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Federalism

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Introduction



- What is federalism?
- Why we need federalism?
- What makes federalism different from other form of government?
- What is Ethiopia?
- How Ethiopia is formed and the forms of government in Ethiopia from ancient to present?

Federalism is …



… a **compact** referring to the **unity** among political entities, while at the same time retaining the **autonomy** of the entities.

Rationales for having federalism



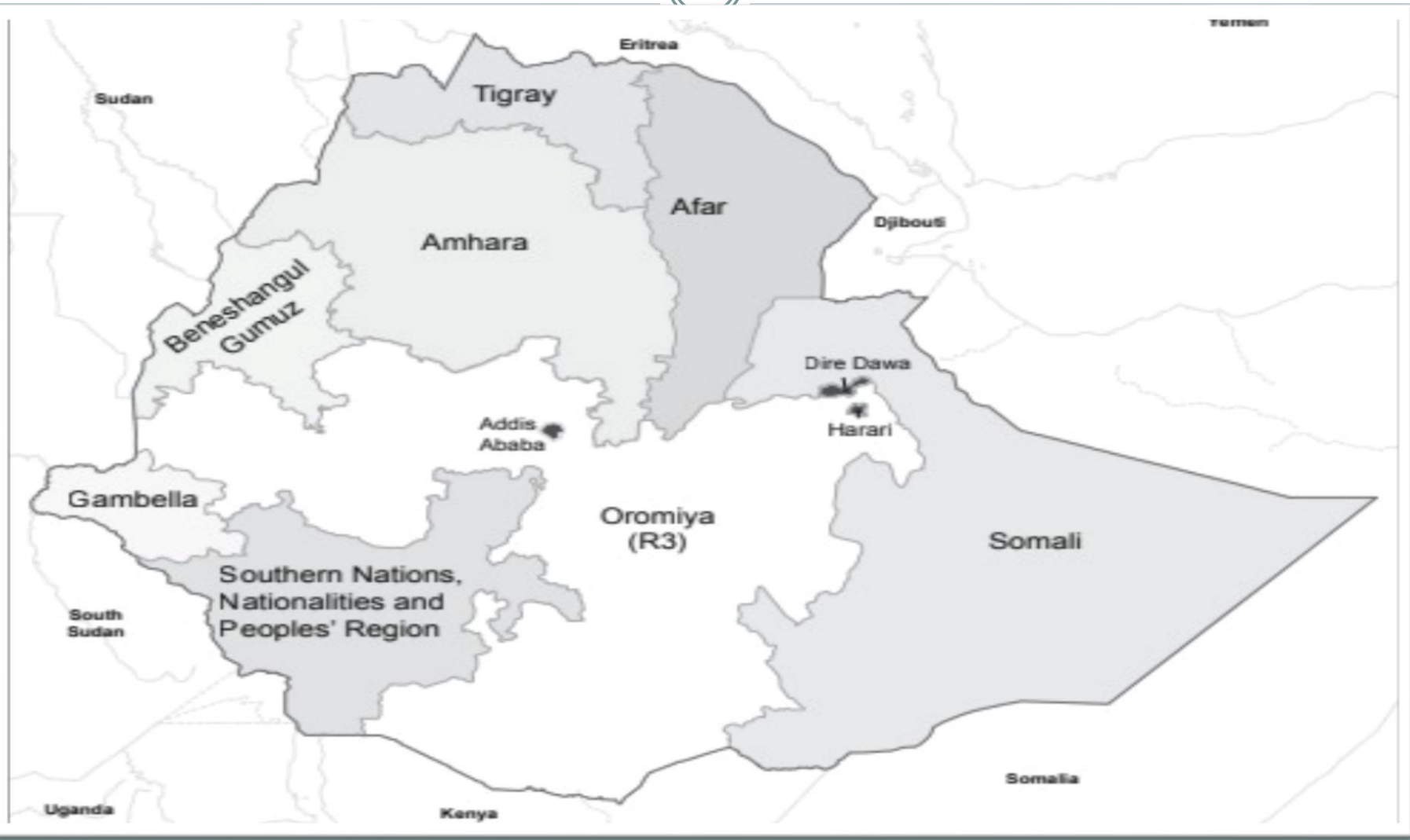
- To accommodate unity in diversity
- To avoid concentration of power
- To grant the right to self determination for constituent states

The Unique Features of Federalism



Two or above sovereign	• National state • Regional states
Sharing of power	• Legislative • Revenue
Unity in Diversity	• One country • Self governing states

Ethiopia


Eritrea
Sudan
Tigray
Afar
Amhara
Djibouti
Beneshangul Gumuz
Dire Dawa
Addis Ababa
Harari
Gambella
Oromiya (R3)
Somali
Southern Nations, Nationalities and Peoples' Region
South Sudan
Somalia
Uganda
Kenya

Ethiopia is …



"… the land of the Abyssinians with dominant position of the Amharas and the Tigrayans called 'habasha's rule' "

"… the only country in Africa that defeated European colonizers, with the rest of the world being hostile to Africa."

"A Christian island pride of Africans and Negroes, symbol of unflinching defiance"

"… the prison house of nationalities."

- Generally, Ethiopia implies different things for different persons because of different history.

Chapter One: Context of the Federal System in Ethiopia

Pre-Menelik II

- De-facto Federalism

Post-Menelik - 1991

- Period of Centralization

Post 1991

- De-jure Federalism

De-facto Federalism



- Gondar, Shewa, Tigray … kingdoms … Ethiopian Kingdoms
- The wallaga and Ilu Ababor kingdoms … June 6, 1882
- The five Gibe kingdoms … Annexed after battle of Embabo
  - Limu Enarya
  - Gomma
  - Guma
  - Gera
  - Jimma
- The Sidama, walayita, kafa, … kingdoms … 1894
- The muslim sultanates of Harar, Afar and somali … 1897
- The Gambela, Benishangul, and other peripheral states …

Centralization Period of 1930-1991



- Menelik II declared in 1906 that he could take away power of nobilities anytime he wishes without giving any reason … but he didn't acted seriously
- Coming into power of Haile Sellasie marked the end of powers of nobilities and full centralization process. The tax system was centralized.
  - For example the power of Abba Jifar II was ended in 1932
- The Power of Southern, Southwestern and Eastern parts were also ended and centralized during the same time.

