : Derogable and non-derogable rights during State of emergency

Derogable rights: Derogating from human rights obligations means:"limit" the extent to which these obligations apply because of an "emergency". Reads Article 4(1) of the CCPR:"In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, color, sex, language, religion or social origin.""From Article 4 of the CCPR and comment it is clear that the followings must be fulfilled to derogate human rights:

- temporary derogations only are allowed;
- an exceptional threat to the life of the nation must exist;
- an official proclamation of a state of emergency must be made;
- a notification to other states and/or relevant treaty-monitoring body of the measures taken;

- a reasonable proportionality between the means employed and the end to be realized must exist;
- other obligations under international law remain applicable;
- measures taken to derogate must not be discriminatory.

Non-Derogable rights: Article 4 of the CCPR further states that some rights under the Covenant are non-derogable, and may therefore not be subject to derogation in times of emergency. These rights are applicable no matter what the circumstances. Rights that are non-derogable are the following:

- the right to life;
- freedom from torture;
- freedom from slavery;
- freedom from post +facto legislation and other judicial guarantees
- right to recognition before the law;
- freedom of thought, conscience and religion.

In Ethiopia, there is no separate provision in the Constitution dealing with limitations that can be imposed on the exercise of human rights and the manner in which these limits can be imposed. The absence of such a general 'limitation' clause might, at first blush, give the impression that human rights are not subject to limitation in Ethiopia. But it is important to note that the absence might also lead to the arbitrary imposition of limitations giving the right holder no recourse to ensure that the limitation is a justified and reasonable one.

Nevertheless, there are specific limitations built into the provisions recognizing the rights. These limitation clauses are often known as claw-back phrases. And so, some rights such as the right to freedom of religion (art 27), expression (art.29), or assembly (art 30) are subject to a specific variety of limitations. While the existence of these provisions clarify matters as to how, what kind of limitations can be imposed upon the exercise of a particular right, there was no way of weighing the legitimacy (or not) of any limitative law, measure, decision, or actions.

In what looks like a basic guideline as to how limitations (i.e., derogations and suspensions in this context) are imposed, art 93 of the FDRE Constitution,

regulating the manner of declaration of emergency, stipulates the principles of necessity and proportionality (art 93(4)a) as essential in times of suspension and derogation of rights. It is remarkable that in the same article (93(4) c)), rights that are not subject to any limitation (be it suspension or derogation) are listed. These rights are the right against cruel, inhumane and degrading treatment or punishment (art 18), right to equality (art 25), and self-determination (art 39(1) and 39(2)). The other provision that is not subject to suspension or derogation is the provision regarding the name of the country (art 1). One notes the conspicuous absence of the right to life from among this list of rights.

Questions that matter

1. Based on the article 9/1, 4 and Article 13/2 and Article 93/4/c of the 1995 FDRE constitution, Discuss whether the Right to life is Derogable or Non-Derogable.
2. Evaluate the principle of division of human Rights in to democratic rights and basic human Rights.
3. Discuss the difference between group and individual rights. Are they separable or co-exists in nature? Reason out.

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ASSIGNMENT (30%)

Part I choice

Select the Correct Answer from the Alternatives Given Under Each Question (15%)

1. **Through the Ethiopian constitutional development history one of the following organs of state has no power to interpret constitution and to determine its constitutionality.**
   A. The imperial majesty chilot
   B. The council of senate
   C. The HOF
   D. None

2. Due process of law, meaning that proceedings in a court of law must be fair and hence follow certain rules except one of the following:-
   A. The presumption of innocence unless proven guilty.
   B. The establishment of guilt beyond any reasonable doubt.
   C. Investigation and trial in different hands and those trials are public.
   D. Right to legal counsel on the part of the accused.
   E. All
   F. None
3. **One of the following is not the major task of the constitution**
   A. It establishes the basic organs of the government
   B. It provides the structure, composition, power and function of the government.
   C. It defines the inter-relationship of organs of the government with one other.
   D. It regulates the relationship that these organs of the government have with the people and defines the rights and duties of the citizen.
   E. None
   F. All

4. Which of the following is the principles of a theory of government in which the supreme power rests in the body of citizens entitled to vote and exercised by representatives they elect directly or indirectly and by an elected or nominated president:-
   A. Classical liberalism

