

Constitutional Law

Introduction to Constitu

- Constitution vs. constitution
- Democracy
- Rule of Law

Features and functions of c

Sources of constitution

- ❖ Classifications of constitution
- ❖ Contents of constitution

A brief history of constitutionalism



Ancient Greece

Roman Civilization

England

USA

France



Constitutional Law

What is constitution.

The fundamental and organic law of a nation or state that establishes the institutions and apparatus of government, defines the scope of governmental sovereign powers, and guarantees individual civil rights and civil liberties.(written instrument embodying this fundamental law, together with any formal amendments). Black's law 8th ed.

Constitutional law is the body of rules that

1. Establish who governs the state (mechanisms for appointing the governors), WHO
2. Determine the functions of the state (powers of the state), and WHAT
3. Prescribe the exercise of power (operational procedures). HOW

- Constitution:- It is the supreme law of the land
- It puts an obligation on laws & other subsidiary regulations
- Art 9(1) " The Constitution is the supreme law of the land. Any law, customary practice or a decision of an organ of state or a public official which contravenes this Constitution shall be of no effect"
- We, the Nations, Nationalities and Peoples of Ethiopia:

Strongly committed, in full and free exercise of our right to self-determination, to building a political community founded on the rule of law and capable of ensuring a lasting peace, guaranteeing a democratic order, and advancing our economic and social development

Constitutional Law

- **constitutionality**, The quality or state of being constitutional. Simply defined, constitutionality is synonymous with legality but in a very mechanical sense.
- In determining constitutionality, one looks at the words of the constitution and then considers the conduct of the state, the question at all times being whether the state has complied with the constitution.
- If the conduct of the state conforms to the words of the constitution that is the end of the enquiry for the answer would be that it is constitutional.
- It does not matter that the powers provided for in the constitution are excessive. In this regard, the constitution is not serving the purpose of limiting power but simply facilitating the exercise of power, however excessive it might be.

- Suppose the constitution includes a clause that provides that the state may expropriate shares held in companies operating in industries regarded as critical and that in all such cases the courts of law shall have no jurisdiction to hear any challenges against expropriation.
- The state expropriate shares in companies operating in the mining industry. By this act, all shareholders will lose their property. it may be concluded that the state has acted constitutionally by following the terms of the law.
- The removal of access to the court means there is virtually no scrutiny of governmental action and no protection of the law for individual shareholders. the state is arbitrary and prone to abuse.
- the conduct meets the test of constitutionality in the mechanical sense of complying with the terms of the constitution, nevertheless considered through the broader and more qualitative lens of constitutionalism,
- **Constitutionalism** is a political philosophy based on the idea that government authority is derived from the people and should be limited by a constitution that clearly expresses what the government can and cannot do. It is the idea that the state is not free to do anything it wants, but is bound by laws limited its authority

- Lawyers look at a constitution as a piece of law, political scientist and politicians may like to call it with Franklin Roosevelt “a layman’s document, not a lawyer’s contract
- One core element of constitutionalism is the legalization of political power, the long historical process in which political rules and public administrations became subjected to the rules they had made, controlled by independent bodies like courts.
- There is neither any constitutional order without this process nor any in which this process has been fully completed the institutional design of democratic governance requires legal rules.
- Without them the identification of democratic membership or the organization of democratic procedures are not possible. Without a legal definition of egalitarian rights to participation and to public opposition the democratic legitimacy of political decisions cannot be guaranteed. There is no democracy beyond constitutionalism, and there is no constitutionalism without at least one democratic element, as we can observe in mixed constitutional orders like the mentioned.

James Madison

- the Founding Fathers of the United States Constitution, James Madison

“In framing government which is to be administered by men over men, the greatest difficulty lies in this: you must first enable government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on government but experience has taught mankind the necessity of auxiliary precautions.”

- This passage confirms three critical points:
- First, that a government is necessary and that its power must be facilitated to enable it to have control and to fulfill the interests of the governed;
- Second, that government cannot be completely trusted with power and that this power must therefore be restrained.
- Third, acknowledging the role that people may play in controlling government it says that this is inadequate and unreliable and therefore that it is necessary to create ‘auxiliary precautions’ to control governmental power.
- constitutionalism is synonymous with these ‘auxiliary precautions’.

The ROOTs Of CONSTITUTIONALISM

- The roots of constitutionalism go way back. It didn't just spring up out of nowhere, but rather evolved into what it is now.
- In 1215, King John of England was forced by a group of wealthy nobles to sign a document called the Magna Carta.
- The **Magna Carta** set certain limits on the king's power. Magna Carta set a precedent for limited government.
- In 1689 in that year the **English Bill of Rights** was signed by King William III of England.
- William III (came to power in what is called the Glorious Revolution.
- Basically, the people of England were tired of King James II's pro-Catholic policies and invited William (who was a Protestant) to come invade their country and become their new king.
- The English Bill of Rights outlined what rights English citizens possessed, and placed limits on the monarch and Parliament.
- The English Bill of Rights is a foundational constitutional document that helped inspire the American Bill of Rights.

Social contract theory

- Political theorist John Locke played a huge role in cementing the philosophy of constitutionalism.
- Locke was an English intellectual who helped develop the concept of **social contract theory**.
- According to this theory, government itself is a sort of "contract" between the people and the state, and if the state abuses its power or doesn't hold up its end of the "bargain", the people have the right to make the "contract" null and void.

“"That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government..."

- The contract theory, argues that the state is born out of compact made among a number of men who come to gather to end an intolerable state of nature. By the compact men abandon certain of their natural rights, but only those necessary for the establishment of a civil condition of society.
- If the establishment of government is contractual, it follows that when government becomes tyrannical it breaks the contract. Citizens of such a state would, therefore, have the right to remove such a government.
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- The compact, according to Lock, was made between the subjects and the monarch to establish a common organ for the interpretation and execution of mans rights, as existing before the political condition was established.
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- In his social contract, Rousseau made a brave attempt to build up a logical and even in controvertible defense of democracy. If men were born free and yet were everywhere in chains, said Rousseau, the only means of rendering the slavery legitimate lay in the retention of the sovereign power in the hands of the individuals who had made the contract. The contract secured equality, thereby each giving himself up to all gave him up to none.

Rule of Law

Rule of Law: The rule of law is an ambiguous term that can mean different things in different contexts

Rule according to law; rule under law; or rule according to a higher law.

-In one context the term means rule according to law. No individual can be ordered by the government to pay civil damages or suffer criminal punishment except in strict accordance with well-established and clearly defined laws and procedures.

-In a second context the term means rule under law. No branch of government is above the law, and no public official may act arbitrarily or unilaterally outside the law.

- In a third context the term means rule according to a higher law. No written law may be enforced by the government unless it conforms with certain unwritten, universal principles of fairness, morality, and justice that transcend human legal systems.

Rule of law

Rule of law:- A phrase as old as Aristotle

-The rule of law is a concept explain in classical time. In Greece Aristotle wrote that

“law should be the final sovereign; and personal rule, whether it be exercised by a single person or a body of persons, should be sovereign in only those matters which law is unable, owing to the difficulty of framing general rules for all contingencies”

- The significance of the doctrine in modern times is probably because of the writings of A.v. Dicey, who considered that the rule of law involved three issues:

- (1) The absence of arbitrary power;
- (2) Equality before the law; and
- (3) Liberties and constitutional law generally are the result of law and law made in the courts.

Rule According to Law

- The rule of law requires the government to exercise its power in accordance with well-established and clearly written rules, regulations, and legal principles. A distinction is sometimes drawn between power, will, and force, on the one hand, and law, on the other.
- When a government official acts pursuant to an express provision of a written law, he acts within the rule of law. But when a government official acts without the imprimatur of any law, he or she does so by the sheer force of personal will and power.
- Under the rule of law, no person may be prosecuted for an act that is not punishable by law. When the government seeks to punish someone for an offense that was not deemed criminal at the time it was committed, the rule of law is violated because the government exceeds its legal authority to punish.

Rule of law

- The rule of law requires that government impose liability only insofar as the law will allow. Government exceeds its authority when a person is held to answer for an act that was legally permissible at the outset but was retroactively made illegal.
- Question

Does rule according to the law consider abridged if the government attempts to punish someone for violating a vague or poorly worded law?

Reason1.

Reason 2.

- **Rule Under Law**

- The rule of law also requires the government to exercise its authority under the law. This requirement is sometimes explained with the phrase "no one is above the law."
 - During the seventeenth century, however, the English monarch was vested with absolute sovereignty, including the prerogative to disregard laws passed by the House of Commons and ignore rulings made by the House of Lords.
- Under the Constitution, no single branch of government in the government is given unlimited power. The authority granted to one branch of government is limited by the authority granted to the coordinate branches and by the Bill of right.
- E.g , water gate conspiracy of President RICHARD M. NIXON

Rule of Law

Rule according to higher law/ no one is above the law/

- All written laws must conform with universal principles of morality, fairness, and justice.
- These unwritten principles of equality, autonomy, dignity, and respect are said to transcend ordinary written laws that are enacted by government.
- Sometimes known as Natural law or higher law theory, such unwritten and universal principles
- E.G unfair or unjust laws. Before the Civil War, for example, African Americans were systematically deprived of their freedom by carefully written codes that prescribed the rules and regulations between master and slave.

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Questions for discussion

- Do such repugnant laws comport with the rule of law?
- - Can a government deprive its citizens of fundamental liberties so long as it does so pursuant to a duly enacted law.?

English jurist sir Edward coke said that "when an act of Parliament is against common right and reason, or repugnant, or impossible to be performed, the common law will control it, and adjudge such act to be void"

DEMOCRACY

During classical time often *democracy* is defined opposite to other types of government:

- *Monarchy* :- Government by a single ruler (king/queen, emperor)
- *Aristocracy* :- Government by noblemen (hereditary)
- *Oligarchy* Government by few persons
- *Theocracy*:- "Government by God" (in reality this means government by religious leaders)
- *Dictatorship* :-Government by people, that have seized power by force (often: military dictatorship)

(*I think Gaddafi is z last dictator*) Do u think is there any other dictator in the world now a days?

Modern REGIME CONTRDICT TO Democracy

- **Totalitarian regime**

Government by a little group of leaders on the basis of an **ideology**, that claims general validity for all aspects of life and usually attempts to replace religion. The regime does not tolerate any deviation from its state ideology. Regime opponents are persecuted, tortured, detained in concentration camps and members of ethnic minorities are killed in mass executions (genocide). Historic examples of totalitarian regimes include: National Socialism (Germany under Hitler, 1933-1945) and **Stalinism?**.

Authoritarian regime

- Government by a little group of leaders. In contrast to totalitarian regimes, authoritarian regimes have no distinct state ideology and grant some amount of freedom (e.g. economic and cultural) as long as their rule is not jeopardized. The most important goal of authoritarian regimes is the maintenance of power and the personal enrichment on cost of the country and its population. **PFUJ?**

Theocracy

- "Government by God": in reality this means government by religious leaders. Usually a certain interpretation of ancient religious laws replaces modern forms of law and is enforced with utmost severity. Example: Islamic Republic of Iran. **Islamic sate ?**

DEMOCRACY



U.S. president **Abraham Lincoln** (1809-1865) defined democracy as:

«Government of the people, by the people, for the people»

- **Democracy is by far the most challenging form of government** - both for politicians and for the people.
- The *term democracy* comes from the Greek language and means "**rule by the (simple) people**".
- The so-called "democracies" in classical antiquity (Athens and Rome) represent precursors of modern democracies. Like modern democracy, they were created as a reaction to a concentration and abuse of power by the rulers.
- Yet the theory of modern democracy was not formulated until the Age of Enlightenment (17th/18th centuries), when philosophers defined the essential elements of democracy:
- separation of powers, basic civil rights / human rights, religious liberty and separation of church and state.

Major Pillars of DEMOCRACY



- The following are the major principles of democracy:
 - a) The Principle of popular sovereignty /popular democracy
 - b)Rule of Law and Supremacy of the Constitution
 - C) Principle of Equality of all Persons before the law
 - d) Principle of Majority Rule Minority Rights
 - e) Principle of Individual Rights and Freedoms
 - f) Principle of Transparency and Accountability

KEY ELEMENT OF DEMOCRACY

In order to deserve the label *modern democracy*, a country needs to fulfill some basic requirements - and they need not only be written down in it's constitution but must be kept up in everyday life by politicians and authorities:

- A. Guarantee of basic **Human Rights** to every individual person vis-à-vis the state and its authorities as well as vis-à-vis any social groups (especially religious institutions) and vis-à-vis other persons.
- B. **Separation of Powers** between the institutions of the state:
Government [Executive Power],
Parliament [Legislative Power] und
Courts of Law [Judicative Power]
- C. **Freedom of opinion**, speech, press and mass media
- D. **Religious liberty**
- E. **General and equal right to vote** (one person, one vote)
- F. **Good Governance** (focus on public interest and absence of corruption)

Discussion question

«No one pretends that democracy is perfect or all-wise. Indeed, it has been said that democracy is the worst form of government except all those other forms that have been tried from time to time»

What you really understand from the above statement?