The Effects of Centralization



- The institution and culture of the northern were imposed on the incorporated southern states,
- Failure to accommodate diversity based on religion, language, tradition and culture.
  - This led to the question of nationalities (Read Walleligne Mekonnen's Article on this issue)
- The political and economic dominance of northern over the southern led to civil wars.
- The absolute monarchy of the state became a danger to the state by it self!
  - "God can not be blamed, the King can not be accused"

The Era of Written Constitutions



The 1931 constitution

- The purpose of the constitution were;
  - Showing the world that 'Ethiopia has constitution as modern states' by Japanizing Ethiopia
  - Building and protecting the power of the emperor
- The constitution provided that;
  - The power of Emperor was unlimited and unquestionable
  - Emperor was the head of the executive, the fountain of justice, the agent of change and the law-giver.

The 1955 constitution



- The constitution continued re-enforcing the process of centralization.
- Civil and political rights of **subjects** and supremacy of law were provided by the constitution (theoretically)
- It introduced of the representative principle for the chamber of Deputies (Universal suffrage by adults)
- The Ethio-Eritrean Federation of 1952-1962
  - The Eritrean federation was abolished by acts of Eritrean assembly; Flag (1958), Penal code (1959), Eritrean Administration instead of Eritrean gov't (1960), total abolishing of federation (1962) … 1993

The 1987 PDRE constitution



- The final stage to complete the institutionalization and monopolization of power was made by adopting the 1987 PDRE constitution.
  - There was only one party i'e WPE (Workers Party of Ethiopia), National shengo (as parliament) although its roles were undertaken by State Council which was permanent executive, legislative and administrative organ of the National Shengo and undertakes the day to day activities of state.
- The Constitution stated that Ethiopia is a unitary state constituting administrative and autonomous regions i'e (5 autonomous regions and 24 administrative regions.)
- Recognized the presence of different nationalities in Ethiopia and tried to address the questions of nationalities.

The Transitional Period Charter



- The defeat of Derg in 1989 at Shire of Tigray led TPLF and EPLF to transfer themselves liberator of whole country.
- The national conference held in Addis Ababa in July 1-5, 1991 created the transitional charter which was used as constitution during the transitional period.

- The Charter established the framework for the provisional government, guaranteed nationalities to preserve their identity, administer their own affairs within their own defined territory, the right to participate in the central government based on fair and proper representation, and the right to self-determination.

The FDRE Constitution



- Article 46: States of the Federation

1. The Federal Democratic Republic shall comprise of States.
2. States shall be delimited *on the basis* of the settlement patterns, language, identity and consent of the peoples concerned.

- Article 47: Lists of member states
- Article 48: State border disputes

Chapter Two
Some Common Features Among Federations



- Every federation operates within a specific local context. For example,
  - federation in Nigeria and Ethiopia aren't the same, even though both countries adopted ethnic federalism.
- Failed federation in former USSR and Yugoslav because of ethnic conflict after cold war …
- The current successful usage of federation in about 40% population of the world …
- The European union which shows the features of both federation and confederation …

Why we need federalism?



- Federalism is "the closest institutional solution" since it combine both **shared rule** for some commonly shared purposes and **self-rule** for other purposes of regional interest in the world today.
  - Shared rule vs. Self rule
  - Federalism vs. Federation
  - "There may be federalism without federations, but there can be no federations without some matching variety of federalism." Preston King
- Federalism is used to solve inter-ethnic conflicts.

Common Features Among Federations



- Common Factors
  - Constitutional Factors
  - Extra-constitutional Factors

1. Constitutional Factors



- Division of Powers
- Written and Supreme Federal Constitution
- Rigid Constitution
- Umpiring the Federation
- Origin of Federations and the territorial Autonomy of the States

Division of Power



1. Division of Power (Constitutionally)
   - Legislative
   - Judiciary
   - Executive
   - Financial
     - The balance between centrifugal and centripetal forces!
   - There are different orientations federalism regarding to division of power:
     - Centralist- center seeking federalism like 'USA' and 'Switzerland'
     - Decentralist- Weak central and strong states like 'West Germany'
     - An appeal to balance - co-ordination, balance b/n unity and diversity … however, perfect balance of power leads to **deadlock**.

Federalism Vs. Other types …



Federal System

Each gov't level are autonomous

Con-federal System

The power of central depends on states

Unitary/Decentralized System

Local gov'ts are the creation of the center

Written and Supreme Federal Constitution



- The basis of federation is the federal constitution which is **written** and **supreme**.
- Federation: can be seen as compact b/n states to create federal gov't and their agreement is the federal constitution. However,
  - Federation, unlike confederation, is not exclusively based on constituent states.
  - The federation of many/almost all nation was not actually arises from compact.
    - Centrifugal federation of Nigeria and Ethiopia (absent of states)
    - Imposition of basic law and artificial constituent states on Germany
    - The central gov't is absent in centripetal federation of USA and Swiss

Rigid Constitution



- Participation of federal and state gov'ts is pre-requisite for amendment of federal constitution.
  - No unilateral alteration of the federal constitution by either level of gov't since it affects both.
- Rigidity: some constitutions include 'unamendable' provision while others make the amendment process more difficult.
  - The USA constitution provides unamendable issue "regarding equal representation of state in the senate"
  - The FDRE constitution is more rigid than any other federation but it doesn't provides unamendable provision.

