

Federalism Lecture Note; Simon

Chapter Three: Distribution of Powers in a Federation

One of the fundamental features of the federations is the fact that powers are distributed, often constitutionally between levels of government. And these powers are institutionalized; entrenched by the constitution itself. This means that they can not be invaded by one level of government. Generally, distribution of power is basically about who does what, and how. The question of who is concerned with the level of government i.e. the federal government and/or the constituent unit governments. The question of what on the other hand is regarding the specific powers, or the particular fields, or the subject matters each level of government is invested with. E.g. defense, education and the like. What is more, the question of how is related to the exercise of legislative, executive as well as fiscal powers. So for the question how, it may be through making laws, implementing those laws, and accompanied with the use of financial powers. Thus, fiscal powers are made available for both levels of government in order to make them discharge their particular functions in particular fields. Needless to mention, the exercise of legislative and executive powers is the manifestation of sovereignty. The primary source of these powers is the constitution. If there are subsidiary or secondary sources, it's because the constitution has provided for those supplementary sources. This is because constitutional details are most of the time impossible due to the frequently differing socio-economic and political circumstances. It's to take account of these varying circumstances that these subsidiary instruments are put to place. These legal subsidiary sources may be in the forms of statutory instruments made by the legislative body, bilateral agreements between the federal and the constituent unit governments, and also judicial constructions which do mean application of the laws by the courts including constitutional interpretation. For instance, in the US, the Supreme Court has played a vital role in defining the powers of the federal government and states by way of interpreting the constitution. The last but not least

subsidiary source of powers in some federations is delegation. Powers could be delegated from one level of government to another to the effect that these powers are taken back.

Legislative and executive powers are indispensable to the exercise of authority in general. Not only in federations but also in all polities the exercise of authority involves legislative and executive authorities. These powers are not available to organs other than government. Private party can not engage in legislating laws and implementing them. This is something exclusively the prerogative of a governmental body. As governmental bodies, both levels in federations need to be endowed with these powers.

There is often an overlap between the legislative and executive powers of governments in federations. This means that the level of government which does have the power to legislate on a certain matter will at the same time have the power to execute that law. This is often the case in federations having a parliamentary form of government, where there is a fusion of authority between the legislative and the executive. The implication here is that if a parliamentary governmental form is superimposed in a state, it's impossible to give the legislative power to one level of government while reserving the executive power to the other for it makes no sense given the fusion of authority between each level of government. An exception to this is India where the laws the union parliament sets are implemented at regional levels. This is made easy due to the dominance of a single party at both levels of government. Conversely, this might not work in a presidential form of government where there is a separate legislature and executive.

Giving such powers for either level of governments has the following advantages.

- It reinforces the autonomy of each level of government;
- It avoids the opportunity of mis-implementation of laws: This means that if the government which is given the power to deliberate certain laws is also accorded with the power of executing those laws, there will be a better ground for the proper implementation of the laws.

In some federations on the other hand, there is a separation of legislative and executive powers between the two levels of governments in that the legislative power is assigned to one level of government while the executive power is reserved to the other level. In most instances, it's the federal government which is granted the power to legislate whilst the regions are vested with the power of executing those laws. The reverse is not true. European federations such as Germany, Austria, Switzerland and Spain have these features. This has the advantage of creating co-ordinations and collaborations between the two levels of governments. This is because these days fields call for joint action on the part of both levels of government. This does not however, mean that the state governments are totally denied the power to enact laws. In some federations which follow the above trend, the state governments are conferred with powers to make laws and execute them as a manifestation of their autonomy. For example, in Germany, though limited, the lander governments are given the power to make laws and implement those laws.

While speaking of the division of legislative and executive powers, there are two models to which federations belong. These are the dualist approach and the integrationist approach. Classical federal systems exhibit the dualist feature. By dualism we mean each level of government exercises independent legislative as well as executive authority. Theoretically it means that each level of government does not come in touch with one another. It may be termed as competitive federalism. The US is supposed to be a dual federal system whereby both levels of government are independent of one another and they exercise full legislative, executive and judicial functions in their sphere of competence. In addition to US, other classical federal systems such as Australia and Canada are classed as dualist federations. The implication is that in federations the federal government can legislate over the whole population and the whole territory. In the implementation of those laws, it should have its civil service and departments through out the country. This is one of the consequences of the

dualist arrangement. This is mainly because it cannot enforce its laws via the states since each level of government is independent of one another. Practically, however, the classical dual federal systems have not neatly stayed dual. They employed mechanisms of collaborations in some concurrent fields. So duality is a matter of degree so to say.