B. Republicanism
C. Communitarianism
D. Modern liberalism
E. All

5. **Which of the following statement is not true about constitutionalism**
   A. Constitutionalism is the actual practice of the principle of the constitution by the government.
   B. To achieve constitutionalism there must be democratic governance (elected government, freedom of association, secularism, and separation of politics from government activities).
   C. Constitutionalism is said to be a reaction to fear.
   D. Constitutionalism is belief in the fundamental principles of a constitutional government.
   E. None
6. ***Which of the following principle of constitutional interpretation servers as "living document" approach which looks at each and every case as unique, and is more concerned with remedy-making than rule-making.***
   A. Structuralism,
   B. Originalism
   C. Textualism
   D. Fuctinalism
   E. Historical
   F. Purposive
7. ***One of the following statement is correct concerning group and individual rights***
   A. In the modern context, 'group rights' are argued for by some as an instrument to actively facilitate the realization of equality.
   B. The close inspection of particular rights that are commonly claimed as group rights reveals either that they are not rights at all or that they dissolve into individual rights.

C. There is no reason why individual rights and group rights should not both figure in our moral thinking.

D. Group rights and individual rights can, then, co-exist more or less peacefully, but it is also possible for them to enjoy a more positive and mutually supportive relationship.

E. ALL F. All except "b"

8. Which of the following statement is correct pertaining to state of emergency

A. Declaration of state of emergency can be made at any time when ever the authority demand

B. To declaration state of emergency exceptional threat to the life of the nation must exist

C. An official proclamation of a state of emergency must be made by the authority.

D. During state of emergency there is no need for a reasonable proportionality between the means employed and the end to be realized.

E. All

F. All except "a" and "d"

G. All except "a"

9. *One do not belong to majoritarian electoral system*

A. Single member plurality system

B. Multiple member plurality system

C. Single member majoritarian systems

D. Single transferable vote systems

E. The alternative vote

10. ***Among the following statement which one is incorrect about the universal principles of rule of law***

A. The government and its officials and agents as well as individuals and private entities are accountable under the law.

B. The laws are clear, publicized, and stable and just, are applied evenly, and protect fundamental rights, including the security of persons and property.

C. The process by which the laws are enacted, administered and enforced is accessible, fair and efficient.

D. A government under law in which coalition and majority rule is balanced by minority and individual rights.

E. None

Part II

"True", "false" Questions (12%)

Write "True" for the true statement and write "False" for the false statement.

1. Based on the article 13/2/ of the 1995 FDRE Constitution, international agreements ratified by Ethiopia are the supreme laws of the land.
2. Constitutionalism can't exist without written constitution.
3. From the plan reading of the 1995 constitution and proclamation No. 250/2001 & 251/2001 it is possible to say that Ethiopian courts has no power to interpret and enforce constitution.
4. In practicing Constitutional interpretation relatively more wait is given to constitutionalism than democratic theory under FDRE constitution.
5. Practically speaking we can't draw difference between federation and self-governing regions under the unitary states except that the autonomous status of the latter exists by the sufferance of the central government.
6. In semi-presidential form of government Parliament survival is dependent on the president and the president survival is also dependent on the parliament.
7. In both presidential and parliamentary form of government no jurisdictional dispute between the President and the prime-minister

8. If you believe that government should have more checks and balances, then a parliamentary system will give you that. If you believe that it should have the power to enact laws quickly, then you should go for a presidential system.

Part II Matching

Match column "B" with column "A" (4%)

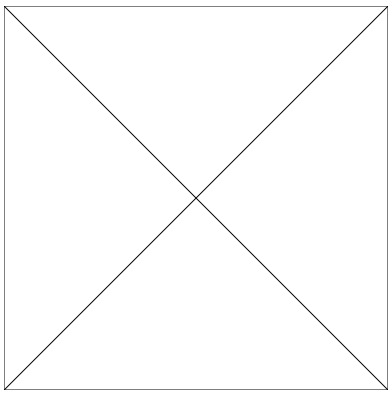
Column "A"

1. _____Democracy that aims to give people the widest scope to live their lives as they choose. This liberty must then be protected by a mechanism of the separation of powers via separate executive, legislature and judiciary.

2. _____ rule of law

3. _____The types of group leaders, in which the prime minister has little executive power to execute by himself for he shares his power with group

4. _____Political doctrine that takes protecting and enhancing the freedom of the individual to be the central problem of politics. It typically believe that government is necessary to protect individuals from being harmed by others leaders within the same party.



Column "B"

a. Bicephalous Executive

b. Monosepalous Executive

c. Acephalous Executive (Dispersed leadership)

d. Protective democracy

e. People's democracy

f. Liberalism

g. Republicanism

h. Communitarians

i. Absence of arbitrary power

j. Independent judiciary.

k. Reliability and predictability.

l. Effective enforcement of law