Umpiring the Federation



- Umpiring the Federation-is impartial, independent of both level of gov't and who decide on issue of federation (like division of power).
- The body which decide on dispute regarding the ***constitutionality*** of the law and ***division of power*** is needed in federation.
  - The Supreme Court in USA (also hear other disputes)
  - The Constitutional Court in Germany (only on issue of basic law)
  - HoF in Ethiopia to decide constitutionality and issue of federation.

Origin of Federations and Territorial Autonomy of the States



- The ***existence*** and ***autonomy*** of constituent states makes federation distinct from unitary which determine the states (not constitution).
- States have stable territories and any territorial adjustment to be approved by the consent of the states.
  - Centripetal/center seeking/coming together federations have prior determined territory. Eg. USA and Switzerland
  - There may be territorial problem in centrifugal/going apart federation since there is pre defined territory.

2. Extra-constitutional Factors



- The essence of federalism lies not in the constitutional or institutional structure but in the society itself.
  - The essential nature of federalism is in the forces of economic, social, political, and cultural that necessitate federalism.
- Democratic pluralism and decentralized party system is essential for all federation.
  - It is impossible to have federalism in one party system and the decision made only by specific group of people.

Chapter Three
Federations and Second Chambers



- What is second chamber?
- What are the rationales to have second chamber?
- How second chamber is composed?
- What are roles of second chamber?
- Is the essence of federation concerning second chamber reflected in FDRE constitution?

The Second Chamber …



- … is an institution in federation in which the interest of constituent states is respected at the federal level. (Rep of member of federation)
  - It is also known as upper house which infers the existence of lower house. The lower house is uniformly organized based on the principle of proportional representation and there is a less strong federal element in it.
- There are two main reason to have second chamber with legislative power in federation.
  - The concept of sovereignty in federations: Limits majority
  - Constitutional division of power in federation- Shared rule

The second chamber in Ethiopia



- HoF is the second chamber which comprises the representative of NNP.
  - But it is distinct from second chamber in others' federation since it is not legislative body.
  - In USA congress (legislative body) consist of House of representative and senate. In Swiss the cantons participate in …
- The second chamber in Ethiopia doesn't have legislative power, except
  - Concurrent legislative power on residual tax power (Art 99)
  - Division of revenue from joint tax (Art 66/7)
  - Amendment of the constitution (Art 105)

Composition of Second Chamber



- The basis of composition may:
  - Territorial equality Eg. USA and Swiss (somehow)
  - Balance of territoriality and citizen equality Eg. Germany and India
  - Close to proportionality Eg. Ethiopia (Justification?)

> "Each Nation, Nationality and People shall be represented in the House of the Federation by at least one member. Each Nation or Nationality shall be represented by one additional representative for each one million of its population."
>
> Article 61/2 FDRE constitution

Selection of Member



- The selection process of member of second chamber is different for different countries.
  - In USA and Swiss the members of Senate are directly elected by people.
  - In India: they are elected indirectly by state legislature (for most part)
  - In Ethiopia there are two ways of election of HOF (Art 61/3)
    - Indirect election by the state legislatures or
    - Direct election by people when the state legislature decide that the members to be elected directly by the people.

Powers of Second Chamber



- The roles given to second chamber by federal constitution are also different from one country to another. There are:
  - Symmetrical Power of Second Chamber with Lower Chamber'
    - Eg. USA and Swiss
  - Participatory and Protective role of second chamber;
    - Eg. Germany
  - Subsidiary (suspensive) role of Second Chamber;
    - E.g India
  - The Unique role of Second Chamber in Ethiopia
    - Constitutional interpretation and organizing CCI- Art 62

The Role of the HoF in Intergovernmental Relations



- Fiscal Federalism: is about allocation of revenue and expenditure responsibilities between federal and states.
  - Allocation of power of taxation (Exclusive, Concurrent and Residual) separately provided.
  - Fiscal federalism is important since there is 'revenue concentration and expenditure decentralization.'
- Self-determination of nations, nationalities and peoples,
- Promoting the equality of the peoples,
- Decide on disputes that may arise among states & etc

Chapter Four
Forging Unity out of Diversity



- What is ethnic/multi-cultural federation?
- What is nation state/geographical federation?
- Why Ethiopia adopted ethnic based federation?
- What are features of Ethiopian federation?
- How the issue of language is reflected under Ethiopian federation?
- What features differentiate Ethiopian federation from other countries' federation?
- Is there contradiction between theory and practice regarding Ethiopian federation?

Multicultural/Ethnic Federalism



Nation state federation Vs. Multi-cultural federation?

- The nation state/geographical based federation is based on the idea of integration or assimilation while
- The multicultural/ethnic federalism is concerned with accommodation of ethno-linguistic, religious and other diversities in one country.
  - Territory is the base of federalism in both types of federalism since the federations presuppose the existence of a territorially grouped diversity.
  - Ethnic federalism is based on the idea of reconciling the forces of unity and diversity by recognizing ethno-regional communities to have territory.
    - The existence of territorially grouped diversity!

Ethnic Federalism of Ethiopia



- The consequence of centralization process and the formation of different 'liberation fronts' …
- The ethnic federalism and the rights of NNP to self determination up to secession was sought as solution for the outstanding and long time question of nationality.

Features of Ethiopian Federation



- Coming together Vs. Holding together
  - Preamble "We the NNP of Ethiopia …"
  - Article 8 "All the sovereign power resides in the NNP"
  - Article 46 clearly shows that Ethiopia's Ethnic Federalism
  - The right to self determination is not subject to derogation …
    - These features shows that Ethiopian federation is formed upon consent of NNP and it shows the coming together features.
  - Federation established from former unitary states
  - The sole power of federal gov't in enacting federal law
    - Are among the features showing that Ethiopia's federation is holding together.

Features … (Distribution of Power)



- Having the three gov't organ at both level is the first step in distribution of power in federation.
- The Power of federal gov't: Article 51
- The Power of Regional gov'ts: Article 52
- The Powers given for federal gov't provided in several Articles like:
  - The power to enact commercial, labor and penal codes (Art 55)
  - The power to approve federal appointments (Art 55 …)
  - The power to establish federal institutions (Diplomatic …) (Art 70)
- FDRE constitution lacks "a necessary and proper clause" what is it and why we need it?