The integrated model or interlocking as some times refers to indicates the fact that fields call for a coordinated action between the two levels of government. In this system most government powers are shared or concurrent whereby one level of government makes laws while the others partake in implementing those laws in a manner that suits their regional preferences. Germany, Austria, Spain, and South Africa are the typical examples of this model. The consequence of this model is that unlike the dualist model, the federal government need not have its civil service and departments through out the country. It'll have a limited presence in the country because regional governments will undertake responsibility for delivering programs through their civil service and bureaucracy. This model is detrimental in that the federal government while making laws may not take particular local circumstances into account. The challenge in this model is restricting the scope of the laws which means making them as broader as possible so that the details are left for the regions.

The approaches as well as the details of distribution of powers across the federations display significant variations. Many factors could be attributed to such variations some of which include:

- The degree of diversity and uniformity in the federations: The more there is heterogeneity in the federation, the greater the tendency to give power towards the regions (non-centralization of power). If on the other hand, the more there is homogeneity, the larger the tendency will be to allocating powers in favor of the federal government (centralization of powers).

- International factors: Classical federations were established mainly for establishing foreign relations and for common defense purposes. These purposes call for robust federal government.
- Processes of formation of the federations: If the process of formation of the federation is the coming together or aggregative approach, it will end up creating federations whereby more powers are given to the regions where the federal government is accorded with fewer powers. If on the other hand the process is devolutionary or holding together approach, the central government retains more power while allocating less power to the regions.
- The period when the constitution is adopted itself is some times taken as one factor affecting the power configuration in the federations. It affects not the approach but rather the details of powers. Such early federations as the US, Canada etc. have constitutions which are framed in a broad manner. Originally, the US constitution provided some list of the federal power while reserving the rest for the states. But gradually the US Supreme Court through the necessary and proper clause, and the commerce clause came to return powers to the federal government. Whereas, the recent federations such as that of India have detailed constitutions containing 97 lists of the federal government powers, the concurrent list being 47 and the state powers 66.
- The prevalence of the common law and the civil law legal system: In the common law legal system, the judiciary, through its power of interpreting the constitution, tilts the power balance to one level of government and/or keeps the balance. As opposed to this, in civil law legal system there is no such opportunity. There are also some federations with the mixed legal systems. They Include South Africa and Canada.
There are differing approaches or patterns of distribution of powers. They are presented one at a time here below.
- Exclusive authority: Each level of government is solely vested with authority on certain areas. In these areas, no level of government other than

the power holder can make laws. Exclusive power could be enumerated or not. It's most seen in the US and Australian federations.

- Concurrent authority: By concurrent we mean that both levels of government have the power of legislation on the same subject matter. This is the reflection of the dualist model. In this approach there may be a larger chance of the occurrence of conflict between the laws of the federal government and of the regions. To get rid of this problem, countries apply a principle known as preemption or paramountcy which is always in favor of the federal laws. The constitutions of the US and India provide the lists of concurrent power together with the principle of preemption whereby the federal laws prevail over regional laws in the event of conflict between the two laws.

- Shared powers: In shared power both levels of government exercise power virtually in respect of the same field but the manner they go on to exercise such powers differs from what we saw in concurrent approach. Unlike the concurrent approach wherein they exercise their powers independent of one another, here they exercise powers jointly by a mutual consent. As a result, there is no conflict that occurs between the laws enacted and hence no need for the principle of preemption. Even if there is conflict, it's before the making of the laws not thereafter due to the fact that the laws are made by mutual consent. This approach tends to pertain to the integrationist model wherein the federal government makes laws to be implemented by the regions.

- Framework power: Here the federal government in some particular fields exercises broader policy making power through what is called framework legislation and the regions are conferred with the power to make detailed rules in that fields as to the implementation of that policy without contravening it. This is the trend in Germany, and South Africa.