- This famous quote attributed to the former British prime minister **Sir Winston Churchill** (1874-1965) focuses right on the weak spot of democracy:
- There is no such thing as the "perfect form of government" on earth, but any other form of government produces even less desirable results than democracy. Until today, no other form of government has been invented that could regulate public affairs better than democracy.

State as a Ju



- Historically state is emerged from socio-economic construct
- In political science, 4 fundamental elements state comprises is **people(permanent population), definite territory, sovereignty & political power(government)**.
- The principle laid by International Law is that wherever a person or a thing is on or enters into that territory, the person or the thing is subject to the jurisdictional authority of the state.
- The exceptions are; state condominium (jointly owned), consent & mandate trusteeship

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- Difference between a federation & confederation is that;
 - ✓ in federation, the incidence of linkage is strong that makes it possible to have authority on the individual citizen of the member state & as such it is endowed with legal personality in the eyes of int'l law.
 - ✓ The fact that the laws made by member states can derogate the law made by the center is generally characterizes *confederation*

Questions that matter

- Is Palestine presently a state in terms of territoriality, community of people, sovereignty?

Palestinian territories", or "occupied Palestinian territories", terms referring to the West Bank (including East Jerusalem) and the Gaza Strip which are occupied or otherwise under the control of Israel
- What are the attributes of the European Union, which may prompt one to characterize it as *confederation*?

Sovereignty in the Changing World

- Unlike the past, sovereignty of the state does not arise from any divine power or status strength,
- but from delegation of power by the people to the state

❖ Forms of sovereignty in international law are:

a. Internal or Territorial Sovereignty

- ✓ Each state has exclusive *domestic jurisdiction* and the *monopoly of power* over its territory and national

b. External Sovereignty

- ✓ States are not subjected (against its will) to another state or to any higher authority.
- ✓ The Limitation on the international relation is that states shall refrain from threatening or using force, oblige to co-operate with one another, abide by the principles of equal rights and self-determination of peoples.

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c. Sovereign Equality

- ✓ All states are juridical equal, in the sense that, formally they have identical rights at the international level **Ethiopia vs. US**

d. Extraterritorial Sovereignty

- ✓ State has an extraterritorial Sovereignty to impose their home policies on foreigners and their properties within their territories.

e. Permanent Sovereignty over Natural Resources

- ✓ every state can freely dispose of the natural wealth and resources within its territory.
- ✓ Yet, rights have duties
e.g. Environment protection

The Concept of Nationality

- **Citizenship** is the status of a person recognized under the custom or law as being **a legal member of a sovereign state**.
- A person may have multiple citizenships and a person who does not have citizenship of any state is **said to be stateless**.
- **Nationality** is often used as a synonym for citizenship in English notably in **international law**
–
- although the term is sometimes understood as denoting a person's membership of a nation (a large ethnic group).
- The Concept of **Nationality** is the quality of being **a subject of a certain state**.

- The **five most** common modes of acquiring nationality are:-

- **birth,**

If one or both of a person's parents are citizens of a given state, then the person may have the right to be a citizen of that state as well.

- **Naturalization:** The most important mode of acquiring nationality besides by birth is that of naturalization. When a person living in a foreign state acquires the citizenship of that state then it is said to be acquired through naturalization..

Naturalization may take place through different acts.

- (i) Marriage-- marriage to a foreign national
- (ii) legitimating or adoption of children
- (iii) acquisition of domicile
- (iv) appoint as govt. official

The condition for naturalization found in municipal laws vary from country to country. Residence for a certain period of time is the most common requirement

Article 6 of FDRE

1. Any person of either sex shall be an Ethiopian national where both or either parent is Ethiopian.
2. Foreign nationals may acquire Ethiopian nationality. Particulars relating to nationality shall be determined by law.

- *Exclusion of ascertain group from having citizenship .
Old time Slaves*
- Modern examples include some Arab countries which rarely grant citizenship to non-Muslims, e.g. *Qatar is known for granting citizenship to foreign athletes, but they all have to profess the Islamic faith in order to receive citizenship.*
- **Reintegration**- *When two independent state comes to one.*
- **Subjugation/annexation**

When a state is defeated or conquered, all the citizens acquire the nationality of the conquering state.

Cession/Succession

When a state has been ceded in another state, all the people of the territory acquire the nationality of the new emerged state. SOUTH SUDANESS

What a constitution should contain

- major purpose of a constitution is to establish the main organs of a government, ensure power division and control the exercise of governmental power
- thus, it should **set standards** against which governmental actions could be measured.
- It should take good account of the country's geography and history, its legal system, and existing form of government and the culture of the people
- ✓ Is the country homogeneous or multi-ethnic?
- ✓ What are the units of social organization and the importance given to customary rights?
- ✓ And how are individual rights reconciled with group rights? etc.
- The open process of decision-making and **referendums** are optimal methods for ensuring **public participation**
- **Art 39/4/ c , Article 47/4/ c**

General Principles, Theories and Doctrines of the Constitution

- There are **four** so called guiding principles that are considered to underpin our constitution, namely:-

Democratic Governance

- This is the idea that the people are governed by the people (or at least by appointed representatives / delegates) for the benefit of the people. For this to be the case, the constitution needs to establish mechanisms to hold the appointed representatives to account. **Art.8**
Art.12

Sovereignty of People

- A sovereign, self governing people, is free to exercise its will to legislate howsoever it pleases without restraint.

The Separation of Powers

- There are three central functions or organs of state, namely the Executive, the Legislature and the Judiciary.
- The notion is that since
- *“power corrupts and absolute power corrupts absolutely”, power should either be shared out between separate and distinct bodies or alternatively that measures are adopted to ensure that whilst each organ can cooperate with the other organs, no one organ will be subservient/submissive /to any other.*
- *A legislature that could also act as prosecutor, judge, jury and executioner could command total power without responsibility or accountability.*
- *FDRE constitution Chapter 6, Chapter 7, Chapter 8*

Classification of Constitution

Written or unwritten. Compare UK and US -	Codified /un codified	Unitary or Federal. FDRE vs PRDE	Flexible or Ridged UK vs FDRE
Separated or fused powers.	Unicameral / Bicameral	Presidential/ Parliamentary Classification	Monarchical or Republican Saudi vs Israel

Classification of Constitution

1. By looking at the Nature of the Constitution itself:

It is a traditional approach

A. Written /unwritten, codified/unc odified

- It's a false distinction. this classification as a valid classification by considering it as dealing:
 - ✓ First- with the degree of codification,
 - ✓ second- with the degree of written detail, and
 - ✓ thirdly- with the origin of the written text of the documents.
- **Written constitution** designates a complete document in which the framers of the constitution have attempted to arrange for every foreseeable contingency in its operation.
- **Unwritten constitution** is one which has grown up on the basis of custom rather than of written law statutes play the major role here.

Classification con't

B. Rigid/flexible,

Conditional/unconditional Classification

- A written constitution is a standard of reference for classifying as rigid or flexible .

Q. what is it that makes a constitution rigid or flexible?

- Whether or not its making is identical to the making of other ordinary laws
- i.e, if the amendment or alteration procedure of a constitution is made to depend on some conditions or special procedures then it is **a rigid constitution**
- **flexible constitutions** have elasticity as they can be bent and altered in form without any need to fulfill some conditions while retaining their main features

Classification con't

2. By looking at the Nature of the State itself:-

Federal/Unitary classification

- this classification of constitutions relates to the method by which power is divided between the two tiers of governments
- government of the whole country and local governments

In a federal constitution, powers of governments are divided between government for the whole and governments for parts of the country in such a way that

- ✓ each government is independent and none is subordinate to the other, and legislature in both cases have limited powers

In a unitary constitution the legislature of the whole country is the supreme law-making body and

- ✓ it has the mandate to allow other legislatures to exist and exercise their powers while reserving the right to overrule them as they are subordinate to it.

A confederate constitution exists If the government of the whole country is rather subordinate to the governments of the parts

Classification cont'd

3. By looking at the nature of the Government itself

1. Presidential/Parliamentary Classification

- the executive formulates policies and execute same upon gaining the sanction of the law through legislature
- thus to protect executive's misuse/abuse of power, the executive should necessarily be answerable to somebody,
- to the legislature or to the public. it Depends on whether the executive is accountable to the parliament and president

In presidential executive, there is a rigid separation of institutions from the bottom upwards.

- ✓ Hence the president and his subordinates may not sit in the congress (legislature).

parliamentary executive, although the great majority of the members of the executive are excluded from the parliament, the heads of department and ministers may sit in the parliament and hence may be accountable to the parliament

Classification cont'd

B. Republican/Monarchical Classification

- where the head of state is a **president**, then that state is a **republic**, and
- where the head of state is a **king**, that state is a **monarchy** or a kingdom. nowadays it has diminished

4. By looking at the Legislature

Unicameral/Bicameral/Tricameral/Tetracameral

A. Unicameralism have only one legislative or parliamentary chamber.

- It exists often with small and homogeneous countries
- A view in favor of unicameral legislatures is that if an upper house is democratic, it simply mirrors the equally democratic lower house, and is therefore duplicative & holds that functions of a second chamber
- such as reviewing or revising legislation, can be performed by parliamentary committees, while further constitutional safeguards can be provided by a written constitution

Classification cont'd

B. Bicameralism

- in USA, the upper house would have states represented equally, and the lower house would have them represented.
- The r/n ship b/n the two chambers varies; in some cases,
 - ✓ they have equal power (in federal systems and those with presidential governments),
 - ✓ while in others, one chamber is clearly superior in its powers (in unitary states with parliamentary systems)
- The bicameral system, is a method of combining the principle of democratic equality with the principle of federalism.
- all citizens are equal in the lower houses, while all states are equal in the upper houses
- There are also instances of bicameralism in countries that are not federations, but which have upper houses with representation on a territorial basis. For example, in South Africa

Classification Cont'd

C. Tricameralism

- **Tricameralism** is the practice of having three legislative or Parliamentary
- The term was used in South Africa to describe the Parliament established under the apartheid regime's new constitution in 1983
- The South African trilateral parliament consisted of three race-based chambers:
 - 1. House of Assembly** — 178 members, reserved for whites
 - 2. House of Representatives** — 85 members, reserved for coloured, or mixed-race, people
 - 3. House of Delegates** — 45 members, reserved for Asians

Constitutional development in US

- The war resulted from an economic regime which the American colonists regarded as tyrannical.
- Their slogan was *"no taxation without representation"* The representation of the American colonies in the parliament at Westminster at that time was a manifest impossibility.
- So, the American war of independence broke out and ended in the establishment of a new political entity known as the United States of America founded upon a constitution promulgated in 1787.
- This constitution embodied the principles enunciated in the Declaration of Independence. This is the beginning of modern documentary constitutionalism.
- It would not, perhaps, be possible to assert that Rousseau's influence was directly felt by the Americans.
- It would be nearer to the truth, probably, to say that the fathers of the constitution were continually informed by the same spirit as that which inspired Rousseau's political philosophy.
- But, Rousseau was directly behind those who led the early movements of the French Revolution.

Constitutional development France

- When the bankrupt government of **France in 1789** resorted to the expedience of recalling into existence the Estates General, which had not met since 1614, it carried into the forum all the idealistic dogmas of Rousseau and his followers, and thus brought them in to practical conjunction with the promulgation of a political constitution.
- The national assembly of 1789 thus drew up the ***“Declaration of the Rights of Man and of Citizen”*** before coming to its proper business of making a constitution.
- This document was saturated with the dogmas of the contractual origin of the state, sovereignty and of individual rights
- The constitution, which followed in 1791, and to which this declaration was prefixed, did not last, because the legislative Assembly to which it gave birth was unaided to deal with the state of anarchy that developed within France and the state of war without.
- **Nevertheless, this is the second great stage in the development of modern documentary constitutionalism as the American Revolution is the first.**

BRIEF HISTORY OF CONSTITUTIONALISM

the basic principles of the Constitution of USA?

