# Federalism and intergovernmental relations

**By: Tariku A**

**Haramaya University**

**College of Law**

**July, 2013**

# Introduction to Federalism

- **The Federal Idea**
- Derives from the latin words *foedus and fides*
- *foedus: covenant, contract or bargain*
- *fides: faith and trust*
- Has to do with the need of people and polities to unite for common purposes yet remain separate to preserve their respective integrities.
- “Federal principles are concerned with the combination of self-rule and shared rule.” ( Daniel J. Elazar,1987)

- **Federalism Unity and Diversity**
- In Federalism is a mistake to present unity and diversity as opposites.
- Unity should be contrasted with disunity and diversity with homogeneity.
- Homogeneity does not always promote unity.
- **Federalism VS. Decentralization**
- Federalism is not mere decentralisation  but a contractual non centralization.
- Non centralization is not the same as decentralization.
- Decentralization implies:
  - Existence of a central authority
  - The diffusion of power is actually a matter of grace, not right.
- In a non centralized political system, power is so diffused that it cannot be legitimately centralized or concentrated without breaking the structure and spirit of the constitution

- **Federalism as Structure and Process** Earlier  Federalism considered as matter of Structural arrangements
- Assumption: the introduction of a proper federal structure would create a functioning federal system.
- Many polities with federal structures were not truly federal in practice.
- Federalism is as much a matter of process as of structure.

# Federalism ,Federal Political Systems & Federations

- **‘federalism**’ is used basically not as a descriptive but as a normative term and refers to the advocacy of multi-tiered government combining elements of shared-rule and regional self-rule.
- It is based on the presumed value and validity of combining unity and diversity, i.e., of accommodating, preserving and promoting distinct identities within a larger political union.
- The essence of federalism as a normative principle is the value of perpetuating both union and non-centralization at the same time. ( Watts,2008).
- **“Federal political systems” and “federations**” are used as descriptive terms applying to particular **forms of political organization.**
- **“Federal political systems”:** refers to a broad category of political systems in which, by contrast to the single central source of political and legal authority in unitary systems, there are two (or more) levels of government thus combining elements of *shared-rule* (collaborative partnership) through a common government and *regional self-rule* (constituent unit autonomy) for the governments of the constituent units.

# Definitions of Federations

- “Federations: Compound polities, combining strong constituent units and a strong general government, each possessing powers delegated to it by the people through a constitution, and each empowered to deal directly with the citizens in the exercise of its legislative, administrative and taxing powers, and each with major institutions directly elected by the citizens.” ( R. Watts,2008.p.10)

## Federations vs. Confederations

- **A Confederation** : is a **union of states in a body politic in** contrast to a federation that is a union of individuals in a body politic, suggesting the unity of one people or nation. (Burgess 2004: 30)
- These occur where several **pre-existing polities** join together to form a common government for **certain limited purposes :**
  - (for foreign affairs, defense or economic purposes)
- The common government:
  - Is **dependent** upon the will of the constituent governments,
  - **Composed of delegates** from the constituent governments,
  - have only an **indirect electoral and fiscal base**.
- Historical examples include Switzerland 1291–1798 and 1815–47, and the United States 1781– 89.
- In the contemporary world, the European Union is primarily a confederation, although it has increasingly incorporated some features of a federation.

## Common Features of Federations

- The generally common structural characteristics of federations as a specific form of federal political system are the following:
- 1. at least **two orders of government**,
  - one for the whole federation and the other for the regional units,
  - each acting directly on its citizens;
- 2. A formal **constitutional distribution**
  - of legislative and executive authority
  - and allocation of revenue resources between the two orders of government
  - ensuring some areas of genuine autonomy for each order;
- 3. Provision for the **designated representation of distinct regional views**
  - within the federal policy-making institutions,
  - Usually provided by the particular form of the federal second chamber;

- 4. A **supreme written constitution**
  - **not unilaterally amendable** and
  - requiring the consent for amendments of a significant proportion of the constituent units;
- 5. **An umpire with power to interpret the constitution**
  - (in the form of courts, provision for referendums, or an upper house with special powers);
  - To deal with Constitutional disputes on power
- 6. Processes and institutions to facilitate **intergovernmental collaboration**
  - **For policy coordination**
  - In those areas where governmental responsibilities are shared or inevitably overlap.