Features … (forms of gov't)



- FDRE constitution adopted parliamentary form
  - There is fusion of power since federal executives (ministers) are the members of parliament at the same time.
  - There is powerful Prime minister and President with nominal and symbolic power. Art 70 & 71
- There is bicameral house at federal level HPR and HoF. HoF mainly deals with interpretation of constitution and distribution of revenue from tax jointly collected.
- Regarding to language the assimilationist and unitary feature is seen under FDRE constitution since all other languages are given secondary status.

Distinct Features of Ethiopian Federation



- Utmost importance given to the ethno-linguistic groups within the Ethiopian polity.
  - Preamble
  - Article 8
  - Article 39
- The territorial principle is taken seriously since the constitution grants ‘mother states’ to NNP and any nation which is not granted ‘mother state’ can have its own state anytime.
- Revolutionary federalism … (some region lacks even political experts)

Distinct Features… cont'd



- Symmetry vs. asymmetry federalism in Ethiopia …
  - Theoretically all states have equal power (Article 47/4)
  - Practically some states are even unable to exercise their rights
- The balance b/n shared rule and self rule???
  - The constitution give more emphasis to self rule but less emphasis to shared rule …
  - The HoF composition based on proportion make it little significant to nation with smaller popn (affected by decision)
- Even though dominant nation are granted with 'mother state' they are not homogeneous … different ethnic groups live in these regions …

Distinct Features… cont'd



- The two federal houses, exclusive power of HPR on legislation and HoF interpretation of constitution because of:
  - The FDRE constitution is not merely legal document but political contract among NNP
  - The representative of NNP needs to determine the scope and meaning of the constitution
  - "Political question doctrine" are best answered by political organ i'e HoF, The judiciary refuses such questions.

Distinct Features… cont'd



Federalism and secession

- Article 39 of the Constitution expressly incorporates the right of NNP to secede after complying with some procedures. These procedures are:
  - Demand for secession has to be made to the legislative Council of the nation and get 2/3 majority approval from the council.
  - The concerned council refer its decision to federal gov't and the later has to organize referendum within 3 years.
  - The demand for secession have to be supported by majority vote of referendum.
  - The federal gov't, then transfer its power to concerned council to determine the division of asset as prescribed by law.

Distinct Features… cont'd



"Secession or the emergence of an independent state does not necessarily result in the establishment of a stable and democratic state. Secession or independence simply replicates the nation state without resolving the controversial and normative question of how to politically integrate, share power and resources among several contending forces. It is for this reason that a genuine federal system is often preferred as it gives space for both unity and diversity, short of fragmentation."

What is more …?



- The Ethiopian federation is affected by politically centralized system which affect the division of power which is one basic feature of federalism. The constituent states are made dependent on center through political party system. This problem is also common in Nigeria.
- Ethiopian federalism faces critical problems:
  - The threat of local tyranny at constituent units' level.
    - The minorities are oppressed by majority at constituent state level. (Minority-less/non dominant compared to other)
    - Numerical majority- Oromo in Oromia, Amhara in Amhara …
    - Political majority- Harari, Gumuz/Berta, Nuer/Anuak …

Problem & Solution



- The problem arises from, not constitutional principle, but non enforcement of these principles:
  - The right to engage in any economic activity …
  - The right to live any where in a national territory …
  - The duty of both level of gov't to ensure protection to citizen!
- Suggested/possible solution:
  - Creating two house at regional state level to protect minorities
  - Creation of several federal executive, human right institutions and Ombudsman in well organized way to enforce the constitutionally granted rights

Chapter Five
Division of Legislative Powers



- What is division of power?
- What is division of legislative power?
- What are types of division of legislative power?
- Which level of gov't do have wide power in Ethiopian federation?
- What is necessary and proper power? What is federal supremacy clause? Are they provided in FDRE constitution?
- How Federal gov't can interfere in regionals?

Division of Legislative Powers



Exclusive powers

Shared Powers

Residual Powers

Division of legislative power Cont'd …



- The division of power is inherent feature of federalism. So, there are legislative, judiciary and executive branch at the both level of gov'ts.
- Distribution of legislative power include the forms (the ways) and the scope (amount/jurisdiction) that given to both level of gov'ts by federal constitution.
  - Forms of distribution of legislative power refers to the ways in which these powers are constitutionally allocated between the federal government and the states, i'e techniques …
  - Scope of legislative powers refers to the areas and amount of jurisdiction assigned to each order of government, i'e substance …

Division of legislative power Cont'd …



- The way of the division of power regarding the three organ of gov't for all federation are not similar …

  "The federal system in USA is designed to enable both the federal government and the states to enact law, to execute and adjudicate it. Legislative, executive, judicial and financial powers are allocated based on the idea that there should some correspondence with the scope of legislative, executive, judicial and financial powers."

- Despite specific variations among the federations, there are some common features one observes in the forms of distribution of legislative powers between the federal government and the states.
  - Division of legislative power can be expressed in three forms, i'e exclusive power, shared power and residual power.

1. Exclusive Legislative power



- Exclusive powers refers to the powers for which the federal constitution has created a ***monopoly***, given only to one level of gov't either federal or states.
- In many federation, the federal constitution list exhaustively the power of federal government and leave unlisted power to states government (residual).
  - For this reason the act of federal gov't beyond listed power is invalid while the acts of states beyond the power given to them constitutionally remain valid (unless it is expressly/impliedly prohibited). This is known as ***doctrine of enumerated power***.