- Popular Sovereignty
 - Government power resides in the people
- Limited government
 - Government is not all powerful, can only do what the people let it.
- Separation of Powers
 - Helps prevent one branch from becoming too powerful
 - Checks and Balances
- Federalism
 - Division of power among national and state governments

Chapter II: Underlying Political Values

- Liberalism
- Republicanism
- Communitarians System
- Democracy Revisited : theories, Justifications and critiques

Discussion question

What does mean democratic developmentalism ? Is it a political ideology or political system?

- Democratic Developmentalism (DD) is defined to be “a political regime in which a developmental party remains in power for a long time by consecutively winning free elections which permit multiple parties, under which policies that punish rent seeking and encourage productive investment are implemented with a strong state guidance.”

- The developmental state is associated with the leading role played by the government in promoting industrialization in **Japan and East Asia** in the post-World War II era.
- Their respective governments pursued a series of policies, including tariff protection, subsidies, and other types of controls aimed at developing selected productive sectors of economic activity.
- Fundamental to the design of the developmental state for these countries was the creation of an alliance between politics and the economy, which materialized in the establishment of a specialized bureaucratic apparatus that had **ample powers** and coordinated the developmental efforts, at least in their initial stages. mica.fikrie@yahoo.com

Political parties

- A political parties is a group organized for the purpose of **achieving and exercising power** with in political power either by **election or revolution**.
- An **interest group (or special interest group)** is any aggregate of individuals who, bound by one or more shared concerns or wants, makes claims up on society in general in order to maintain or promote its position or objective.
- Political parties originated in Europe and USA in the 19th centaury
- Europe and America parties depend **on mass support**
- In Africa parties leadership related to **tribal or ethnic basis**
- In Asia **religious factors** or by affiliation with ritual brotherhood

Types of political parties

- Fundamental distinction can be made between **cadres parties and mass based parties**
- **Cadre parties**:- dominated by politically elite groups of activists
- These create conflict between
 - Aristocracy:- land owners, traditionalists clergy
 - Bourgeoisie:- industrialist, merchants, traders, bankers, financiers & professional people
- Both develop their own ideology as liberal and conservatives
- Bourgeoisies liberal ideology:- clamoring(shout or demand loudly) for formal legal equality and acceptance of the inequities of circumstance./ John Locke/

- **Conservative ideology** – focus on maintaining former status quo.
- In U.S both federalist, anti federalist, democrat and republican all belonged to **liberal ideology** but different in the means the uses to realize their beliefs

MASS BASED POLITICAL PARTIES

- cadre parties normally organize in relatively small number of parties adherents, mass based parties on the other hand , **unite hundreds of thousands of follower, sometimes millions**. Not the number, the essential factor is that such party attempts to base it self on **an appeal to masses**.

E. g socialist parties are mass based parties

Possible Answers'

- Theoretically, revolutionary parties attempt to gain power by violence(Conspiracies, guerrilla warfare)
 - democratic working with in the legal frame work of election.
- **Aim:-**THEY TRY TO TAKE POWER BY CREATING FEAR ON THE MASS AGAINST POPOLULAR SOVERINGITY WHICH IS THE MAIN BASE OF DEMOCARCY
- Tactically:-** It serves to mobilize citizens and demonstrate the powerlessness of any government.

Discussion questions

- How we distinguished revolutionary parties from democratic one ?
- What is the purpose of terrorist and disruptive activity in the struggle for power?
- Terrorism Vs Popular Democracy ?

Liberalism

“By definition a liberal is a man who believes in liberty”

- Liberals have typically maintained that humans are naturally in “a *State of perfect Freedom* to order their Actions...as they think fit...without asking leave, or depending on the Will of any other Man”
- **Liberalism** is a political philosophy or worldview founded on ideas of liberty and equality. Whereas classical liberalism emphasizes the role of liberty, social liberalism stresses the importance of equality.
-

- Liberals espouse a wide array of views depending on their understanding of these principles, but generally they support ideas and programmes such as freedom of speech, freedom_of press , freedom of religion ,free market, civil rights, democratic societies ,secular governments, gender equality, and international corporation.
- Liberalism rejected the prevailing social and political norms of hereditary privilege, state religion, absolute monarchy, and the Divine Right of Kings

- The 17th-century philosopher John Locke is often credited with founding liberalism as a distinct philosophical tradition.
- Locke argued that each man has a natural right to life, liberty and property, while adding that governments must not violate these rights based on the social contract.
- Liberalism started to spread rapidly especially after the French Revolution
- Opponents of liberalism – conservatism old enemy - fascism – communism
- Montesquieu pleaded in favor of a constitutional system of government, the preservation of civil liberties and the law, and the idea that political institutions ought to reflect the social and geographical aspects of each community.

- In particular, he argued that political liberty required the separation of the powers of government.
- Montesquieu advocated that the executive, legislative, and judicial functions of government should be assigned to different bodies.
- He also emphasized the importance of a robust due process in law, including the right to a fair trial, the presumption of innocence and proportionality in the severity of punishment

- The development into maturity of classical liberalism took place before and after the French Revolution in Britain, and was based on the following core concepts:
- Classical economics, **free trade, laissez-faire** government with minimal intervention and taxation and a balanced budget.
- Classical liberals were committed to individualism, liberty and equal rights.
- The primary intellectual influences on 19th century liberal trends were those of Adam Smith and the classical economists, and **Jeremy Bentham and John Stuart Mill**.

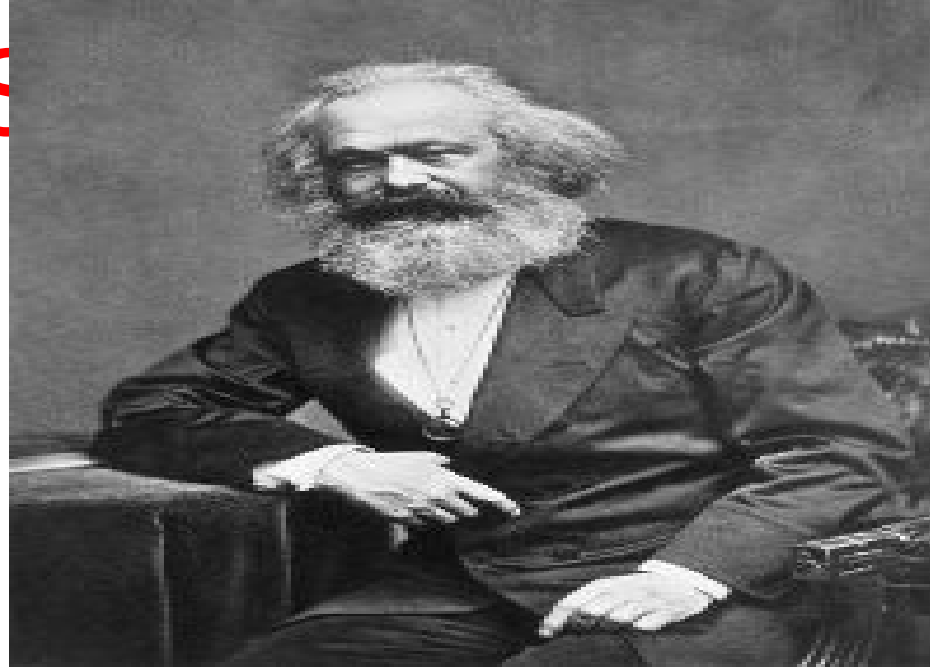
- Government should be limited to defense, public works and the administration of justice, financed by taxes based on income.

- Social liberalism

By the end of the 19th century, the principles of classical liberalism were being increasingly challenged by downturns in economic growth,

- a growing perception of the evils of poverty, unemployment and relative deprivation present within modern industrial cities, and the agitation of organized labour.

- The ideal of the self-made individual, who through hard work and talent could make his or her place in the world, seemed increasingly implausible.
- A major political reaction against the changes introduced by industrialization and *laissez-faire* capitalism came from conservatives concerned about social balance, although socialism later became a more important force for change



- **Socialism** is a range of economic and social systems characterized by **social ownership and democratic control of the means of production**.
- Social ownership may refer to **forms of public, collective, or cooperative ownership; to citizen ownership of equity**; or to any combination of these

- By the late 19th century, and after further articulation and advancement by Karl Marx and his collaborator Friedrich Engels as the culmination of technological development outstripping the economic dynamics of capitalism,
- "socialism" had come to signify opposition to capitalism and advocacy for a post-capitalist system based on some form of social ownership of the means of production

- Feature of communist parties
 - **Democratic procedure** in the choice of parties
 - Communist group formed their cells in the place of work. The work place cell was the first original element in communist party organization (firm, work shops , store, school, university).
- Party members thus tended to be tightly organized their solidarity, resulting **from common occupation, being stronger than that based upon residence.**
- There is a danger to go on their separate way. Therefore, it is necessary to have a very **strong party structure for party leaders to have extensive authority.**
- If the groups are to resist such centrifugal pressure

- Centralization

There is principle of free discussion, which supposedly developed at every level before the decision is made, but afterward all must adhere to the decision that **has been made by the central body**.

- The splintering that has form time to time divided or paralyzed the socialist parties is forbidden in communist parties.

- Which **have generally succeed in**

- Further distinctive characteristic of communist parties in the importance given to ideology.
- Primary concern of the party being to indoctrinate it's members with Marxism
- Fascist parties:- their teaching was authoritarian and elitist.
- They thought that societies should be directed by most talented and capable people by an elite.

Republicanism

- **Republicanism** is an ideology of being a citizen in a state as a republic under which the people hold popular sovereignty.
- Many countries are "republics" in the sense that they are not monarchies
- According to republicanism the paramount republican value is **political liberty, understood as non-domination or independence from arbitrary power.**
- Republicanism common ideas and concerns are , the importance of civic virtue and **political participation, the dangers of corruption, the benefits of a mixed constitution and the rule of law**, etc
- However, mixed government was considered ideal. First Plato and Aristotle, and then Cicero, developed the notion that the ideal republic is a mixture of these three forms of government **democracy, aristocracy, and monarchy.**

- Niccolò Machiavelli:- The prince
- Liberalism and republicanism were frequently conflated/Combined/, because they both opposed absolute monarchy.
- What is the difference between republicanism and liberalism
- An Important distinction is that, while republicanism stressed the importance of civic virtue and the common good,
- Liberalism was based on economics and individualism

- In contemporary usage, the term **democracy** refers to a government chosen by the people, whether it is **direct or representative**.
- Today the term *republic* usually refers to a representative democracy with an elected head of state.
- Such as a president, who serves for a **limited term**; in contrast to states with **a hereditary monarch as a head of state**, even if these states also are representative democracies, with an elected or appointed head of government such as a prime minister

- DEMOCRACY "Rule of the commoners", was originally conceived in Classical Greece, whereby political representatives were chosen by lot (as in a jury) from amongst the male citizens: rich and poor.
- In modern times it has become equated to elections or "a system of government in which all the people of a state or polity....elect representatives to a parliament or similar assembly

- According to scholars , democracy consists of four key elements:

(a) A political system for choosing and replacing the government through **free and fair elections**;

What about competitive???????

(b) The **active participation** of the people, as citizens, in politics and civic life;

(c) Protection of the human rights of all citizens, and

(d) A rule of law, in which the laws and procedures apply **equally** to all citizens

Democracy

- Democracy requires three fundamental principles:
 - (1) upward control, i.e. sovereignty residing at the lowest levels of authority
 - (2) political equality, and
 - (3) social norms by which individuals and institutions only consider acceptable acts that reflect the first two principles of **upward control and political equality.**

Critics on democracy

1. **Tyranny of the majority**

Majority rule is often listed as a characteristic of democracy.

Hence, democracy allows for political minorities to be oppressed by the "tyranny of the majority" in the absence of legal protections of individual or group rights.

2. Democracy is impracticable

Common people doesn't understand complicated issues of politics but they elect. Peoples are very little interest in politics but expected to make decision

3. Rule of ignorance

People may easily influenced by cunning politicians

4. One man one vote

The vote of intelligent man is equal to layman

5. It believes no special knowledge or skill needed to run the government

E.g Mr. Seid Yimar

6. Modern democracy is based on territorial representation not based on other interest

Bole vs. Bate nicafikrie@yahoo.com

“Democracy is the worst form of government except all those other forms that have been tried from time to time”

Winston

Churchill's

6. Democracy is impossible/ The one who has economic power also have political power/

Normally peoples are selfish and prefer their own good than the nation.