# Virtues of Federalism

- 1. Efficient and effective solutions because of closeness to the problems;
  - Subsidarity principle
  - Ensuring Policy Responsiveness
- 2. Additional level of "checks and balances":
  - Dispersal of Power
  - The prevention of tyranny
- 3.More political participation through local democracy
  - Multiple levels of Voting and Representation
- 4. Protection of minorities and their representation on federal level

- 5. Greater Economy of scales
  - Big internal Market
  - Big Resource and Population base
- 6. Security from foreign aggression
- 7. creative competition for best practices
  - between federal and regional level and
  - between regional entities (laboratory federalism)
  - Policy Diversity
- 8. sub-societies can be integrated into the system without loosing their identity (unity in diversity) Conflict management

# THE CRITIQUE OF FEDERALISM

- Complex, slow to change,
- Tolerates uneven development and regional inequality,
- Duplicates functions and services
- The allocation of responsibilities and resources to two orders of government is difficult
- Thought to be an expensive system of government
- ‘Minorities within minorities’ problem
- Unstable: A halfway house *en route to secession*

# Contemporary Relevance of Federalism

- Is Federalism an obsolete 19th c Form of Government?
- Far from being an obsolete form of government in the contemporary world
- In fact it is concept of the nation-state that more and more people have been coming to regard as obsolete
- we appear to be moving from a world of sovereign nation-states to a world of diminished state sovereignty and increased interstate linkages of a constitutionally federal character.
- At present, among the 192 States recognized by UN,
- 28 that are functioning federations in their character
- **Contain:**
  - About two billion people,
  - 40% of the world population, and
- **Encompass**
  - Some 510 constituent or federated units

# Reasons for the contemporary Increased interest & Relevance

**First, Pressures at one and the same time for larger political organizations and for smaller ones.**

- **The desires of their people to be both *global consumers and local citizens at the* same time,i.e trend of "glocalization."**
- **Second, Federations as "the world's most liveable countries." by UN Standard.**
  - The consistent placing of 8 federations within the top 21 of the some 174 in the annual U N ranking in terms of economic welfare, respect for rights and quality of life.
  - Indeed in 2006, Australia ranked third,Canada sixth, USA eighth, Switzerland ninth, Belgium thirteenth, Austria fourteenth, Spain nineteenth and Germany twenty-first.
- **Third, the flexibility of the federal idea allowing various forms of state organisation to meet the interest of the people.**
- Application of the federal idea has taken a great variety of forms.
- The degrees of centralization or decentralization differ across federations is different from country to country

# Federations and Second Chambers

- Second chambers are more common, if not inherent in federations.
- A second chamber is based on a different rationale and  composition than the lower house.
- **Rationale for Second Chambers**
- **A. To Represent the interests of states (groups) at federal level.**
- In federations the federal legislature should represent both the unity and the regional diversity.
- While the lower house represent the whole people as individuals( Unity), the second chamber represent them as groups,( regional diversity).
- Second chambers are expression of shared rule in federations.

- **B. To act as counter majoritarian system.**
- The lower house is often uniformly organized on the principle of proportional representation.
- There is a less strong federal element in the lower house.
- It is organized and operates on the majoritarian democratic principle.
- Second chamber represents the federal principle as distinct from the democratic principle.

# The Ethiopian System

- The FDRE Constitution provides for two federal houses. The HoPR and the HoF.
- It fulfils the minimum requirement of having a second chamber as all other federations but with a totally different function.
- It differs from other federations in terms of:
  - Ensuring regional participation in federal law making
  - Acting as a counter majoritarian institution.
- This is because of:
  - The limited role it has in federal law making
  - The mechanism of its composition

# Composition of Second Chambers

- Second chambers are  based on a different organizing principle from the lower house.
- Variations exist in the composition of second chambers.
- Some organize on the basis of equality of territory without regard to population weight.E.g. USA, Switzerland.
- Others use proportionality principle based on population weight. Eg.Ethiopia
- Others balance the principle of territoriality and citizen equality. Eg.Germany,
- **Selection of Members**
- Variations exist among the federations in the manner in which the members of the upper house are brought to office.
- Direct election by the people.
- Indirect election by the state councils
- Sending of delegates from state governments

- **Limited Role of HoF in Law Making**
- The 1995 Ethiopian Constitution stands in sharp contrast to other federations.
- The role of HoF in law making is very limited.
- Under Article 55(2), the HoPR remains the sole and highest law-making authority of the federal government.
- Article 55(1) makes clear that the HoPR exercises exclusively the legislative functions assigned to the federal government.
- **Problems in acting as counter majoritarian system**
- There is no mechanism for the smaller states to check the decisions of the HoPR.
- Danger of the center being hijacked by a few more populous ethnic groups which may affect the aim of nation building.

# Chapter two

# Division of Powers in Federations

# Two Models of Division of Powers

- There are two broadly different approaches to distributing powers within federations:
  - the dualist and integrated models.
- Many countries have elements of both.
- The dualist model typically assigns different jurisdictions to each order of government, which then delivers and administers its own programs.
- The integrated model provides for many shared competences and the Regional governments often administer centrally legislated programs or laws.