Residual vs. Enumerated authority: By the talk of enumerated powers we are referring to governmental powers that are named. This power could be exclusive, shared, or concurrent as the case might be. Residual powers on

the other hand are unnamed powers that are presumed to exist. They might be given exclusively to one level of government; they might also be concurrent or shared. The general trend across federations in this regard is that the federal powers are enumerated. So are the concurrent powers. Whereas the powers of the regions are residual. Exceptionally to this, the Canadian constitution provides the lists of powers of the provincial governments together with the concurrent powers leaving the residual powers to the federal government.

Emergency or override powers: In almost all federations, these powers if any are given to the federal governments with the motive to prevent potential disintegration of the whole federation which is some times referred to as Balkanization. So if an exercise of regional powers could lead to the disintegration of the federation as a whole, the federal government is given the power to exercise emergency powers to avert such tendencies of balkanization by the regions. For instance, the Indian union government is given an unprecedented power to abolish or destruct state governments in the event that threatens the cohesion or the continuity of the federation. It's fear of political fragmentation that triggers the inclusion of these emergency powers under the constitution in favor of the federal government. But most constitutions recognize unequivocally the indestructibility of the regional governments. This shows us the fact that emergency powers are rarely included in constitutions. If need be, they are included by the consent of the states. In addition to India, the constitutions of Argentina, Pakistan and Malaysia give the federal government the power to unilaterally declare a state of emergency on constituent units which could even lead to the destruction of the latter.

Delegation: It means that powers that normally belong to one level of government are delegated to the other level often accompanied by financial assistance. It can be taken back at any time where the delegator wills.

Residual vs. Implied authority: Generally speaking, if the federation is formed through an aggregative process, residual powers are given to the

states. The tendency in doing so is to delimit the federal government power and to enable states to act in the remaining fields thereby to reinforce their autonomy. This by itself does not, however, secure their autonomy because their autonomy is the function of the extent or the comprehensiveness of powers given to the federal government. On the other hand, if the federation is formed through devolutionary process, in addition to exclusive federal state authority, and concurrent authority, the residual powers are given to the federal government. Residual authority is some thing that is unspecified, a power field that is independent which has less connection with the powers already listed. But some powers might be unspecified but tied to authorities that have already been mentioned. If for example, the power of inter-state commerce is given to the federal government but any other field which has relevance to undertake such transaction like the enactment of commercial code is left unspecified, it's by inference given to the federal government. This is what is called implied authority.

Scope of powers: By a general trend, foreign relations, defense, inter-state and international commerce, powers related to monetary policy, treaty adoption and ratification, the development of major physical infrastructures like the construction of highways, railways, airports, sea ports, energy projects like dams are allocated exclusively to the federal government. These powers are given to the federal government because of the following major reasons.

- They have a nation-wide advantages;
- They link two or more states;
- They are used to avoid economic inefficiency;
- They preserve internal economic unity; and
- Monetary policies are macro-economic sectors.

As a result, it's not advisable to give such powers to the regions for their decisions do not have effects in the remaining regions.

On the other hand, intra state commerce, primary and secondary education, maintenance of law and order, health care, and social welfare are subject

matters which most of the time fall under states jurisdiction. This is because they have more of local than national dimension and therefore, they should be left to the local unit of governments. We've to be cautious here. Such fields as education and health may need minimum national standard for their proper implementation. This is most likely to be set by the federal government through framework legislations. Here we can observe the aspects of concurrent and joint authority.

In broader terms, economic and social policies are fields for concurrent jurisdiction. Both levels of government exercise certain powers in respect of economic and social policies. Some of the concurrent or joint fields include: labor relations, environmental regulations, pension, and police powers. There are also certain fields which do not belong to either the federal government or the states. Nor are they concurrent. These consist of: natural resources, post secondary or tertiary education, the enactment of criminal law and civil law. Even court systems do vary across federations. Some federations have only one level of courts, federal courts. In these federations there are no such things as state courts. The courts are established through out the country and adjudicate legal disputes. India is a good example in this regard. But other federations including Ethiopia establish two parallel levels of courts, both at the federal and the state levels.