In election peoples with money and wealth become successful b/c votes can be bought

7. Unless there economic equality there cannot be a democratic government or democratic state.

- US practice

- USSR

8- Lack of stable government

Democracy does not provide stable government common people have the right to change it at any time they like.

E.g 1950 Pakistan

FORMS OF DEMOCRACY

- DIRET DEMOCRACY

One form of democracy in which all eligible citizens have active participation in the political decision making, for example voting on policy initiatives directly.

- Switzerland has a direct democracy system and votes are organized about four times a year

- In Switzerland, without needing to register, every citizen receives ballot papers and information brochures for each vote (and can send it back by post).

Modern-day representative governments, certain electoral tools like **referendums, citizens' initiatives and recall elections** are referred to as **forms of direct democracy**

- **REPRESENTATIVE FORM**

- In most modern democracies, the whole body of eligible citizens remain the sovereign power but political power is exercised indirectly through **elected representatives**.

- Characteristic of representative democracy is that while the representatives are elected by the people to act in the people's interest, they retain the freedom to exercise their own judgment as how best to do so

THE SEVEN COMMANDMENTS

1. Whatever goes upon two legs is an enemy. *Four legs good, two legs better*
2. Whatever goes upon four legs, or has wings, is a friend.
3. No animal shall wear clothes.
4. No animal shall sleep in a bed. *No animal shall sleep in a bed with sheets.*
5. No animal shall drink alcohol. *'No animal shall drink alcohol to excess.*
6. No animal shall kill any other animal. *No animal shall kill any other animal without cause.*
7. All animals are equal. *All animals are equal but some animals are more equal than others*

- Constitutional development of traditional Ethiopia till 1931
- Constitutional development in other parts of Ethiopia
- The 1931 Constitution
- The 1955 Revised Constitution
- The 1974 Draft Constitution
- The Proclamation establishing the PMAC
- The 1987 PDRE Constitution
- The Transitional Charter

- An Ethiopian historian in the following words beautifully elucidated the imperial omnipotence:
- ***“The kings of Abyssinia are above all laws, they are supreme in all causes, ecclesiastical and civil, the land and persons are equally their property -----if (one) bears a high rank it is by the kings gift”***
- CONQUERING LION OF
JUDAH HAILE SELASSIE
GOD, EMPEROR OF ET



F
F

Development of Documentary Constitution

Ancient and Medieval Documents of Constitutional Nature

- Before 1931, the Ethiopian Empire had no formal written constitution.
- For centuries, customary and religious laws served as the constitution of the ancient monarchy.

-The Ser'ata Mengist

The most real decrees of the Sar'ata Mangist were:

- 1. Kings Coronation;*
- 2. According to a custom initiated by King Amda Seyon, the daughters of Zion bar – the way of*

- The Fitha Negest (Justice of Kings) was a volume that dealt with the function of the various parts of society, including the monarch and religious authorities, and the traditions and rules that they should adhere to.
- It was used as the source of authority in legal, ceremonial, religious, Imperial court and customary matters.

The Fetha Nagast

- *Law of the Kings", is a collection of laws which in use in Christian Ethiopia for many centuries.*
- *It was originally written in Arabic by the Coptic Egyptian writer Ibn al-Assal*
- *It has two distinct parts, The first dealt with religious matters and the second with secular matters*

1931 Constitution and 1955 Revised Constitution

- The tendency towards centralization and the formation of nation-state picked up pace in the second half of the nineteenth century
- In 1896, the Italians attempt to colonize Ethiopia collapsed at the battle of Adwa.
- This set a new historical propelling event.
- Menelik in 1908 created the first ministerial frame work in the history of Ethiopia.

- Following the coronation of Emperor Haile Selassie in November of 1930, the new monarch set up a constitutional commission to draft the first formal written constitution.
- The constitution was drafted by **Bejirond Tekle Hawariyat Tekle Mariam**, a Russian educated intellectual of some considerable political sophistication.
- He was greatly assisted by **Blatangueta Hiruy Welde Selassie**, a person of equal intellectuality to Bejirond Tekle Hawariyat, but the product of the traditional church schools of Ethiopia.
- Blatangueta Hiruy had visited Japan, and had been greatly impressed by that Empire's path towards modernity and development while retaining it's traditional values.
- Thus, the 1931 Imperial Constitution of Ethiopia was greatly influenced by the Meiji Constitution of Imperial Japan.

The 1931 Constitution: the Japanese Paradigm

- ✓ Relying heavily on the constitution of Japan(The Meiji Const)
- ✓ The first and foremost political dynamics of that period **was centralization with a view to build a nation-state. Japan was homogenous people**
- ✓ The Constitution was meant to serve as an instrument of centralization under the Emperor
- ✓ The Constitution was not intended to serve as instrument of modernization.
- ✓ In general it was a mere confirmation of the powers and prerogatives of the Emperor

- Has seven chapter and fifty five article.
Almost 2/3 of deals about his majesty

Art. 3. "The law determines that the imperial dignity shall remain perpetually attached to the line of His Majesty Haile Selassie I, descendant of King Sahle Selassie, whose line descends without interruption from the dynasty of Menelik I, son of King Solomon of Jerusalem and the Queen of Ethiopia, known as the Queen of Sheba "

The 1955 Revised Constitution

- The Westminster Paradigm and the Aborted Reform thereof (seemingly constitutional monarchy)
- ✓ West Minister model is a political theory and a constitutional framework brewed and distilled in Britain
- ✓ the revised Constitution of 1955 was largely the cumulative and resultant effect of external and internal pressures
- ✓ The train of events in favor of modernization was further enhanced by the federation of Eritrea with Ethiopia by UN resolution.
- ✓ the Const. incorporated the basic tenets of fundamental human and political rights from

- ✓ The legislative body was bi-cameral:
- ❖ **senators** were appointed from the nobility and a few from the commons for their meritorious/price worthy/achievements, while
- ❖ The **deputies** were directly elected from equally populated voters
- ✓ the const. was declared to be the supreme law of the Empire for the first time



The 1974 Revolution and the 1987 Constitution

- Since 1974 a new social order was in the making.
- Oppositions in the regime took many forms
- The 1960 attempted coup d'état is a watershed
- University students became heirs of the rebels
- After 1960 coup d'état many realized that the regime whose legitimacy came from divine right to rule could be overthrown
- In 1960 and 1970 new elite from western become many antithesis of ancient regime.
- Rebels in Ogaden, Bale, Gojjam
- Arab Israel- war of 1973 Ethiopia loss its best allies Israel and US
- Teachers, tax driver students, unemployed, labour union
-

The 1974 Revolution and the 1987 Constitution

- ጉልቻ ቢለዋወጥ ወጥ አያጣፍጥም Endalkachew Mekonnen cabinet (new) vs Akillu Habtewuld Cabinet(Fromer)

Change of stove does not make the stew any better)

- On September 11, film by Jonathan Dimbleby and on 12 suspended the constitution, deposed the emperor, dissolve parliament, thus ending the regime.
- Derg prohibited all demonstration and assemblies
- From 1974 till 1987 Derg ruled by decree
- The Provisional Military Administration was also in the process of reconstituting itself.
- Rural and urban lands were nationalized. All private production and distribution enterprises were brought under the ownership and control of the state.
- The country became the Peoples Democratic Republic of Ethiopia..

- In 1984 Worker party of Ethiopia established as vanguard and single party
- The draft of constitution was completed in 1986 and submitted to public debate and ratified by referendum in Feb. 1987
- Since the base of classification of Constitution are the **outstanding characters** of the of the concerned constitutions.
- <<We, the working people of Ethiopia, based on centuries old glorious history are engaged in a great revolutionary struggle to extricate ourselves from our current state of backwardness and transform Ethiopia in to a socialist society with high level of development where justice , equality and social prosperity>>
- The national “*Shengo*” (*Parliament*) was modeled after the *Supreme Soviet of the U.S.S.R.*/ once in a year/
- The president enjoyed a lot of power. He was the Head of State and had no less power than any head of Government.
- This Constitution does not merit so much discussion because it died well before it was born



- The shengo proposed five autonomous and 24 administrative regions
- Eritrea with out Afar inhabited area, Tigray, Assab for Afars, Diredawa for Issas, and Ogaden
- But the attempt is Too little too late

The Transitional Charter, 1991:

- **The transitional charter redefined the sources of all power is Nation nationality and people**
- **Decentralization of power**
- **The right of secession**
- **14 regional state formed based on pro.7/1992**
- **Reverse approach to Nation-State Formation introduction to Federalism**
- **It has as completely changed the structure of the State; i.e., from a unitary to a federal structure, though it wasn't mention in an explicit manner, it can be inferred from the charter it self and subsequent proc.**

- The Charter also guaranteed each nation, nationality and peoples the right to administer its own affairs within its own defined territory and
- Effectively participate in the central government on the basis of freedom, and fair and proper presentation
- Ethiopia doesn't have the most representative government after the COR

The Making of the constitution

- The making of the constitution involves both procedural and substantive issue
- Procedurally, it relates to the process of creating expert drafts persons, the drafting itself ,submission the appropriate bodies for discussion, adoption of the draft by drafter and the drafter and then submission for ratification or approval
- Substantive who must be participate in drafting/Popular participation/,issues, history of the nation
- Popular participation an essential condition precondition for its legitimacy
- The group in power at the time of the constitution may exclude others

When a Nation need to have constitution

- The creation of the new states (birth certificate for the new born state)
- At the end of absolute use of power (after successful revolution)
- The abolish of the old constitution and its replacement by new one which often coincides with major institution and social reconstruction

The making of the FDRE Constitution

- The 1991 transitional charter established the Constitutional draft commission
- The composition of the drafting commission has not detailed in the charter
- Council of Representative is anticipated to play important role important role on the constitutional draft because in addition to its role establishing the commission budget and overseeing its activity
- Constitutional commission was legally established in 1992 by virtue of Pro. No 24/1992
- Article 7 of the above proclamation states about

....composition issue

Members from COR 7

Political Parties 7

Trade unions 3

From three professional Association
2 each

$$2*3 = 6$$

Ethiopian chamber of commerce 3

Women representatives 3 Total
=29

Silent features of FDRE constitution

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

1. Unicameral Legislature/ Non second chamber/Upper house/

- 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. Oromia and Amhara can enact any law they like in HPR

2. Non Judicial Constitutional Interpretation

- The Ethiopian constitution 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.

3. Secession Clause and Implications/ Art 39/

- Another unique feature of the Ethiopian federation is related to the issue of secession.
- 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 / More inclined to Group right/

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

Dimensions in respect of Nation, Nationality and Peoples of Ethiopia

Putting the Conflict in Perspective

- Cause of state failure & prolonged war in Ethiopia in the 20th Century / the conflicting interpretations over the state crisis that ensued after Menilik's coming to power /
- **Over centralization of power and economic resources** by the „dominant“ group from Showa, this defined itself and the State along its narrow line and marginalized the others, which led to too strong feelings of ethnicity.
- The conflict should not be characterized as ethnic.

The Other Perspective

- These are three other versions of analysis of z conflict, namely
 1. *The colonial approach / OLF is the proponents of the colonial approach,*
 2. *Greater Ethiopia“ (or Nation Builders) and*
 3. *National oppression*

The National Oppression Thesis and the Question of Nationalities

- By identifying the Showan Amhara as the single '*oppressor nation*',/others are the '*oppressed nations*'
- the 'ethno-nationalist movements' preferred to define their course of struggle on the basis of 'nationality' than class assimilation

Coming together & holding together

- ***Coming together***: when the regions choose to form a single federal polity
- ***Holding together***: the central government devolved political authority to the regions to maintain a single unified state.

One identity or many:

- ***Mono-national or “national” federations assert a single national identity, as in Australia, Austria and Germany,***

Con't

Symmetric or Asymmetric:

- **Symmetric** (all z constituents have identical power),In symmetric federalism the constituent units have identical, that is symmetric, powers, relations and obligations relative to the central authority and each other; example, Australia.
- **In asymmetric** federalism some provinces enjoy different powers. For example In Canada for Quebec.
- In “asymmetric” federal systems, the powers granted to subunits are not identical. Some regions have different areas of autonomy from the others.
- This allows greater flexibility to respond to distinct demands and to accommodate diversity.

Fundamental principles of the FDRE constitution

- The principle of popular sovereignty
Art. 8
- Constitutionalism & constitutional
supremacy art 9
- Respecting of fundamental human
right Art 10
- Secularism Art 11
- Transparency and accountability of
gov't Art 12

- 1. All sovereign power resides in the Nations, Nationalities and Peoples of Ethiopia.*
- 2. This Constitution is an expression of their sovereignty.*
- 3. Their sovereignty shall be expressed through their representatives elected in accordance with this Constitution and through their direct democratic participation*

The Legal question what does it mean sovereignty?