Exclusive power … cont'd



- The FDRE constitution under Article 50/2 provides the existence of the three organ of gov'ts (legislative, judiciary and executive) at both level.
- The constitution enumerate the federal power and gave the residual power to regional states. It seems like the regional states have wider power than federal gov't. But the exclusive power of federal gov't is not limited to Art 51 of the constitution.
- The "necessary and proper clause" is also impliedly provided under FDRE constitution (Article 51/2 & 3)

Exclusive power … cont'd



- Maters of national importance are exclusively given for federal gov't; like
  - National Defense Force to have common defense
  - Foreign relation for enforcement of treaty by one organ under IL.
  - Financial and monetary power for common economy
  - Enactment and enforcement of law which are of national interests.
  - Inter-states relation like transport and other communications.
  - Power to declare state of emergency over all or in part of country.
  - Power to determine matters of nationality, immigration, refugee, passport, asylum …
  - The power to establish uniform calendars & etc

2. Shared Legislative Power



- Shared powers represent the meeting point of the two levels of governments. It is the place in which both the federal and states participate to exercise some power.
- The reasons of having shared power include:
  - The difficulties to allocate certain power to either level of gov't.
  - The need of federal gov't to encourages and guides states.
- Since the regime of shared powers is unavoidable, federal constitutions often provide mechanisms of handling conflict situations between the federal government and states.

Shared Legislative Power…



- Some spheres of shared power include:
  - Economic affairs, like …
    - Regulation of trade and commerce
    - Industries, labor and economic planning
  - Social affairs/services like …
    - Education, health protection and welfare of citizens, insurance, and assistance for old age, unemployment, accident, and workers compensation…
    - The reason for involvement of both level gov'ts in these sphere is stated as:
      - The personal nature of the services, the need to adapt them to local circumstances and their close relation to other aspects of local government urge for state power while;
      - Extensive federal financial assistance necessitates the participation of federal gov't in these spheres.

Types of Shared Powers



Shared Powers

- Framework
- Concurrent

Framework Powers



- Framework power is when the federal gov't legislate general laws in a federation and leave the states to enact more detailed legislation on the same area in order to adopt the policy in the local context.
- The federal law create the general standard while the constituent states fills the gaps.
- Framework power helps for significant decentralization of policy-making authority without sacrificing uniformity.

Framework power (Ethiopia)



- There is no express provision for shared power under FDRE constitution except for tax power. However, framework power impliedly provided in:
  - Article 55/6 enactment of "***Civil Laws***" (which is the power of states in principle) and made framework power b/c … "necessary to establish and sustain one economic community"
  - Article 51(2,3) Vs. Article 52/2(c): Enactment of laws by the federal gov't "…national standards and basic policy criteria"
  - Article 51/5 Vs. Article 52/2: Land Law

    'Federal government is empowered to enact laws for the utilization and conservation of land while the states are empowered to administer land and other natural resources.'

Concurrent Powers



- Concurrent power is the area where both the federal and states gov'ts can exercise their respective power simultaneously or depending on whether the matter is of national importance or regionals' concern.
  - Concurrent powers provide an element of ***flexibility*** in the distribution of power enabling the federal government to postpone the exercise of potential authority in a particular field until it becomes a matter of federal importance.
- Under FDRE constitution enactment of penal laws on the matter not covered by federal penal law can be considered as concurrent power b/c states may enact only if the federal penal law does not exhaust the list of offences. Article 55/5

Conflict Between Federal and State Law



- Conflict between the federal and state laws in the area of concurrent power is the important issue to be regulated in federation.
  - Most federation provides the 'federal law supremacy clause' to make federal laws prevails over the states law in case of contradictions. (Eg. USA, Switzerland, India …)
- There is no express pre-emption of federal law clause in Ethiopian federation but:
  - The CCI by provided that 'laws issued by regional states in contradiction to federal laws are of no effect regarding administration of land.'
  - Proclamations, for instance (Proc. No 25/1996 under Article 6/2) provided that regional states' laws which are not consistent with federal laws and international treaties are not applicable by federal courts.

3. Residual Powers



- Residual powers represent those powers not listed or partly listed by federal constitution and assigned to either unit of government.
- These powers may be arise from changes in distribution of powers or new responsibilities that have come about because of changes in new circumstances.
- The United States, Switzerland, Germany, and Ethiopia (Article 52/1) have preferred to leave residual powers with the states while in India such powers belong to the center.

Importance of Residual Powers



- It avoids the possible conflict on the unforeseen power or new power b/c it determine the gov't level who may exercise the power when it come to existence.
- It shows the sovereignty of states who are given the residual power (Eg. USA federation shows the constituent states had not totally surrendered to the federal government). (The doctrine of enumerated power)
- It also protect the constituent states from uncontrolled power of federal government or in other words it may prohibits an 'excessive centralization of power.'

Comparative Study of Division of Power



- Formally speaking, the Ethiopian regional states have wider power than constituent states in any other federation. This can be inferred from:
  - The regional states in Ethiopia have their own constitution with the power to create and amend it any time and their own legislative organ (unlike constituent states in India).
  - Unlike the states in Switzerland and Germany as well as India the states in Ethiopia can enact their own procedural and civil codes.
  - FDRE constitution has also no express "necessary and proper" clause as in the United States or a comprehensive list of shared powers as in Germany.
  - The regional states also have wider power in self-determination and the sovereignty of nationalities.
  - The constitution is clear to authorize the states "to formulate and execute social and development policies, strategies and plans of the state" within the overall federal framework.

Power of Federal Vs. States



- It has been argued that “the powers of the member states are relatively meager and this has been reinforced by the regional governments fiscal dependency on federal level.”
- In addition to fiscal dependence of states on federal gov’t, the policy-making is also very much centralized.
- The regional states are excluded from foreign policy power and from participation in legislative activity of federal gov’t. So the Ethiopian federation is designed completely with an emphasis on self-rule but not much on shared rule.