By looking at the details of the patterns of power allocation and the extent of powers allocated to each level of governments, we can categorize federations into centralized and decentralized. If for instance, the federal government has a long list of powers and the regions are left with less of those powers, the federation could be regarded as centralized. Indian, Mexican and Venezuela's federations are described as centralized. If on the other hand, as in Canada and the US, states or provincial governments exercise substantive jurisdictions in many fields, the federal system is termed as the decentralized one. In addition to the US and Canadian federations, the Swiss federation is known for its decentralized features.

We can also describe federations as legislative and administrative. In Germany for example the Bundestag has the power to make general laws or framework legislations which are to be administered by the lander governments. So from the view point of the federal government the federation could be described as legislative federalism and from the view point of the states it might be described as administrative federalism. Besides Germany, South Africa and Austria pertain to the administrative federalism. Generally speaking, you can not achieve a comprehensive, clearly delineated assignment of powers or authorities to the two levels of government. There is an inevitability of interdependence of authority between the two levels of government. Because of this interdependence, scholars call federal systems generally as a marble cake federalism rather than a layer cake federalism. In a marble cake, the two ingredients are visible but since they are lightly mixed, it's difficult to differentiate the where about of these ingredients. Therefore, governmental systems are just like a marble cake in federations. The fields where the two levels of government exercise interdependent jurisdictions are many. Consequently, there are inevitable overlappings and interlockings whereby the clear delimitation of powers is not complete. It's also termed as a picket fence federalism.

On the face value, the Ethiopian federal system seems to pertain to the dualist approach in which both levels of government have legislative, executive and judicial powers. See Art. 50 (2) of the FDRE constitution. But when you go deeper and deeper through the provisions, you come across many concurrent and shared powers which depict its integrationist components. For this reason, the Ethiopian federal system may be the hybrid of the two approaches. While looking at its form, the constitutional theory claims that the Ethiopian federal system is formed through aggregative mechanisms but in reality it is not true. It's rather formed through the devolutionary mechanisms. This can be testified from the fact that its immediate predecessor was a unitary system of government. So it's

difficult to categorize the Ethiopian federation into the dualist or the integrationist based on its form due to the existence of inconsistency between the constitutional myth and the reality. It's centralized because the constitution in its article 51 provides a long list of federal government. There is no a clearly stipulated principle of preemption in the constitution in case when there arises a conflict between the two levels of government in concurrent fields. But what is seen in practice is different in that the federal government can sweep the authorities of the regions. This is partly due to a party discipline. A party system and the working of federal system are very much related. If the same government controls the federal government and the regional governments, then there will be less room for difference. The regional wing of that political party is going to be subservient to the commands of the party at the central government. Accordingly, in the Ethiopian federal system, the federal government can secure the obedience of the regions even in the absence of the principle of preemption for there exists a single party domination. The fact that the Ethiopian federal system is dominated by a single party plays a vital role in the centralization of the federal system. If the two levels of government are controlled by different political parties, that is where the working of the federal system is going to be tested. For more detail on the exclusive, concurrent and shared powers of the federal government and states refer to articles 51, 52 and 55 of the constitution.

Under the constitution there is a list of framework authority in addition to a list of exclusive and shared powers. The federal government enacts laws on the utilization of land and other natural resources in which the states administer those matters in accordance with federal laws. See Art. 52 (2) D of the constitution.

Emergency powers in the Constitution: When some thing endangering the federation as a whole happens in the states, the federal government is empowered to intervene in the states to arrest any deteriorating situation in that state. See articles 51 sub articles 2, 14 and 16 and 62 sub 9 to this

effect. There is also a proclamation which has relevance in this regard entitled proclamation no. 359/2003 which provides for a system of federal intervention in the states. This proclamation, in its preamble and under its body makes a reference to the above constitutional provisions. The proclamation in its article 2 (1) defines intervention in a broader sense as a system of intervention in the states pursuant to article 62 (9) of the constitution. It also includes measures taken in accordance with article 51 (14) and (16). By a close reading of the proclamation beginning from article 12, we can appreciate the fact that such emergency power has the consequence of suspension of the pre-existing administration of the state which endangered the constitutional order. Accordingly, the federal government can only exercise suspensive power whereby it can put in place a provisional administration which can stay in power for a maximum of two years in lieu of the previous administration that has endangered the constitution until a legitimate state administration is put in place in the next round of election. According to the proclamation, intervention can be made in three instances. 1. Where there is a deteriorating security situation Arts. 4-6. 2. Where there is human rights violation and 3. Where the constitutional order is endangered.