Supreme authority in a state. In any state sovereignty is vested in the institution, person, or body having the ultimate authority to impose law on everyone else in the state and the power to alter any pre-existing law.

- How and by whom the authority is exercised varies according to the political nature of the state.
- One of these bodies may in fact retain sovereignty by having ultimate control over the others.

- But in some countries, such as the USA, the powers are carefully balanced by a constitution.
- In the UK sovereignty is vested in Parliament.
- **Sovereignty of Parliament.**

The constitutional principle that the legislative competence of Parliament is unlimited. No court in the UK can question its power to enact any law that it pleases.

-Who are NNP see 39/5/

- Which right they have see 39 (1),(2),(3) art 43/2/

- there right should interpret accordance with art 13/2/

- Has Power to deciding on all internal economic, political, social, cultural, legal and other such matter of importance. The idea is that there shall be no authority that can stop them from making decision that they believe in

- What is your thought on each side of the argument?

?????? ???? ???? ???? ?

Supremacy of the Constitution

9(4). All international agreements ratified by Ethiopia are an integral part of the law of the land

-1st :- IA considered be for all intents and purposes, part of the corpus of Ethiopia law

Countries experience

1. Dualist approach

UK the treaty never have direct statue like application. The legislator enact law that incorporate(transform) treaties to domestic law.

2. Monist approach

Nether land – certain treaties are directly applied that in such case these treaty are deemed superior to all laws including constitutional norms.

3. Mixed/ Hybrid/ approach

US- Some treaties are self executing in which they will be directly applied.

- To determine self executing treaties US courts apply The intent of the drafter (intent implied and expressed in treaty it self.
- By usage self executing treaties are equal to domestic law
- Incase of conflict a later US law prevails over the international agreement. Frequently US violate international law
- Reason for direct application
 1. Giving direct application international increase their importance and weight it decrease the likelihood of refuse by authorities and develop public trust.
 - 2.To assure other signatory states carry out their obligation based on good faith on state
 3. It better assure the right of individual without government intervention

Reason 4 opposing direct application

- 1. Sovereignty

The nation is entitled to determine for itself its method of implementation or fulfilling that obligation. Direct application tantamount to interference in the internal affairs.

2. Approval by parliament is an important democratic check on treaty making process

3. The legislature tailors the act of transformation, rewording a treaty making process to match domestic circumstances

Supremacy of the Constitution Art 9(1)- (4)

- Questions

1. Are all IA subject to ratification in Ethiopia? If so, is that feasible ? If not, what kind of treaties fall within the complete prerogatives of the executives? See art 51(8), 55(12), 71(2), 74(6), 77(8)
2. If not, what would be the status of those international agreements not needing ratification? Are they not the integral part of the law of the land? see 55(12), 9(4)
3. In relation to those international agreements which by Ethiopia, do they become an integral part of the law of land immediately up on ratification? Do they need publication? See 9(4), Proc.no 3/1995 art 2/3/

“ All Federal or Regional legislative, executive and judicial organs as well as any natural or juridical person shall take judicial notice of Laws published in the Federal Negarit Gazeta”.

4. What is are the hierarchical relation between Cons. Vs IA, IA vs state constitution , IA vs Proclamation

13(2) vs. 9(1)

9(4) vs. 51(1) Proclamation

9(4) vs. State constitution 52 (2) A
& B

5. What is the relation between 9(4) and 13(2)

Human and democratic right

- Art 10

1. Human rights and freedoms, **emanating from the nature of mankind**, are inviolable and inalienable.

2. **Human and democratic** rights of citizens and peoples shall **be respected**.

1. Not given by state or authority preexist their legal recognition

2. Ethiopian constitution follow natural law theory of right (because universal nature of humankind they are endowed with a certain universal right which are natural, inalienable and inviolable

Questions:- Are all right stated in chapter three are inalienable and inviolable right???

- Is it possible to precisely tell the difference between human right and democratic right ?

Separation of state and religion art 11 & 27

- First amendment 1787

“ Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise of thereof, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and

- Known as “the establishment clause”
- What should be the relation between state & religion from the perspective majority and minority religion
- How do you see the tension between separation state and religion on hand freedom of religion.
- The relation between religion vs freedom of conscience

e,g punishment of dissenters

- “the [First] Amendment embraces two concepts—freedom to believe and freedom to act.”
- “Freedom of conscience and freedom to adhere to such religious organization or form of worship as the individual may choose cannot be restricted by law ... and [they] safeguard the free exercise of the chosen form of religion.”
- Neither federal nor state governments could unduly infringe on the right to freely exercise religion without a compelling state interest
- The First Amendment prevented Congress from outlawing beliefs, but did not prevent Congress from outlawing practices. “actions only and not opinions.”

Transparency and accountability Art 12

1. The conduct of affairs of government shall be transparent.
2. Any public official or an elected representative is accountable for **any failure in official duties**.
3. In case of loss of confidence, **the people may recall an elected representative**. The particulars of recall shall be determined by law.

✓ Accountable to

- Political appointees
- Top appointed public servant
- To people

- Article 54(4) Members of the House are representatives of the Ethiopian People as a whole. They are governed by:
- a. The Constitution;
- b. The will of the people; and
- c. Their Conscience.

- What if a conflict happen between the conscience of the MP and the constitution?
- What if a conflict happen between the whole country interest and the interest of constituency ?
- How one regional representative presumed to speak for the other in federal Ethiopia?

Art 54(7) recall (authority of the people)

- Executive accountable to the legislator based on Art 57(17),18
- How accountability of executive work in parliamentary system?
- **NB;- Most senior member of the parliament also member of the cabinet**

- Provision related to freedom expression (Art 29) judicial independency(art 78),art 79/2/ both play vital role for effective implementation of Art 12
- In relation to freedom of information see Pro.No 590/2009 See art 14/3/,14/8/14/9/
- Public institution may delayed information for 42 or 84 days in exceptional cases
- Long list exception art 16-27
- Judicial accountability Art 79/3/ judges shall exercise the function in full independence and shall be directed solely by the law.

Policy objectives under the FDRE Constitution

- A constitution is fundamental and supreme law which serves both as a legal and policy instrument to guide a nation's activities in all areas that concern a political society. ??????
- The contents directive the directive principles & policy objective reflect primarily the pecuniary situation and state of facts in the society concerned.
- FDRE also contains "National Policy and objective" under chapter Art 85-92
- The constitution doesn't state whether chapter 10 provisions are justiciable or non justiciable
- Art 85 give direction
- “ Any organ of Government shall, in the implementation of the Constitution, other laws and public policies, **be guided** by the principles and objectives specified under this Chapter.” /as guiding star & beacon light/
 - Art. 89/5/ ?????

- JUSTICIABLE
- A case or dispute properly brought before a court of justice; capable of being disposed of judicially.

- **The presidential system**
- In a presidential system, there is no distinction between the positions of the Head of State and Head of Government both of which are held by the president.
- The president enjoys ultimate power decision and, therefore, has complete political responsibility for all executive actions.
- A member of the legislative can join the executive only after resigning his membership in the legislature.
- The president does not propose bills
- Separation of power serves to check and balance

- The president has a fixed term of office/tenure and his government has a fixed tenure.
- The president can be removed from office only through death, resignation, inability to discharge his responsibilities, or by congressional impeachment
- Conviction on charges of treason, bribery, or other serious crimes.
- NB:_ The president could be elected directly by the people or by an electoral college, a system of electing a president or another representative or leader by a group of persons who are elected from the people for the purpose of electing the president or another leader.
- The president is not accountable to the legislature. Instead, he is accountable to the constitution.

Merits and Demerits

(i) Merits

- ❖ The first advantage of presidential government is the fact that the executive is stable by virtue of a fixed term.
- ❖ As the president is directly chosen by the people, it is argued by the supporters of this system that there is a high tendency for the system to be more democratic than a leadership chosen by a legislative body

E.g Democratic Congress and a Republican President

- ❖ The existence of separation of powers is another advantage of this system.
- ❖ President can recruit ministers of highest caliber persons of greater competence and integrity without any need to make political considerations or party affiliations.
- ❖ Members of the parliament are guided by their conscience rather than a strict party discipline.

(ii) Demerits

- Difficulty in removing an unsuitable president from office before his/her term has expired.

E.g military coup Vs a vote of no confidence

- No power to dissolve the legislative organ or to participate in legislative deliberations, lacks disciplined voting along party lines.

- The tendency towards authoritarianism as winning presidency is a winner-take-all, zero sum game.

E.g Coalition vs leave his party

- No way to reconcile conflict between the Executive (deadlock)

E.g Ecuador

“The president blames congress, the congress blames the president, and the public remains confused and disgusted with the government in Washington”.

Parliamentary system

- It is system of gov't in w/h the executive is dependent on the direct or indirect support of the legislature (the parliament) often expressed through a vote of confidence.

Features

- There is a watertight division between the office of the prime minister (the head of executive) and that of the president.

(The head of state, has such roles as symbolic role, chief diplomatic officer, nominal chief executive officer, chief appointments officer, legislative role (formality-signing on bills passed by the legislature), and other prerogative such as pardon/amnesty and granting various titles and other honors.)

- Ministers are members of the parliament although not the case in all countries.

E.g United Kingdom, and India

- - A political party or coalition of parties, as the case

- The government has no fixed tenure as the parliament can dismiss it by declaring vote of no confidence with respect to the policies and programs of the governing party.
- Cabinet may be able to make use of what is known as party 'whip'/parliamentary 'whip' and dominate the parliament.
- Parliamentary systems have collective or collegial executives (a council of ministers)
- The government directly responsible to the House only indirectly responsible to the electorate.
- Absence of clear-cut separation of power between the executive and the legislative
- Have a distinct heads of state (president) and head of government (prime minister)
- The government as a whole is not directly elected by the voters but is appointed from amongst the representatives

... con't

Merits

- ✓ since a party or coalition of parties which has won majority vote in the parliament forms government,
- ✓ the executive- legislative relation is one of co-ordination. thus, is preferable for countries with an infant democracy.
- ✓ easier to pass legislations, since the executive branch is dependent upon the direct or indirect support of the legislative .

Demerits

- ✓ the Head of Government is not directly elected
- ✓ Absence of clear distinction /separation of power between the executive and the legislative &
- ✓ it places too much power in the executive