Federal Intervention in Regions



- The emergency and intervention are different since:
  - **Emergency** refers more to an extraordinary than to normal circumstances that necessitate the use of special powers in order to arrest a crisis situation, while
  - **Intervention** refers to federal gov'ts interference with the states even in normal circumstances or situations not provided by the constitution.
- In many federation, including in Ethiopia, it is normal if federal executive intervene in regional states during emergency (to avoid threat on nation).
- However, in Ethiopia there is law which permit the federal gov't to intervene in regional gov't, even in normal circumstance (even where there is no emergency).

Condition for Intervention



- There are three situation for intervention:
  - The request of a state administration, federal defense forces to arrest a deteriorating security situation within the requesting state when its authorities are unable to control it.
  - The HPR shall on its own initiative request a joint session of the HoF and of the HPR to take appropriate measures when state authorities are unable to arrest violations of human rights within their jurisdiction.
  - The HoF shall order under Article 62(9) federal intervention if any state, in violation of this federal constitution endangers the constitutional order.

  - ***Read "System for the Intervention of the Federal Government in the Regions Proclamation No. 359/2003."***



- How federal laws can be enforced throughout the territory of the country? Which organ is in charge?
- Does federal laws applicable only in Addis Ababa and Dire Dawa?
- What is Intergovernmental Relations and how it works in Ethiopia?
- What are dual and executive federalism?
- Is Ethiopian federalism is competitive or cooperative?
- What are the scheme of inter-governmental relation in Ethiopia?

Dual Executive vs. Functional Federalism



- ***Inter-governmental relation***: - is the relation (formal or informal) b/n federal & state gov'ts regarding co-ordination of policies on shared powers, horizontal relations between the constituent states or even the relations between the federal government and the local governments.
- ***Dual Executive*** is the situation in which federal systems enforce their laws and policies by setting up dual structures (federal and state institutions) while ***functional federalism*** is the way of enforcing federal laws by entrusting the state machinery with the power to enforce both federal and state laws.

Direct Enforcement by Federal Agents



- The FDRE constitution does not expressly provided how federal laws can be executed in overall areas of the country, but it can be inferred from it that:
  - the organization of the federal executive is co-extensive with the division of legislative power (Art 50/2 of FDRE constitution).
  - It seems there are parallel federal and state executive organs in charge of enforcing federal and state laws respectively.
- Some executive organs are organized throughout the country to enforce federal laws. These institutions include Customs Authority, Federal Inland Revenue, Telecommunications, Postal Services, Insurance and Banking and Federal Public Prosecution. Their aim is to enforce exclusively federal laws.

Delegation



- Delegation is the mechanism by which the federal government authorize respective regional states' executive machinery to enforce the federal laws in a given region. (Article 50/9 of FDRE constitution)
- By delegation the executive organ of state gov'ts directly enforces federal laws.
- Sometimes, the state gov'ts take over the duty of enforcing federal laws despite the absence of direct authorization. This shows the lack of a well-organized institutional setup for the enforcement of federal laws as well as the fact that the system of intergovernmental relations in Ethiopia is not well developed.

Division of Executive Power



- The clear division of executive power in Ethiopia is essential b/c:
  - The constitution does not have comprehensive list of concurrent power and if there are conflicts on power the adjudication of the dispute is not easy as courts does not have power to decide the issue and the HoF is not well organized.
  - There are little or no formal intergovernmental relation, even the existing intergovernmental relation is at its infant stage.
  - The Ethiopian Second Chamber doesn't have legislative power and the constituent states' participation at the federal level is minimum.
- Therefore clear division of executive power helps to avoid dispute on power and for smooth relation b/n the two level of gov'ts.

Dual Federalism



- There is allocation of executive power like the legislative power allocation (Parallel/co-existent)
- Each level gov'ts remain autonomous and each must act directly towards the people in the process of enforcing its laws.
- There would be little overlap or sharing of functions between the two governments, for this reason the is dual polity which create dual or layered cake federalism.
- It is also known as competitive federalism since there is competition between the two levels of government as each legislates, executes and adjudicates its own laws.

Executive Federalism



- Executive Federalism implies that the enforcement of federal legislative is constitutionally assigned to the constituent states/units.
- The country's administrative agency is undertaken by the constituent states since they are just executes federal laws.
- The constituent states may determine how the federal laws are enforced, but the federal gov't can also provide a rule of implementation.
- State authorities may be subject to strict instructions from highest federal authorities and failure to execute the federal law is constitutional violation.
- The executive federalism is also known as cooperative (functional) federalism since legislative power mainly belongs to the federal government and execution to the states.

Intergovernmental Relations in Ethiopia



- The issue of Intergovernmental Relations is wide and complex, cannot be perfectly completed overnight.
- It has taken a century or more for other federations to settle these relationships by legislation, litigation, political practice, and tradition.
- In Ethiopia, there is neither a comprehensive dual structure nor executive federalism at work. The institution of co-operative federalism, too, is not well-known.
- The system Inter-governmental relations in Ethiopia works through:
  - Delegation of Power
  - Co-operation through Executive Institutions
  - Co-operation through Party Channels
  - Co-operation through the Process of Policy-Making

Delegation of Power



- The delegation of power provided by FDRE constitution is “downward delegation” b/c it is only federal gov’t who delegate its power to regional states and there is no express clause permitting the states to delegate their powers to the federal gov’t and also there is no prohibition on it.
- It is inherent in delegation that whoever has delegated power can also take it away at any moment.
- Federal practice so far indicates that the federal government delegates the states some aspects of the executive rather than legislative powers, with the exception of a few framework laws.

Co-operation through Executive Institutions



- The political relationship between the federal gov't and the states is regulated by both formal structures as well as practice outside the legal framework. (Ministry of federal affair is one way)
- The level of dev't regional states in Ethiopia is not equal. Oromia, Tigray, Amhara and SNNPR have relatively greater level of political and economic dev't while Gambela, Benshangul-Gumuz, Afar and Somali are known as "emerging states" or "less developed states".
- The Federal gov't is required to assist those less developed states, this states-federal relation is operated under Ministry of federal affair.