Delegation under the constitution: As can be understood from article 50 (9) of the constitution, the federal government can delegate when necessary its power to the regions. It can be made through a constitutional means or by the consent of the two levels of government. For this purpose it's relevant to look at articles 78 (2) and 80 (2) and (4). It's about the delegation of judicial power. Of all, article 78 (2) has a great significance in this regard. It states that the federal government can establish federal high and first instance courts through out the country nationwide or in some regions. Until the federal government establishes its courts through out the country, the power of the federal first instance court is delegated to the states high court and the power of its high court to the states supreme court. So matters clearly of a federal nature are adjudicated in these courts according

to the federal laws. Very recently, the federal government has established its high court in Assosa and Hawassa which are the administrative seats of the Benishan Gul Gumuz and SNNPR regions respectively. The constitution does not clearly state about the possibility of reverse delegation i.e. delegation of state power to the federal government. But it does not mean that it's prohibited. The constitution in article 94 (1) states that unless otherwise agreed, the exercise of any delegated power shall be accompanied by the allocation of the revenue by the delegator. This provision does not single out the federal government as the only organ having the power to delegate but it rather implies the possibility of delegation by both levels.

Fiscal power: It's an important part of the distribution of powers. It serves two principal purposes. 1. The distribution of legislative and executive powers would be meaningless unless backed by the means of acting i.e. money. 2. It's by itself an important tool for such economic purposes as macro-economic management, designing social security schemes, and devising a good health care system. Fiscal power is basically composed of two components i.e. expenditure responsibility and revenue responsibility. Expenditure responsibility in a constitution is some thing that can be inferred from the general allocation of the legislative and executive functions. Revenue power is a means of acting which unlike the expenditure responsibilities is separately and explicitly listed under the constitutions. As far as possible the revenue means must match the expenditure means so that there will occur a fertile ground for the exercise of the responsibilities each level of government is assigned with. We say there is a mismatch when there is an imbalance between the revenue and the expenditure commitments. This imbalance could be either surplus or deficit. It's said there is surplus when the revenue commitment is greater than that of the expenditure commitment. The converse works true for deficit. In federations such imbalance is rectified through the mechanism known as inter governmental transfer.

When we are talking about fiscal federalism, there are certain guidelines we should take into account. These guidelines are presented here below as follows.

- The principle of fiscal equivalence: It's all about the need to match the revenue commitments to that of the expenditure commitments. As opposed to this theoretical notion, sub national units often find themselves in a state of deficit because they are assigned with costly expenditure responsibilities while the lucrative sources of revenue are reserved to the federal government.
- The subsidiarity principle: It assigns fiscal responsibilities primarily to local units because local units are closer to the public in which they could understand the preference of the public and provide them with the necessary social services accordingly. To put it otherwise, local governments are deemed to be accountable to the local people and responsive to their needs because of their proximity to them.

In the allocation of fiscal authority, expenditure responsibility must be assigned first in order to get rid of mis-allocation of resources.

According to the literatures of fiscal federalism, there are certain principles we should adhere to in assigning expenditure functions. These include:

- Efficiency: There is deemed to be efficiency when a level of government is able to discharge its functions without any problem having contained the costs as well as the benefits under its jurisdiction. It can also be expressed by a concept called externality whereby the action of one level of government will have an effect on another in the form of either benefit or cost. Things of this kind such as macro-economic management, and inter-state commerce have a cross-boundary effect so that it's impossible to leave them to the regions. They should rather be assigned to the central government so as to carry out them effectively. On the other hand, matters having a purely local nature such as the administration of natural resource, land and the like are to be left to the regions within which these resources are located.