... con't

Electoral systems

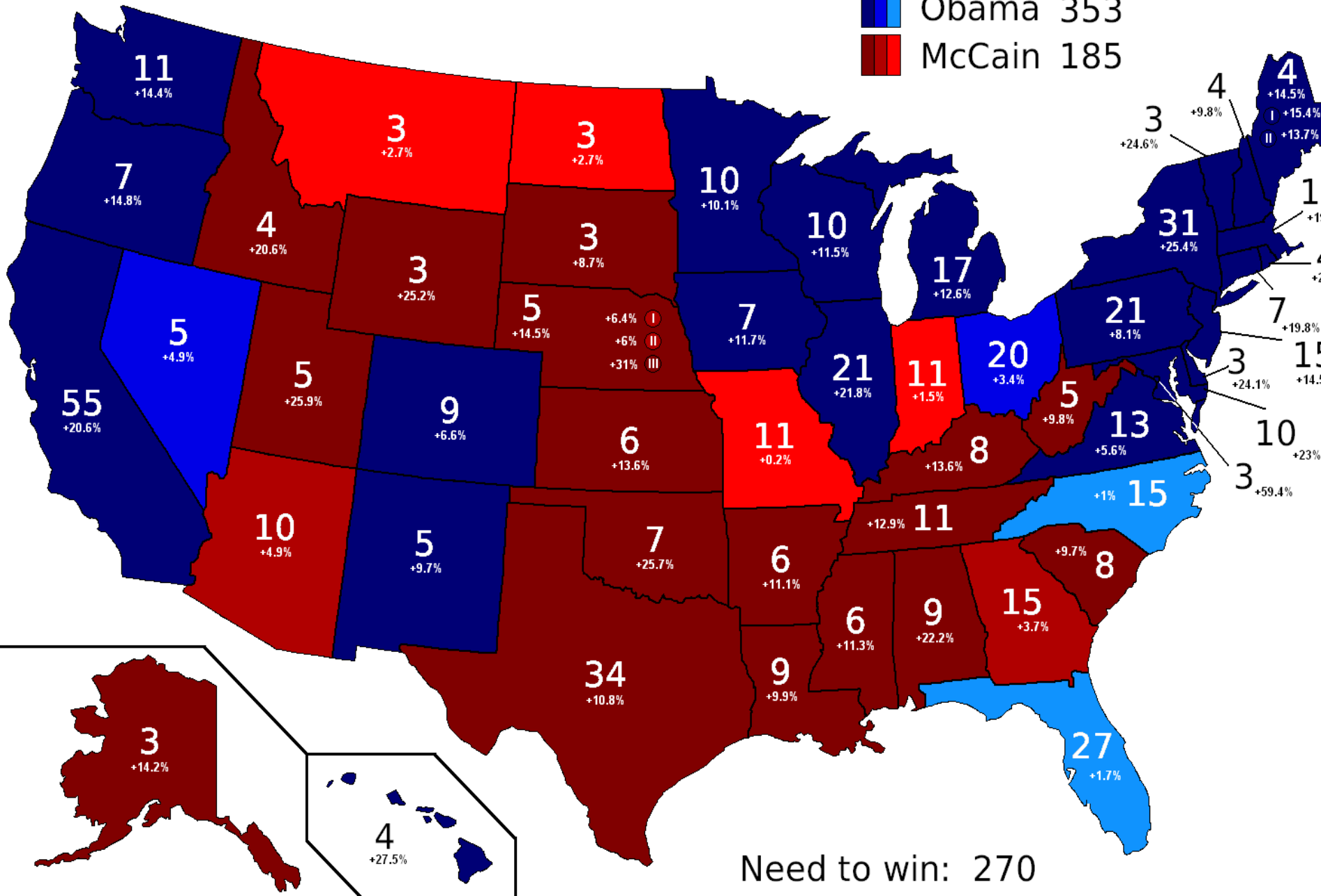
- An election is a decision making process by which a population chooses an individual to hold formal offices.
- “Democratic elections are not merely symbolic..... they are competitive, periodic, inclusive, definitive elections in which the chief decision makers in a government are selected by citizens who enjoy broad freedom to criticize government, to publish their citizens' criticism and to present alternatives".
- What are requirements for legibility to vote?
 - Age, nationality. sound mind (not insane), a non-felon requirement for legibility to cast votes.
- who may no vote,
- Ancient Greek disallowed women, foreigners, or slaves to vote

-US, only white male property owners were able to vote.

- Suffrage is destined for citizens of the country so long as they meet the criteria for election.
- Some countries go to the extent of making voting compulsory on their subjects thereby making liable a citizen **legible to vote but fails to cast a vote.**

Electoral College

 Obama 353
 McCain 185



Need to win: 270

- Electoral systems can be categorized as majoritarian, proportional and mixed representation system.
- **Majoritarian Representation systems**
- This is the oldest and simplest electoral system, dating back at least to the 12thC, in which a candidate in whose favor a majority of votes are cast is returned to office.
- There are many variants of the Majoritarian system, the most prominent of which is simple majority (relative majority) also known as First Past the Post (FPP) and Absolute Majority.
- First Past the Post (horse racing) winner -takes -all. E.g UK, India
- candidates do not need to pass a minimum threshold of vote nor do they require an absolute majority as a simple majority can do

E.g X 35% of the votes, Y 33% and Z 32% respectively.

Proportional Representation system

- - Proportional systems focus on the inclusion of minority voices. Seats in a constituency are divided according to the number of votes cast for party lists
- It is meant to achieve real representation at the national level which the majority system of representation fails to accomplish.
- OPEN LIST (SCANDVIAN) vs. CLOSED LIST (ISRAEL)

Ethiopia, Art 38 of FDRE. Proc.no 111/1995

- Any election shall be based on free, direct, and popular suffrage.
- A candidate with more votes received than that by other competitors within the constituency shall be declared the winner.

Chapter VII: Horizontal and Vertical Division of Power

- The concept and development of separation of powers
- Separation of powers in parliamentary and presidential systems
- Separation of powers under the FDRE Constitution
- The structure, composition and functions of Federal Organs
- The Executive, the Legislature and the Judiciary
- Vertical division of power

Separation of power and forms of gov't

- Separation of power is a means of limiting government power and hence for institutionalizing constitutionalism
- Arstotel - Stated that the three elements of government must be separated.

. Montesque

Fully articulated the notion of separation power between three branches of government, namely, the legislative, Executive, Judiciary

- Legislative

(the law maker, parliament, congress or assembly)

Executive - execute or implement laws and polices

Judiciary

Interpreting laws constitutions and resolving disputes

FDRE art 50/2/

The Federal Government and the States shall have legislative, executive and judicial powers.

The Legislative

- *“The House of Peoples’ Representatives is the highest authority of the Federal Government. The House is responsible to the People. The State Council is the highest organ of State authority. It is responsible to the People of the State”*
- The legislative is a popular assembly that is constituted in modern democracies through election of most , if not all of its member in regular periodic election
- It is the “Power house of popular representation and decision making”
- Power to fire the chief executives and force out members of the cabinet as it deems needed
- Two houses

Lower house:- Direct representative of the people

Upper house:- represent different organized groups

Division of Power

Form and Scope of Distribution of Powers

- The constitutional allocation of legislative power is defined on the basis of three categories;
- Namely, exclusive powers (of the federal government and/or of the states), concurrent powers and reserve power.
- The Ethiopian Constitution in general follows the United States" and Swiss" forms of distribution of powers.
- **The Ethiopian federal system appears to reflect some aspects of coming together as well as holding together. Although it is a fact that none of the constituent states**

- Entity, owing to the aggregate nature of the federation, the federal government appears to be one with **enumerated and limited powers and the federation is based on the accommodation of** diversity within the various Ethiopian NNP existent at the time of ratification by the Constituent Assembly.
- It is the states that hold residual powers as per Article 52(1),
- “All powers not given expressly to the Federal Government alone, or concurrently to the Federal Government and the States are reserved to the States”.
- Except the power of taxation, for undesignated powers of taxation are as per Article 99 left to the determination of HPR and HoF.

Undesignated Powers of Taxation

“The House of the Federation and the House of Peoples’ Representatives shall, in a joint session, determine by a two-thirds majority vote on the exercise of powers of taxation which have not been specifically provided for in the Constitution”.

- Thus Article 99 should logically be treated as an exception to Article 52(1).
- It is worth noting that the powers granted to the federal government limited to the list under Article 51.
- It might appear that by virtue of the reserve clause, any power not mentioned under article 51 belongs to the states, but other provisions of the Constitution also indicate
- Additional powers entrusted to the federal government. powers seem to be additional; i.e. under Article 55, 74 and 77,96,99
- So the reserve power of the states only applies after discounting all power of the federal government distributed throughout the Constitution

- The Constitution empowers the federal government to “*formulate and implement the country's policies, strategies and plans in respect of overall economic, social and development matters.* **SEE ARTICLE 51/2/**
- *Establish and implement national standards and basic policy criteria for public health, education, science and technology.* **ARTICLE 51/3/**
- The same Constitution also empowers the states, among other things, “*to formulate and execute **economic, social and development policies, strategies and plans for the state.*** **ARTICLE 52/2/ C**
- ***The big question*** is to draw the borderline between the two, but certainly there is no doubt that this makes most of the policy-making areas concurrent.

- LIST OF FEDERAL POWER

Broadly speaking, the exclusive federal power includes: defense, foreign affairs, immigration, major taxation powers, currency and foreign exchange, foreign and interstate trade, maritime shipping, inter-regional communication, postage and matters physically transcending state boundaries such as high-way transport services and key aspects of economic activities, for which uniform regulation is deemed important.

- Some of these powers are justified on the ground that it would mean unnecessary multiplication of authority, creation of inconsistent directives and creating chances of friction.
- The general principle, on which allocation of responsibilities has, usually, been based in the vague concept that **matters of national importance, should be reserved to the federal government, while matters of regional importance should devolve to the states.**

NB:- But the principle does not tell us much about the specifics of what powers should go to the federal government and which one to the states.

Article 55/5/ penal vs state power

Article 55/6/ Civil laws vs federal power

Shared Legislative Powers

- Shared powers represent the meeting point of the two levels of governments, otherwise considered exercising exclusive shares of federal and state powers.
- These powers refer to that category of powers in which both the federation and the states exercise at some point at least part of the power.
- **There are certain matters which cannot be allocated exclusively either to the federal government or the states.**
- **It may be desirable that the states should legislate on some matters** but it is also necessary that the federal government should also legislate to enable it in some cases to secure uniformity across the nation.

- Another reason for having shared powers is the fact that the federal government may need to guide and encourage state efforts and more importantly some measure taken by the states may have spill-over effects and for this reason **the federal government may need to intervene**
- Land law; in theory, it appears legislation is a federal matter while the administration of land and natural resources belongs to the states.
- However, constitutional practice differs from theory.

E.g Amhara rural land utilization proclamation article 52/2/d vs 51/5/

- The CCI ruled that the law is constitutional by stating the following two grounds: *as it is part of the residual power of the states* and also because it has been retroactively endorsed by the Federal Proclam

- Article 5/1/ & /2/ Federal rural land administration proc no 89/1997

- Any Region shall administer rural land in accordance

with the general provisions of this Proclamation.

- For purposes of implementation of the provisions of sub-Article (1) of this Article, each Regional Council shall enact a law on land administration.

- **Concurrent Powers**

- As one category of shared powers, concurrent powers refer to powers attributed to both entities.
- However, one of the entities – often a times, the states – are allowed to exercise this power until the federal government steps in to legislate on such powers.
- Concurrent powers provide an element of flexibility in the distribution of power enabling the federal government to post pone the exercise of potential authority in a particular field until it becomes a matter of federal importance.
- The FDRE Constitution no where indicates such concurrent powers, excepting tax-matters. Article 51, article 98
- However, it is still possible to argue that even in other non-tax-matters there are concurrent powers. the Constitution has in one way or another made mention of concurrent powers, albeit not explicitly

- Illustrations:

Article 51(1) provides that “[t]he Federal Government] shall protect and defend the Constitution.”

- From this proposition one may arrive at the following conclusions, namely:
 - A. Each and every state shall protect and defend its own, respective Constitution.
 - B. Jointly and severally, states shall protect and defend the FDRE Constitution.
 - C. The Federal Government shall also be responsible for protecting and defending the respective Constitutions of each and every state.
- Here, aren't (b) and (c) concurrent powers?

Residual Powers

- Residual powers represent those powers not listed or partly listed by the Constitution and assigned to either unit of government.
- The United States, Switzerland, Germany, and Ethiopian Constitutions have preferred to leave residual powers with the states while in India such powers belong to the center.
- The greater the list of enumerated powers, the less significant the residual powers will be.

Fiscal Federalism

- Generally, the study of fiscal federalism focuses on the allocation of expenditure responsibilities, revenue raising powers and adjusting vertical and horizontal imbalances through intergovernmental fiscal transfers.
- In a federal system, powers allocated to governments could be of two general kinds: functions and responsibilities to be discharged by each government, and means for affecting these responsibilities. This includes the **expenditure** (in a wider sense) and the **revenue** soliciting aspects of the governments.

Structure of Allocation of Taxation Power in Ethiopia

The FDRE Constitution divides taxation power into three categories, namely:

- a) Federal power of taxation,
- b) State power of taxation, and
- c) Concurrent power of taxation.

There is also undesignated power of taxation (Art.99 cons).

The power of taxation comprises of two specific powers: the power to set a tax rate and the power to collect the tax paid

The Exclusive Power of Taxation of Federal and Regional State Governments

- The most important question in the discussion of the exclusive power of taxation is whether each level of government can determine its own **tax basis and tax rates**.

This raises the question

- whether a specific tax assigned to the state also signifies the power to change tax rates and to set the tax base? Can the states individually determine the tax rate, exempt taxpayers or determine tax relief?

- The FDRE Constitution provides exclusive revenue sources under the title “federal power of taxation” and “state power of taxation”.
- The exclusive domain of each level of government is not the tax base but the tax source.
- Usually, tax bases are classified into direct and indirect, or tax *in persona* (individual) and tax *in rem* (property). In any tax legislation, defining the tax base of each together with its appropriate rate, is emphasized.
- TAX SOURCES are either territorial **i.e. has taxing power on activities carried out within a country and that produce tax base.**
- OR world wide income method, enables it to have the legal right to tax **its nationals or permanent residents of other citizenship, irrespective of the place where the income is derived**

- In most cases, it is argued that states should have the power to determine the tax rate if the power of taxation is exclusively given to the states.
- In Ethiopia, the FDRE Constitution declares that the Federal Government shall levy taxes and collect duties on sources reserved to it, and the states, likewise, exercise the same power with respect to sources that fall under their jurisdiction.
- Thus, the two levels of government exercise their legislative and administrative powers within their respective spheres of taxation.
- Thus, the FDRE Constitution does not explicitly limit the power of the states to alter tax rates or to influence the tax bases.
- In Article 100 it only provides general “directives on taxation”; i.e. conditions they must consider prior to exercising their powers taxation.
- In practice, however, tax legislation is uniform throughout the country.