Co-operation through Party Channels



- The Party Channel is the most pervasive scheme used by the federal government to influence state governments as well as to guarantee uniformity of policies.
- If the officials of both sets of government are adherents of the same ideology or followers of the same leader or leaders, then they might be expected to pursue harmonious policies.
- If one homogenous political party controlled all gov'ts (both federal and the state), there would be no occasion for intergovernmental conflict.
- However, if the same party organization controls both level of gov'ts and has a centralized party structure, this might weaken the power of the regional gov'ts in a way that undermines regional autonomy.
- The party structure in Ethiopia undermines the federal division of power and subordinates the regional gov'ts to the federal gov't.

Co-operation by the Process of Policy-Making



- The federal gov't may influence the regional states through its nation wide policy making power only on the power expressly given to it by the constitution.
- Furthermore, the federal gov't sometimes make policy in excess amount (beyond) its power.
  - For example, the federal government may enact policy in areas covering elementary education that are according to the Constitution within the competence of the states and this may be justified on the ground of state governments' lack of expertise who may design the necessary policy in the area.
- In general the states accept the economic, social and dev't plans issued by the federal government due to:
  - The power of federal gov't to enact national policies &
  - States lack the required expertise to bring alternative policies.

Chapter Seven
Federalism and the Adjudication of Disputes



- How Ethnic Federalism is adopted in Ethiopia?
- Does Ethnic Federalism always successful system?
- How conflicts in federation are resolved?
- Is umpiring organ in Ethiopia is independent from both federal and regional gov'ts?
- Is judiciary in Ethiopia is dual or just subordinate to federal judiciary? In other words do we have federal and states courts which have their own (constitutionally granted) powers?
- Is there any shared judiciary power b/n federal and state courts? What kind? How it is exercised?

Introduction of Ethnic Federalism



Historical Marginalization

- Disintegrated Ethiopia (Pre 1855)
- Centralization and Marginalization

Nationalism

- “Question of nationalities"
- Revolution 1974 & Marxism

Ethnic Federalism in Ethiopia

- Formation of several Fronts
- Adoption of Federalism 1991-1995

Introduction …



- Ethnic federalism does not always successful since it was failed in former federations of the USSR and Yugoslavia but it can also be the most successful political system as in Switzerland and India.
- As such diversity is not a threat in itself, it becomes a fertile ground for conflict only if the system fails to provide a political solution to it in the form of resource and power sharing, the accommodation of the groups to the decision-making process and by ensuring self -rule.

The Role of the Umpiring Federation



- The presence of a body that umpires disputes concerning the constitutionality of laws in general and the division of powers in particular is critical in federation.
- The umpiring body in federation must not rest either with the federal government alone or with the states.
- Since the division of power is artificial, imperfect and a generalized skeletal thing, the possibility of dispute cannot be permanently avoided.
- Hence having umpiring body in federation helps to cope up these problems and this crucial function is granted to the HoF in Ethiopia.

Constitutional Adjudication



- Adjudication of Constitutional Matters
  - Diffused (USA)
  - Centralized (Europe)

Diffused System



- The diffused (decentralized) system also called the American- system accords every branch of the judiciary the right to review the constitutionality of laws.
- In principle any court has the power to declare any law or decision of an executive body unconstitutional, if such a law or decision violates the constitution, final appeal being reserved to the federal Supreme Court.
- The ordinary courts decide constitutional issues in the process of disposing their routine function and review of constitutionality is, therefore, something that comes to the courts incidental to the case.

Centralized system



- The centralized system confers the power of reviewing the constitutionality of laws to constitutional courts.
- Distinct from and independent of the ordinary courts, the Constitutional Court serves as a watchdog for the enforcement of the supremacy of the constitution.
- The Court does not involve itself in the ordinary settlement of disputes unless the case relates to a constitutional question.
- Hence, the challenges of "***judicial activism***" are less serious in Germany (centralized) than in the United States (diffused).

The Ethiopian Choice (HoF)



- The Ethiopian Second Chamber (HoF) is empowered to decide constitutional disputes and also to interpret the constitution under Article 62 & 83 of FDRE constitution.
- The rationale behind vesting the power of interpreting the constitution in the HoF are:
  - The nature of constitution in general and the role of NNP in particular shows that the constitution is political compact b/n NNP and the organ who should granted with this power must be their representative (HoF).
  - To avoid judicial activism- which might result in hijacking the very document that contains the "compact b/n the nationalities" to fit the judges" own personal philosophies

HPR vs. HoF



- If HoF is the organ which empowered to review the constitutionality of all laws (enacted by HPR and other organs…) how HPR can define the power of HoF by enacting proclamation? Is the proclamation by itself constitutional? Which organ can review its constitutionality?
- The constitution does not wipe out the role of judiciary and Proc 1234/2021 gave the courts the power to entertain case involves constitutional question leaving the final say to HoF.

Limitations on HoF



Article 83: Interpretation of the Constitution

1. All constitutional disputes shall be decided by the House of the Federation.
2. The House of the Federation shall, within thirty days of receipt, decide a constitutional dispute submitted to it by the Council of Constitutional Inquiry.

Article 67: Sessions and Term of Mandate

1. The House of the Federation shall hold at least two sessions annually.
2. The term of mandate of the House of the Federation shall be five years.

- The HoF session being only twice in a year and with the increase in the number of intergovernmental conflicts, the House certainly will be an inefficient institution of the task of constitutional interpretation.

Judiciary in Federalism



- The division of judiciary power in federalism is controversial since there are different approach in different federal countries regarding how they introduced judicial hierarchy.
  - There are dual set of courts, for instance in USA and Ethiopian federalism. The ***federal courts*** applying and interpreting federal laws and another set of ***state courts*** applying and interpreting the laws of each state.
  - Subordinate courts of state to the federal courts, for instance in Germany, Switzerland and India all lower and intermediate courts of appeals are state courts, whereas all courts of final appeals are federal tribunals.
- The FDRE Constitution states that supreme federal judicial authority is vested in the federal Supreme Court and State Supreme Courts shall have the highest and final judicial power over State matters. (Article 80)
- By virtue of delegation the state Supreme Court exercises, in addition to its state jurisdiction, the jurisdiction of the federal High Court and the state high courts exercise, in addition to their state jurisdiction, the jurisdiction of the federal First Instance Court.