- Equity: It's about the provision of a uniform standard of public services through out the federation. Some basic public services like education and health require the laying down of a minimum national standard in order to avoid discrimination between citizens based on merely of their residence. This is equally important to fortify a political cohesion with in the federation. Equity could be of two types i.e. inter-personal and inter-jurisdictional. The former is concerned with absolute equality whereas the latter is about providing sub-national units with comparable means of basic services.
- Administrative feasibility: It's about assigning states with functions which they are capable to discharge. This principle is highly inter-related to the principle of efficiency.
- Mobility: If the subject of undertaking by the level of government moves from one state to another, it'll be better to make that economic unit be regulated by the federal government.

It's possible to assess functions allocated to the federal government and the regions under the FDRE constitution in light of the above principles.

- The administration of land and other natural resources: As per article 52 (2) D of the constitution states are vested with the power to administer land and other natural resources in accordance with federal laws. Land and natural resources are immobile. In line with the literatures of fiscal federalism, the whole administration of natural resources and land including the making of laws should be left to the local units. In contrast to this conception, however, the constitution puts restriction in the power of the regions by allotting the law making power to the federal government.
- Social services: By virtue of article 52 (2) F of the constitution, the regions can provide social services to their residents in compliance with the minimum national standard set by the federal government. This is consistent with the principle of equity which requires the involvement of the federal government with the view to eliminate discriminations among citizens irrespective of their residence.

Revenue sources: Revenue is a wider concept which comprises tax and non-tax sources such as borrowing, user fees, and service charges. In the context of developing countries, it also includes external assistances. Fiscal federalism theorists generally provide certain guidelines for the allocation of these sources in general and tax sources in particular. Some of them are tantamount to the principles we saw for the allocation of expenditure functions earlier. They include:

- Economic efficiency: One of the factors under economic efficiency is mobility. By mobility we mean if the economic unit upon which the tax falls moves from jurisdiction to jurisdiction, it'll be inefficient for a local unit of government to levy and collect taxes in respect to that economic unit. Therefore, the power to levy and collect tax in respect of that economic unit should be left to the federal government. Let's take for example corporate income tax. It's a kind of tax collected from the income of corporations or companies. Since companies derive their income from different geographical areas of the country and it therefore moves across jurisdictions, it makes unsuitable for local units of government to levy and collect tax on it. If each of the regions is allowed to collect tax in its respective territory, there occur conflicting tax regimes with regard to the same economic unit. Thus, the federal government should intervene in the levying and collection of taxes of virtually the same field having regards to the aspects of mobility.
- Equity: Redistribution policy is one way through which equity is manifested. If there is a substantial income inequality within the federation, it will create instability, resentment by the poor towards the rich which ultimately exacerbates the future well-being of the community as a whole. It's through the redistribution policy that this problem is eased if not solved. This policy resorts to tax as an instrument to alleviate such difficulty through the imposition of progressive income taxes where the rich is taxed heavily and the poor is taxed lightly and even exempted. Since it's a macro-economic policy, it's unsound to assign the regions with such power. It does

not; however mean that the regions are totally devoid of any power regarding income tax because they could levy supplementary tax rates. Added to this, such revenue sources as taxes from natural resources which are unevenly distributed through out the country should be collected on the basis of the principle of equity and redistributed to the remaining regions. While redistributing, the regions from where those resources are excavated should be given a prior share in keeping with the derivation principle. This is done by the federal government.

- **Residence principle:** It means that the location of that economic unit determines to which level of government a certain revenue source should be assigned. Let's here take individual traders as an example. Individual traders are located with in particular regions. So taxation of business income of individual traders could be assigned to the regional governments by the application of residence guideline.
- **Benefit principle:** This principle dictates that a particular level of government which is providing a bundle of services to its inhabitants is entitled to impose taxes, fees and charges associated with that benefit. For example, the federal government caters an issuance of passport. The issuance of passport entails payment of certain fee. As a result, it's the federal government which collects those fees on the basis of benefit principle.
- **Accountability to the electorate:** It requires that a governmental level must spend what itself has generated. If it expends what it obtained from other level of government, it will not have the incentive to expend it responsibly. This is basically because citizens can not ask that level of government to be accountable for what they have not given it. If on the other hand, it derives its revenue from citizens through tax, they will be able to ask how that revenue has been expended. Accordingly, it ensures accountability. That is the essence why regional governments should be given adequate revenue sources. If they are not provided with adequate revenue powers and rely on heavy transfers from the federal government to

carry out their fiscal responsibilities, they are going to be accountable to the granter rather than to their electorates.