Parliamentary inviolability and immunity

- Parliamentary immunity means the protection of members of parliament against civil and criminal for acts undertaken in pursuance their parliamentary duty.
- Three major trend
 - Income countries ordinary law is sufficient enough to protect all members of society including parliamentarians'
 - In this countries parliamentarian does not enjoy freedom from arrest in civil and criminal proceeding
 - E.g Netherlands Norway

2. Other protect from civil case but inviolability can not be allowed to obstruct the court proceeding in criminal justice
- E.g Australia parliamentarian exempted from obligation to appear before a court when parliament is sitting and from jury services
 - S.A can not compelled to appear a court as witness or defendant in civil case being heard at venue other than that of the seat of parliament
3. Protect parliamentary from prosecution of criminal case except flagrant delicto for serious crime and their case should be entertain by higher court.
- Prohibit all of cases of arrest and prosecution with out express authorization of the assembly to which a parliamentarian belongs

- Start from day of their election or appointment
- Before they take oath or after they take oath

Ethiopia Article 54 /5/6/

- 5 No member of the House may be prosecuted on account of any vote he casts or opinion he expresses in the House, nor shall any administrative action be taken against any member on such grounds.
- 6. No member of the House may be arrested or prosecuted without the permission of the House except in the case of flagrante delicto

- ***flagrante delicto [Latin] In the commission of an offence.*** can only be made when a person is in the act of committing an offence. The phrase is most commonly applied to the situation in which a person finds his or her spouse in the act of committing adultery.
- **Arrestable offence** An offence for which there is a fixed mandatory penalty or which carries a sentence of at least five years' imprisonment (e.g. theft).

Dissolution of Parliament

- The situation in which a parliament is disbanded before the expiry of its term is very common in parliamentary semi-parliamentary
- Dissolution applies normally to the lower house rather than the upper house
- Who dissolved
 - The prime minister
 - The president
- Article 60 **Dissolution of the House**
- 1. **With the consent of the House**, the Prime Minister may cause the dissolution of the House before the expiry of its term in order to hold new elections.
- What if the house reject a dissolution ?
- Does article 60/5/ solve any possible problem arising out of such situation? E.g What if emergency thing happen

- 3. If the House is dissolved pursuant to sub-Article 1 or 2 of this Article, new elections shall be held within six months of its dissolution.
- 4. The new House shall convene within thirty days of the conclusion of the elections.
- 5. Following the dissolution of the House, the previous governing party of coalition of parties shall continue as a caretaker government. Beyond conducting the day to day affairs of government and organizing new elections, it may not enact new proclamations, regulations or decrees, nor may it repeal or amend any existing law.

Power and function of parliament

1. Approval of taxation and expenditure generally in the context of national budget

2. oversight of executive action policy and personnel

3. Debating on issues of national and international

4. Hearing and readdressing grievance

5. Ratification of treaty

6. Participating in constitutional change

7. Educational and awareness creation see regulation # 3/2006

NB. Coalition government is necessary for effective legislative oversight

EXCEUCTIVE

- parliamentary systems do not permit insulation of power between Parliament and executive:
- Parliamentary systems are all power-sharing systems.
- By looking into the core authority structure in which a chief executive, a prime minister is empowered to perform.
- From this standpoint the head of government may relate to the members of his government as:
- A first above un-equals
 - A British prime minister stands as a primus (first) above un-equals; he truly runs the government and has a free hand in picking and firing truly subordinate
 - A first above un-equals is a chief executive that is the party leader, that can hardly be unseated by a parliamentary vote, and that appoints and changes cabinet ministers at his or her pleasure

- A first among un-equals
- A first among un-equals may not be the official party leader, and, yet, cannot be unseated by a mere no confidence parliamentary vote and is expected to remain in office even when his cabinet members change. So, this 'first' can unseat its ministers but can not be unseated by them or the Parliament
- A first among-equal

A prime minister that falls with his cabinet; that generally must embark on the governmental team - 'imposed Ministers' and that has little control over the team (better described as a non-team whose untouchables play their own game)

“The prime minister is the chief executive, the chairman of the Council of Minister, and the commander-in-chief of the National Armed Forces.”

FDRE Constitution, Article 74 (1).

- While the OPM is the steering wheel of the ship of the state, while it is the PM who is the steering man.

Appointment of the PM Article 73.

- *The prime minister shall be elected from among members of the House of Peoples' Representatives.*
- *Power of government shall be assumed by the political party or coalition of political parties that constitute(s) a majority in the House of Peoples' Representatives.*

Selection of CM

- PM has to take several factors into consideration while making the appointments. Some of them are listed below.

1. He shall consult the senior members of his party.
2. There is a tradition that surviving members of past ministers of his party, if they are eager to be appointment, are to be given preference and posts, commensurate with their seniority to the PM.
3. He has to see (Nation, Nationality and Peoples) the nations people are duly/fairly represented in the Cabinet.
4. Different factions of the same party should be given representation.

Social, economic and religious groupings are not to be ignored.

5. Women should be adequately represented.
7. Men who are good orators with a clean image be chosen.
8. He must obtain the consent of those chosen. etc

NB:-Resignations are always treated as a sign of disloyalty and held against the PM

- IS there division of judicial power in federalism??

Judicial power should be divided between them in line with the rest of the federal arrangement 78/2/3/, 79/1/

- Federal Courts applying and interpreting federal laws and another set of Courts applying and interpreting the laws of each state.
- These seems to be the case with the United States and Ethiopia judicial power divided between them in line with the rest of the federal arrangement

- USA The Constitution provides that the judicial power shall be vested in **one Supreme Court** and in such inferior courts as the Congress may form time to proclaim and establish.
- FDRE Constitution states that supreme federal judicial authority is vested in the Federal Supreme Court and reserves for the HoPR to decide by a two-third majority vote to establish inferior Federal Courts as it deems necessary, nationwide or in some parts of the Country.78/2/
- There is only one federal Supreme Court with nationwide jurisdiction fdre 80/2/

Federal courts	State court s	State delegation power	Appeal/ cassation over cassation
Cassation bench 80/3/A	Cassation bench 80/3/b		
Federal Supreme court =78/2/,80/1/	State Supreme court 78/3/,80/2/ = Cassation bench 80/3/b	Federal high court in Tigray, Amhara, Oromia 78/2/,80/2/	
Federal High court 78/2/	State High court 78/3/	federal first instance court 78/2/ SNNPR/ Tigray/ Amhara/ Oromia	
Federal first	State first	No delegation	

- Theoretically speaking, is organized on a dual basis in which there are two parallel court systems, the federal courts and the state courts with their own independent structures and administrations.
- In certain circumstances, a case brought before a State Court may thereafter be taken to a Federal Court. How????????, see 79/6/
- In the United States Federal Courts almost exclusively deal with matters of federal law and matters raising constitutional interpretation, whereas State Courts deal primarily with matters of state law, but State Supreme Courts also hear cases raising issues of both federal and state law

Art 8/1/,Proc.25/96 Vs Art 20/6/ FDRE

• *First Instance Jurisdiction of the Federal Supreme Court*

The Federal Supreme Court shall have exclusive first Instance jurisdiction over the following:

1) offences for which officials of the Federal Government are held liable in connection with their official responsibility;

- Who are "Officials of the Federal Government based on art 2/1/ Proc.# 25/96

members of the House of Peoples' Representatives and of the House of the Federation, officials of the Federal Government above ministerial rank, ministers, judges of the Federal Supreme Court and other officials of the Federal Government of equivalent rank;

- The federal supreme Court shall have the highest and final judicial power over federal matters.
- It also states that the Supreme Court shall have the highest and final judicial power over state matters
- What is the key for the allocation of jurisdiction between federal and state courts ??? No answer in FDRE but in Proc. # 25/96
- Federal court has jurisdiction cases “laws, parties and places”
 - ✓ Federal laws and international treaties,
 - ✓ Cases to which a federal government organ is a party,
 - ✓ Cases arises in Addis Ababa &
 - ✓ Suits between persons permanently residing in different regional,
 - ✓ Cases regarding the liability of officials or employees of the federal government in connection with their official responsibilities or duties
 - ✓ Cases to which a foreign national is a party.

Art 10. *Power of Cassation of the Federal Supreme Court*

In cases where they contain fundamental error of law, the

Federal Supreme Court, shall have the power of cassation over:

1) final decisions of the Federal High Court rendered in

its appellate jurisdiction;

2) final decisions of the regular 'division of the Federal

Supreme Court;

3) final decisions of the Regional Supreme Court rendered as a regular division or in its appellate jurisdiction

Cassation over cassation Art 80/3/

- A, The Federal Supreme Court has a power of cassation **over any final court decision** containing a basic error of law. 80/2/
- B, The State Supreme Court has power of cassation over any final court decision on state matters which contain a basic error of law.
- The minutes of the Constitutional Assembly also suggest that the federal supreme court has the power of **cassation not only over federal matters** but also on **state matters** and even more interestingly the **federal Supreme Court reviews state matters in which the state supreme Court has rendered a final decision by way of cassation**n.

Is judicial shared power exist in Ethiopia ?? See
Art 55/4/,/5/

-*Proc. No 25/96 Art 3/1* Federal Courts shall have jurisdiction over: cases arising under **the Constitution, Federal Laws and International Treaties,**

-State practice

State Courts do adjudicate criminal cases in the regular discharge of judicial duties, not in their delegated powers

- **The Commercial Code too is a federal law by virtue of Article 55(4) of the Constitution and the same holds true for the Penal Code (Article 55(5)).**
- **NB;- art FDRE 13/1/, 79/7/, 78/2/ Amharic version**

The constitutionality of Administrative tribunal

- There are controversial tribunals introduced from time to time by the federal legislature and they do seem to dismantle the courts' jurisdiction.
- The Constitution declares that judicial powers both at federal and state levels are vested in the Courts 79/1/
- Article 78(4) stipulates that "*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*"
- The Constitution guarantees every citizen right of access to justice. '*every one has the right to bring a justifiable matter to and to obtain a decision or judgment by, a Court of law or any other competent body with judicial power*' 37/1/

FDRE Art 78/4/ vs Administrative tribunals

- First, The trouble in Ethiopia is that such tribunals are neither autonomous nor subject to review at a higher level.
- Secondly, although the judiciary arguably has power to interpret the Constitution, it has no power of reviewing the constitutionality of laws as this power has been expressly granted to the HoF.
- Thirdly and more importantly, the judicial branch's power of reviewing decisions of several other tribunals is far from clear and the system has not yet established it beyond doubt

Chapter VIII: Forms of State

- Unitary state, federation and confederation
Federalism: a brief overview
- Common features of federations
- Allocation of competence in federations
- The nature of Ethiopian federalism
- The division of powers under the FDRE
Constitution Powers of the Federal Government Powers of the regional states

Theoretical Foundation of Federalism

- Carl Friedrich describes federalism *as a union of group-selves, united by one or more common objectives but retaining their distinctive group being for other purpose.*
- Dicey's definition is that a federal state is a political invention which is intended to reconcile **national unity and power with the maintenance of the rights of the "member states"**.
- Communities or states which form a federation are striving towards unity rather than uniformity.
- To give expression to this striving towards unity within diversity, those matters which are of common importance to all the federal parts are entrusted to the central government , while matters that are vital to the preservation of a separate identity are left to the authorities of the individual units.
- Accordingly, in a federation sovereignty is to all intents and purpose partitioned.

- The central authority is sovereign in regard to the matters entrusted to it while the states, or communities, or cultural groups, are supreme in their own terrains.
- This division of function and powers can be regarded as an express characteristic of federal systems in that the authorities on the two levels enjoy equal status, and are in no way subjected to each other.
- The constitution is in reality a “contract” which is entered into by the federating units and can only be altered by a prescribed procedure.
- This “contract” makes provision for the exercise of all governmental functions.