# Types of Powers

- **Five Categories of Powers**

1. **Exclusive Powers**
2. **Residual Powers**
3. **Concurrent Powers**
4. **Framework Powers**
5. **Implied Powers**

# Main Contents of Federal Powers

1. Powers necessary for the **continued unified existence** of the federation and hence inherently federal by their nature.
   - E.g. National defense, international or foreign relations, citizenship, immigration and naturalization, and other powers inherently intrinsic to these powers.
2. **commercial powers** that are essential for facilitating local as well as international trade.
   - E.g. interstate commerce, postal and telecommunication services, weight and measures, domestic currency coinage and foreign currency usage, and banking, insurance, patents and copyright.

# Main Contents of Federal Powers

3. Powers that enables **central government to implement powers** mentioned in the first and the second category.
   - E.g. powers over rail, air, water and road adjoining two or more states transports
4. Powers dealing with various **protection of various social and political issues**.
   - E.g. legislations concerning electoral laws, criminal laws and procedures as well as enforcement of laws of political rights such as press, demonstration and registration of political parties

# Main Contents of state Powers

1. Powers dealing with public services
   - E.g. Primary/Secondary education, Health care, Municipal affairs,
2. Powers dealing with local security and justice
   - E.g. Police, courts etc
3. Powers relating to preservation of diversity
   - E.g. Cultural, linguistic issues

# Division of Power under the FDRE

## Federal Powers

- Under the FDRE constitution, Art. 51 the federal government is assigned the responsibility on:
- National defense, foreign relations, monetary policies, foreign investment and the establishment and implementation of national standards on health, education, science and technology.

# Division of Powers under FDRE

## State Powers

- The nine regional states have equal powers and duties.
- Under Art.52 The Regional states are empowered to:
- Establish their own administration with responsibility for the state's civil service, law and order and the state police force.
- Regional states formulate and execute Regional State laws, economic, social, and developmental policies and strategies as well as administer their own budgets.
- Above all, Regional States are empowered to adopt and implement their regional constitution.

# Division of Powers under FDRE

**Concurrent Powers in Ethiopia**

- E.g. Art.98 Concurrent Power of taxation, and on Civil and Criminal laws

**Framework Powers in Ethiopia**

- Federal government setting standards and principles but implementation left to regions.
- Education, Public health, rural land administration, preservation of culture and history.
- Social, economic & development strategies.

**Implied Powers in Ethiopia**

- No clear indication but as some federal powers are broadly designed, there is probability of implied powers in the future.

# Division of executive Power in Ethiopia

- In Ethiopia, each government has the power of legislation and execution on matters that fall under its respective jurisdiction.
- Federal laws are, therefore, implemented through the federal executive unless otherwise provided by the Constitution.
- There are cases where the Constitution permits the central government to reserve legislative power for itself and to leave its administration to the states.
- E.g. When the federal government delegates its powers and functions to be administered by the states, as prescribed in Article 50 (9).
- E.g. When the federal government enacts law for the utilization and conservation of land and other natural resources, historical sites and objects, but its administration is reserved for the states.
- E.g. The power to establish national standards concerning public health, education, science and technology is reserved for the centre though the provision of these services is left to the states (Article 51 (3)).

## Important Concepts of Fiscal Federalism

**The major issues of fiscal federalism are summarized as:**

1. **Allocation of expenditure responsibilities,** which deals with the issue of which item of power of spending should be carried by which level of government;
2. **Allocation of revenue raising power**; which deals with the issue of which types of taxes should be levied and non tax revenues should be assumed in which jurisdiction by which level of governments;
3. **Fiscal imbalance,** deals with the fiscal mismatch between the expenditure responsibility and revenue sources . The imbalance between the tires of government and disparities between them in executing their respective responsibilities; vertical and horizontal imbalances; and
4. **The intergovernmental financial transfer**; which deals with the issue of financial flows between the federal and the states and among the states; vertical transfer and horizontal transfer in order to adjust the imbalance and keep a viable federal system.

# Chapter three

## Federalism and Accommodation of Diversity: The Ethiopian Experience

# Federal Features

## 1.Two or more orders of governments

- The federal republic comprises of the federal government and the state members. ( Art.50(1).
- The state and the federal governments shall not interfere in each others powers.(Art.50(8).

## 2. Constitutional division of Powers

- Art 50(2) states that the federal government and the regional states shall have legislative, executive and judicial powers.
- The federal government has enumerated and limited powers and the states hold residual powers. By virtue of the reserve clause, any power not mentioned in Article 51 belongs to the states.
- However, the Constitution gives other powers to the federal government, powers which are not mentioned in Article 51 but which are distributed throughout the text. E.g. Under Art 55, labour law, criminal law etc...
- Therefore, the reserve powers of the states only apply after discounting all the powers of the federal government, which are enumerated throughout the text of the Constitution, and not just in Article 51.