- **Autonomy:** If sub-national units of government depend heavily on transfers from the federal government, their autonomy will be severely eroded. It creates what is called a dependency syndrome. Autonomy is a measure of how much financial resources you have at your disposal. It dictates us that regional governments must rely on self financed means rather than being dependent on transfers from the higher order of government so that they can effectively discharge their responsibilities.

Furthermore, The assignment of revenue should take account of such principles as administrative feasibility, the principle of equivalence and what have you.

Let's now look at some of the patterns of revenue sources under federal constitutions in line with the afore-mentioned guidelines.

- **Personal income tax:** Personal income tax is a tax imposed on the income of individuals. It could be income of employment, it could be income from engaging in business, it could also be imposed on royalties (income from intellectual services) etc. As far as progressive aspect of that tax is concerned, it's the federal government that levies tax on this matter since equity so requires. The regions also levy supplementary tax rates on a federally defined tax base based on the application of the principle of residence. So the imposition of personal income tax turns out to be a concurrent area.
- **Corporate income tax:** It's most of the time a concurrent power field between the federal and regional governments. The federal government is entitled on the basis of mobility while the states are entitled on the basis of residence.
- **Revenue from natural resources:** We can think of four kinds of revenue with regard to natural resources. These are: 1. Revenue from the direct marketing of the resources, 2. Royalty fee to give license to private companies for the extraction of these resources, 3. Taxes imposed on the

annual profit of the companies, and 4. Tax imposed on the extraction of the resources from its natural state (severance excise tax). The first two are often shared between the federal government and the regions in the interest of equity. On the other hand, the third type of revenue source is given to the federal government while the fourth is apportioned to the regions.

- Customs duties: It's tax on imports and exports. It's almost always exclusively federal.
- Sales tax: it's concurrent. If it's a value added tax, it's the federal government which levies and collects taxes allowing regions to share from the respective taxes collected from each regions.

Agriculture income taxes, property taxes and land taxes are given to regions under different federal constitutions. User fees and service charges on the other hand are allotted to the level which renders the services based on benefit principles.

With this general framework, let's come to the discussion of revenue patterns in the Ethiopian constitution. The constitution in its article 95 states that revenue is divided between the two levels of government taking the federal arrangement into account. This would mean that the geographical source of the income, residence and benefit principles are all taken into account implicitly. It makes the assignment of the revenue sources in a very detailed manner by naming each and every sources belonging to both levels. It for example makes an assignment of revenue based on the identity of the tax payer. Accordingly, if the employee is that of the federal government, it's the federal government that can impose tax the inverse holds true for states. It also makes assignments based on ownership of an entity. In view of that, the federal government levies all kinds of tax on different enterprises owned by it. So do the states on the enterprises under their ownership. What is more, the geographical source of the taxable economic unit is an implicitly determining guideline of the revenue allocation.

The constitution provides a list of an exclusive revenue sources of the federal government and of the regions. It also provides concurrent or shared revenue sources. There is no, however, such thing as residuary power of revenue under the constitution. Revenue powers in principle must be named. Those revenue powers which are not expressly provided by the constitution are termed as undesignated powers of revenue in article 99 of the constitution which belong to none level of government. The fate of these undesignated powers will be decided by the joint session of the two houses, namely: the HOF and the HPR.

Basically there are three kinds of revenue which are significant to consider. They are:

- Own revenue: In this kind of revenue, both the federal government and regional governments can self determine the base, the rate, collect the revenue, and use it entirely for their purposes.
- Revenue sharing scheme: For this purpose it's important to consider article 98 of the constitution. Accordingly, income from corporations, share companies, and private limited companies, as well as dividends distributed by these companies, and income from large-scale petroleum and gas operations are shared between the federal government and regional governments. Practically, the federal government determines the tax base as well as the tax rate, and collects it. After all, the regions will share the proceeds thereof.
- Inter-governmental transfers: They usually occur from the federal government to the regions. The opposite does not often work in federations. It's rather the case in confederations. Here the recipient government does not have any constitutionally guaranteed right to determine the base, the rate, collect the revenue, and even to share from it. It's some thing which entirely resides in the grantor with the exception of the general purpose grant.