(Article 78/2)

Shared Judicial Power



- The existence of dual court does not necessarily imply that each level of courts exercise only exclusive judiciary power. There are shared judiciary power like:
  - Labour case, Criminal case, Commercial case … which are the federal laws according to Article 55/3&4 of the constitution are adjudicated by state courts in their regular discharge of judicial duties, not in their delegated powers.
  - The fact that the federal Supreme Court does also review state cases when it discovers errors of law also suggests the existence of shared judicial powers.
  - The FDRE constitution under Article 13/1 provides that "All federal and state legislature, executive and judicial organs at all levels shall have the responsibility and duty to respect and enforce the provisions of this chapter [chapter three]."

Jurisdiction



- The FDRE constitution Prohibits the establishment of special or ad hoc courts under Article 78/4, b/c
  - Special or ad hoc courts which ***take judicial powers away*** from the regular courts or institutions legally empowered to exercise judicial functions and which ***do not follow legally prescribed procedures*** shall not be established
  - Special or ad hoc courts (most of tribunals) in Ethiopia are ***neither*** autonomous nor subject to review at a higher level.
  - However, based the case they may entertain and to deal with case overload of regular courts, these tribunals are established and their number increases from time to time …
- The jurisdiction of courts and the powers they have to adjudicate cases is constitutionally guaranteed by the FDRE constitution under Article 79.

Jurisdiction … cont'd



- The jurisdiction of court directly relates with the rights of individual to access to justice.

  "Every one has the right to bring a justiciable matter to and to obtain a decision or judgment by, a court of law or any other ***competent body*** with judicial power." Article 37/1

- The FDRE constitution suggests that not all disputes are within the scope of judicial power. Judges or other bodies with judicial power decide only justiciable matters, those that arise from actual cases and are capable of settlement by legal methods.
- It also states that the State Supreme Court shall have the highest and final judicial power over state matters. But cannot be clearly understandable what constitute federal or state matters. The court embellishment Proclamation defines this issue (it provides the grounds to consider certain matter belong to federal or states). (The place, the parties and the laws)!

Jurisdiction … cont'd (Delegation)



- The delegated function of state courts is restricted to exclusive federal matters rather than to shared federal powers. As far as shared power is concerned they do not need any delegation.
- The decision of state supreme court on delegated power can be appealed to and revised by federal supreme court but the decision of state supreme court on shared power cannot be appealed and revised by federal supreme court, except for cassation. (Article 80/6). The federal Supreme Court by way of cassation does review even cases arising from state laws, a much wider power not enumerated expressly under Article 80 of the constitution.

The Power of Cassation



- The federal Supreme Court has found ways and means of reviewing state Supreme Court decisions even when the case does not involve federal law. It is though power of cassation.

  Article 80/3: ***Notwithstanding*** the Provisions of sub-Articles 1 and 2 of this Article;

  (a) The Federal Supreme Court has a power of cassation ***over any final court decision*** containing a basic error of law. Particulars shall be determined by law.

  (b) The State Supreme Court has power of causation over ***any final court decision on State matters*** which contains a basic error of law. Particulars shall be determined by law.

- This mean that the federal Supreme Court has the power to review all final decisions rendered by any court throughout the country.

Conclusion



- Federalism is considered as the golden political system since it allows to have one united nation even if there are diversified societies in the country. It helps to build one strong nation from different identities.
- Ethiopia adopted ethnic based federalism since 1991 on the ground of long lasted question of nationalities which led to establishment of d/t fronts based on the identity of their own nation, like TPPF & OLF. The ethnic federalism and the rights of NNP to self determination up to secession was sought as solution for the outstanding and long time question of nationality.
- The FDRE constitution introduced federalism and the rights of NNP to self determination up to secession. Giving this wide power to NNP make the constitution unique, from constitutions of others federation.

Conclusion … cont'd



- Every federation operates within a specific local context. However there are common features among all federations in the world. These common features may constitutional & extra-constitutional.
- Federalism is distinct from confederation and unitary type of gov'ts, in a sense that, among other things, there are two level of governments whose powers are derived from the federal constitution and sovereign in their sphere of power. They are independent of each other even if they are not mutually exclusive.

Conclusion … cont'd



- Ethnic federalism is criticized for the potential conflicts between/among diversities it comprises like failed federation of former USSR and Yugoslavia but there are also most successful ethnic/multicultural federation of Switzerland, and India. In fact diversity is not a threat in itself, it becomes a fertile ground for conflict only if the system fails to provide a political solution to it in the form of resource and power sharing, the accommodation of the groups to the decision-making process and by ensuring self -rule.
- Geographical/nation state federation is criticized for it is based on idea of assimilation/integration in homogeneous states and cannot be applied to multi cultural states like Ethiopia, Nigeria, India and etc. So each type of federalism have their own respective benefits depending upon the context of countries applied them.

Conclusion … cont'd



- Division of power is essential in federalism. It is the powers allocated to federal government and states by the federal constitution.
- The federal constitution allocate power b/n the two levels of gov'ts as exclusive, shared and residual power. The exclusive powers are the areas which made monopoly and given to either level of gov't. The shared powers are the areas where the powers of both level of gov'ts overlaps and cannot be given to each exclusively. It can be either concurrent or framework power. Residual powers are the powers which are not expressly covered by the federal constitution but granted to one level of gov't (mostly to states) when it come in to figure.
- Federalism can be dual or executive depending on the way in which federal laws are enforced throughout all territory of the country.
- The role of umpiring body in federalism is essential since conflict cannot be avoided forever. Different mechanisms are employed by different countries regarding umpiring federation.



The End