# Con’t

**3. Supreme, Rigid Constitution**

- The constitution declares its supremacy and it cannot be amended by order of government unilaterally. ( Art.9(1)).
- Amendment of the constitution require consent of both the federal and regional states.(Art. 104 & 105).

**4. An Umpire to deal with Constitutional Disputes**

- The  constitution authorises the non legislative  house with authority to interpret the constitution and deal with constitutional disputes. (Art. 62(1)).
- 5.Mechanism for representation of the states in the federal policy making organ?
- 6. Inter governmental Relations?

# Language Policy

- The 1995 Federal Constitution attempts to balance the interest of maintaining national unity on the one hand and the ethno-linguistic groups demand for cultural preservation and distinctiveness on the other.
- It declares under Art 5(2) Amharic as the working language of the Federal Government but does not spell the official language for communication between the federal government and the states although as a matter of practice, Amharic remains to be so.
- The present Constitution under Art 5(3) entitles member states to determine by law their respective working languages. This opens the way for the states to adopt their own  working languages from among the local languages.

# Unique Features of the Ethiopian Federal System

- Even though the Ethiopian federal system shares some similar features with other federations it has also got some unique features that sets it apart from others.

**1. Unicameral Legislature**

- The 1995 Ethiopian Constitution provides for a two house federal parliament: the HOPR and the HOF.
- Nevertheless, this is in some sense misleading because the second/upper chamber (HOF) is not part of the law making process at federal level. In other words, federal law does not need the consent of the HOF, to be a law.
- Because of this it fails to give a chance for ethno national groups participation in federal law making. Fails to act as a counter majoritarian system.

# Unique Features

## 2. Non Judicial Constitutional Interpretation

- The Ethiopian federal system departs from the convention of constitutional interpretation by the judiciary - Supreme Court or constitutional Court.
- It grants the HOF among other things with the power to interpret the Constitution, resolution of disputes among the regions.
- Particularly the power of interpreting the constitution makes the HOF of Ethiopia unique.
- Why the HOF and not the Judiciary to interpret the constitution?
- Two reasons: Ideological and historical.
  - the constitution is a “political contract among the nationalities” that should be interpreted by a politically representative organ.
  - Bad reputation of the judiciary as collaborator in violation of rights in the past regimes.

# Con’t

## 3. Secession Clause and Implications

- Another unique feature of the Ethiopian federation is related to the issue of secession. This is one of the highly contested provisions of the Constitution.

## 4. Explicit Recognition of Nations ,Nationalities and Peoples as Building Block of the Federation and Its Implications

- One feature one notices throughout the Constitution is the utmost importance given to the ethno-linguistic groups within the Ethiopian polity.

# Limitations of the Federal system

## 1. Issue of Legitimacy of the Constitution

- The term legitimacy connotes acceptability. It is about popular recognition and acceptance. It refers to the belief among a large number of people that the constitutional text needs to be obeyed by all.
- **Two kinds of legitimacy: Original Legitimacy and Derivative legitimacy.**
- Those constitutions that are born in the context of an overwhelming consensus that engendered the participation of all sectors of the population, and has as a result developed a content that is entirely compatible with the socio cultural and political context might  have a strong original legitimacy.
- Constitutions  also gain a legitimacy that emerges as their clauses are implemented to the satisfaction of most of the members of the polity. This kind of legitimacy is an earned/derivative legitimacy.

# Con’t

**2. Absence of Federal Supremacy clause**

- Unlike other federations that clearly provide for the paramountcy of the federal laws in case of conflict between the federal and state laws, there is no such indication in the Ethiopian system.

**3. Failure to Take in to Account Historic Mobility and Inter Group Relations**

- The decision to create a multicultural federation that assumes the distinct existence of each group not only creates hard boundaries between them but also underestimates the existence of a shared history among the groups.

# Con’t

## 4. Systemic Problems Related to Management of Conflicts

- One can classify conflicts in Ethiopia terming them **pre federal and post federal conflicts.**
- In pre federal Ethiopia for the large part of the 20th century, two main issues are visible in the political conflicts. These are the issue of **class and ethnicity.**
- The federal system while dealing with old conflicts on one hand it also gave birth to new types of conflicts, the post federal conflicts.
- The constitution has envisaged for the establishment of some institutions like the House of federation and provided for some mechanisms to deal with some of the conflicts.
- However, this system is said to be inadequate to deal with the complex nature of conflicts and their management.
- Currently it is being overshadowed by Ministry of Federal Affairs that has overlapping powers with the house in conflict management.

- Thank You For You Attention!!