Inter-governmental transfer is the character of almost all federations. It may be because of the problem in the design of the federation; the over

centralization of fiscal power and, at times, it's inevitable though differs in its extent across federations. It's inevitable because the federal government is often placed in a very fiscally advantageous position. In almost all federations the federal government controls such lucrative revenue sources as customs duties, progressive personal income tax, printing money, borrowing from external sources. Its expenditure commitments are minimal compared to its revenue sources. As a result, it finds itself in a state of surplus. Conversely, states do have no worthwhile revenue sources in comparison to the federal government. The expenditure commitments however, are costly which ultimately lead them to deficit. Unless this problem is remedied, it results in mis-allocation of resources. Inter-governmental transfers are, therefore, instruments created to rectify the mismatch that occurred between the federal government and the states due to the allocation of revenue sources.

We can think of two kinds of fiscal imbalances; namely: vertical fiscal imbalance and horizontal fiscal imbalance. Vertical fiscal imbalance is created as a result of the mismatch between revenue and expenditure between the federal government and the regions. Its effect is mis-allocation of resources. It could be remedied by transfers from the federal government to the regions. While horizontal fiscal imbalance refers to a phenomenon where there is disparity between states across the federation. Its effect is corroding political union, and creating inequitable consequences between citizens simply based on their residence. It can be corrected through the regime of what is called horizontal fiscal equalization or equalization transfer. If there is the scheme of horizontal fiscal equalization, it often happens through the agency of the federal government and at times, it may be directly donated to the poorer state by the richer. This was the case in Germany in the event of its unification where the richer landers of the west made direct donations to the eastern landers which were lagging behind.

Basically, we've two kinds of transfers: unconditional and conditional. The following are examples of unconditional transfers.

- General purpose grants: In this kind of transfer, there are no strings or conditions attached whatsoever. This means that there is no condition imposed on how to spend the revenue and what the outcome will look like. It's actually part of the general budget of the recipient. They are preferable in that they respect the autonomy of the recipients i.e. the regions. They are on the other hand condemned for the creation of transfer dependency and less room for accountability for the electorates. There are other unconditional transfers but with less degree of unconditionalities such as block grants and categorical grants.

- Block grant: The grant is made having in mind a certain broader field of expenditure. The condition is only imposed on the prescription of the field. The recipient can therefore, spend the donation in the way it pleases in so far as it's not outside the field prescribed.

- Categorical grant: It's even less unconditional than the block grant. The field of expenditure in this kind of grant is a little bit narrower than that of in the block grant. But like in block grant the donee is free to spend the grant in the way it likes given the restriction in the field.

Conditional grants or special purpose grants as some times referred to are grants to which various sorts of strings or conditions are attached. They consist of:

- Input based conditionality: The donor prescribes the details of the expenditure of the fund. It's so intrusive that it denies the autonomy of the recipient to act in the way it likes.

- Output based conditionality: The donor is interested in the realization of certain results or outcomes. Unlike in input based conditional grants, the recipient governments retain their autonomy to determine how a certain outcome is going to be achieved. As a result, it's preferred to input based conditional grant by the regions.

- Matching grant: As the name itself suggests, the federal government makes a certain fund available for a certain project leaving the remaining percentage of the project to be satisfied by the regions. Matching grant

could be of two types: open ended matching grant and close ended matching grant. In open ended matching grant, the percent of share to be contributed by each level of government is open to adjustments. Whereas, in close ended matching grant, the percentage each level contributes is fixed.

- Non-matching grant: The federal government makes available a certain fund with out any matching requirement.

The federal government can positively influence the policy of the regional governments through its spending power by making available special purpose grants to the regions. It can also use its spending power negatively to reward its political ally and punish its political adversary in the event where different political parties control the federal government and the regions.