- Prerequisites for Federal Associations

There must be a strong need and desire to shoulder

Common interests jointly

Domestic interests separately

Types of Federations

Based on origin:

Centripetal and Centrifugal Linking Units

1. Centripetal linking is where independent states move closer together to create a federal state.

- Most federations have this type of origin, for example the USA and Switzerland.(coming together)

2. Centrifugal linking is where decentralized unitary units are converted into a federation. Usually unilateral action is initiated by the central authority.

II. based on foundation:

Federal states can be created on different foundations. They usually have a territorial basis, but can also have other bases

- 1. Territorial Units; here, it is territorial area that serves as unit of the federation. These areas can again be subdivided into two kinds, namely city-states on the one hand and states on the other hand.
- 2. Corporate Units;

In this case the federal units are not territorially bound so that what is at issue is a type of federalism in which various groups or communities inhabit the same region and attend to their own domestic interests in accordance with the subsidiary principle, but naturally co-operate with each other on matters of common concern.

3. **Person Oriented Units**; the principle of person oriented units is closely related to the principle of corporatism; both relate to various communities which inhabit one and the same country.

- In the latter case (corporate units) the various communities live in separate regions (or municipalities) of the same country while in the former case, they are completely mixed.

- Consequently the only method of achieving a degree of differentiation in a society such as this is to base the functions of the authorities on the particular needs (or characteristics) of the people.

4. **Associated Units**;

- This applies to members, which according to international law are independent (of the federation) but according to constitutional law are never the less members of a federal state. The best known example is west Berlin

A. Nation Centered Federalism:

- This doctrine stresses that the nation is superior to its component parts.
- The national government is the government of all, its powers are delegated by all, it represents all and acts for all”.

B. State Centered Federalism;

The theory asserts that the Constitution was a result of state action. Proponents of this theory said that the states should vigilantly guard themselves against the national power.

C. Dual Federalism

This is also called the separatist theory of federalism. This called for the carving out of separate fields of authority, for the federal and the state governments.

D. Cooperative Federalism: Under this scheme, both collaborate to meet certain ends.

-The most important device of cooperative federalism is that of providing grants-in-aid to the states.

-The American federal system does not comprise of independent layers of government but is cooperative in nature

E. Creative Federalism: This has all the features of cooperative federalism, yet has some unique elements of its own.

It lays emphasis on cooperation, not only between the federal and state governments but between them and the local units

F. New Federalism /of Richard Nixon/:

This, in content, is much similar to creative federalism, A new label was given to it by Richard Nixon, he believed in responsible decentralization, whereby the states and local authorities would receive a larger share of powers.

- The thrust of new federalism is to de-emphasize the national government's role in the partnership of governments and to strengthen that of the state and local governments.

- The concept of judicial review
- The centralized model
- The decentralized model
- Powers and organs of constitutional interpretation
- The Ethiopian approach

Benshangul election case

- FIVE NATIONALITY BERETA, GUMZ, SHINASHA, MAO, KAMONA
- Proc.No 111/87 to be elected as people representative speaking the language of the region is mandatory
- Aggrieved parties Amhara, Oromo, Tigire, Agew & other
- CCI majority recommend it is unconstitutional because of art 38/1/ FDRE
- Dissenting opinion:- The Proclamation should interpret inline with other provision specially art 8, 39 and historical arrangement of the constitutions. It is recommend constitutional
- HF resend the decision to CCI to ask other professional opinion
- **Issue** Is speaking the working language of National state is prerequisite to be a candidate for election at regional councils?

Relevant articles to solve the case

1. Article 1, federal and democratic state structure
2. Article 39/2/3/ Right to develop once culture
3. Article 39/5/ Definition of NNP
4. Article 47/1/ States of the federation
5. Article 5/2/3/ Federal working Amharic and state working language
6. Article 8, Sovereignty of NNP
7. Article 9 supremacy of the constitution
8. Article 25 Equality of citizens
9. Article 39 /2/3 right of equality of NNP
10. Article 38/1/ Right to be elected

Rationale behind constitutional interpretation

- In order to safeguard the supremacy of the constitution, a special organ checking the constitutionality of laws is indispensable.
- Every Constitution needs an organ interpreting the constitution and giving a final decision on disputes arising on the constitution.
- The assertion that the constitution is a supreme law would have no meaning unless there is some authority to safeguard the constitution against violation.
- The principle of separation of power is supplemented by an equally important concept of 'check and balance', the **constitutionality of the legislative acts are supervised by the judicial branch of government.**
- It was in the famous case Marburg Vs Madison that the federal Supreme Court asserted its power to review the conformity of legislation with the constitution and disregard a law held to be unconstitutional.

- The simplified procedure by which, *prerogative and* other remedies have been obtainable in the High Court against inferior courts, tribunals, and administrative authorities.
- On an application for the judicial review of a decision, the Court may grant a quashing order, mandatory order, prohibition order, declaration, or injunction; it may also award damages.

Under constitution law

- Judicial review is the power of courts to pass judgment upon the constitutionality of the legislative acts which fall within their normal jurisdiction.
- Courts can refuse to enforce a legislative which are unconstitutional and hence void.
- Judicial review was first introduced in the US. There is no express provision empowering the court to adjuster constitutional issues in the US constitution

- Case
- Federalists hatched and swiftly implemented a plan to preserve Federalist values through the federal judiciary.
- First, President Adams named his Secretary of State, John Marshall, as the new Chief Justice of the United States.
- Second, Congress created sixteen new federal judgeships, to which Adams nominated and the Senate quickly confirmed sixteen new “midnight judges,” all Federalists.
- Finally, in a much less significant move, the outgoing Federalist Congress authorized the President to appoint forty-two minor office-holders, called justices of the peace, for the District of Columbia.
- William Marbury did not get his, he filed a suit in the Supreme Court, asking it to order the Secretary of State of the new Jefferson administration, James Madison, to deliver his commission.
- Republicans set out to stop the Federalists from retaining through the courts the influence that they had lost at the polls.
- On one front, the Republican Congress abolished the new federal judgeships that its predecessor had created.
- On another, after William Marbury filed his suit in the Supreme Court in December of 1801, Congress enacted legislation that effectively barred the Court from meeting for more than a year, until February 1803.
- On a third, the Jeffersonian set out to “impeach” and remove from office Federalist judges that they believed had abused their powers.

- Marshall focusing on a technicality, involving what lawyers call “jurisdiction”.
- By constitutional design, the Supreme Court functions almost exclusively as an “appellate” court, reviewing decisions already made by lower courts to correct errors on points of law.
- Marbury’s suit against Madison did not fall within any of those exceptional categories. Marshall pointed to a statute authorizing the Supreme Court to issue the kind of *remedy that Marbury* sought, a “writ of mandamus” ordering government officials to perform their legal duties.
- By enacting that statute, Marshall’s opinion reasoned, Congress had attempted to give the Supreme Court jurisdiction to act as a trial court in every case in which one party sought a writ of mandamus. Marshall managed to create a constitutional question about the power of the Supreme Court to engage in judicial

- *It would defeat* the purposes of a written Constitution if the courts had to enforce unconstitutional statutes. The courts must exercise judicial review because the Constitution is law, and it is the essence of the judicial function “to say what the law is.” With this conclusion, Marbury lost his case .
- The fact that Marbury lost and Madison won solved Marshall’s immediate problem, involving the specter of the President and Secretary of State defying a Supreme Court ruling and being applauded by Congress for doing so.
- But the chain of reasoning that led to the case’s outcome involved assertions of enormous judicial power.
- Madison won, and Marbury lost, only as a result of a precedent-setting ruling that the Supreme Court must review the constitutionality of acts of Congress.
- *Marbury’s holding on this point has endured, and has generally been honored*, into the present day.

The power of second chambers

- In assessing the legislative power of upper houses in Federal countries, two trends are prominent.
- 1) The first category of upper houses is equally share the power of law making with lower houses. (co-equal legislators: USA and Switzerland) The consent of both houses is a condition for a bill to obtain a legal force. The two houses in this regard are co-equal as no law can be enacted unless both houses agree on the same text.
 - 2) The second category of upper houses plays a subsidiary role.(Subsidiary legislator, eg. (German and Indian)
 - Each piece of legislation does not need the approval of both the lower and upper houses, but the latter make sure that the interests of the states are taken into account.

- **The HF: A non legislative second chamber**

- The FDRE constitution fulfills the minimum requirement of having a second chamber but with a totally different function.

- The upper house or House of Federation has no legislative power. The only provisions we can trace legislative functions of the HF are **Article 99, 62(7) and 105.**

- To determine undesignated power of taxation (concurrently with the House of People's Representative)
- To determine the division of revenues derived from joint Federal and State tax sources, and the subsidies that the Federal government may provide to the States;
- To amend the constitution. In the strict sense, the Ethiopian parliament is unicameral as the HPR is the only law making organs.

- Although the constitution has more or less addressed the issue of self rule, a clear deviation from the principle of share rule is visible in the Ethiopian federal arrangement.
- As the power to legislate is exclusively given to the House of people's Representative (HPR) organized on a proportionality principle (majority rule), there is no mechanism for smaller states to check the House of people's Representative.
- Majoritarian House of Federation. The Ethiopian House of Federation, seems to ignore this basic principle of upper chambers applicable in worldwide federations.
- The constitution states that “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

- The first part of this provision seems in line with the principle discussed earlier.
- As each nation nationality is a building block of the federation, they need to be represented in the HF.
- The representation of one million persons by one person is undermining the chance of the minorities to influence the upper house and they are submitted to the majority as in lower houses.
- The House of Federation composition is closer to the proportionality principle which is a main characteristic of lower houses.
- The organizational principle of the HF is almost the same as HPR except that there is a significant difference in the number of constituencies, 100.000 for the HPR and 1 million for the HF.

- Although the HF pretends to be the House for nations and nationalities, it is in fact representing the majority.
- A majority in the HPR is also a majority in the HF and hence the very principle of sovereignty of Nations, Nationalities and peoples which it claims to enforce is in jeopardy.
- This is rather the sovereignty of the population that is reflected in the end, as in the HPR.
- The Ethiopian house of federation didn't accommodate persons of exceptional talent.
- We can illustrate the danger created by the HPR monopolizing the federal law making power. From the 550 seats of the HPR, the most populous nations (the Oromo and Amhara) occupy 304 seats

- Therefore, the Oromo's and Amhara's will form a quorum and their combined vote will suffice to pass legislations to the prejudice of other nations and nationalities.
- As stated earlier, it is such fear that many federal constitution avoided by setting a non majoritarian second chamber where the rights of minorities will be exercised and counter balance the majority rule.
- Bicameralism requires a second chamber that is dissimilar in terms of its composition compared to the first chamber.
- Is the overrepresentation to certain minorities or smaller states is a basic characteristic of upper houses in federations.
- It is a guarantee against the tyranny of the majority in the lower houses. mica.fikrie@yahoo.com

- **Constitutional Interpreter**

- Generality is one of the distinctive characteristics of constitution. Constitutional provisions are intended to stay long period and accommodate changing circumstances of the country.
- Constitutions by their nature are stated vaguely so that they will serve for generations. Due to their generality, constitutions have loopholes or may be over vague; constitutional interpretation is the solution to this problem.
- Who should be empowered to adjusted constitutional issues

There are four different scenarios:/ Ibrahim Idris make them three model, American ,Europe and swizz model

- US, India, Australia..... the ordinary courts
- European countries/ Australian Model/..... a special court
- China the legislature national people congress
- Switzerland referendum.

- In America there is no express provision or verbis empowering courts to adjudicate constitutional cases.
- It is rather in Marbury vs. Madison that the federal supreme court asserted its power to review the conformity of the legislation with the constitution. And to disregard a law held to be unconstitutional .
- Many countries expressly entitled courts to interpret constitution .E.g Brazil,Mexico, Japan,Korea and Japan
- European model/ Australian Model/ - especial constitutional courts interpret the constitution/established to monopolizing constitutional litigation/. It usually utilized special procedure and focuses on higher constitutional matter.
- German constitutional court comprises 16 judges for 12 year services/ most power full constitutional court/, both house participate in election 6/6
- Swiss model constitutional court can see the constitutionality of cantons law but not the federal law/ there is parliamentary supremacy over judicial supremacy.

Ethiopia's experience

- Out of three constitution 1931 and 1955 revised constitution did not include specific provisions on constitutional adjudication nor did they expressly designate a body empowered to handle adjudication of constitutional case.
- 1987 the constitutionality of a law concerned to state council Art 82 1/b/” Interpret the constitution and other law”
- In contrast to other models HF entrusted to decided on a constitutional dispute
- Courts dined power of interpreting constitutional provision and handling judicial review of legislative statue
- Any delegation of HF power to committee is violation of the constitution but z house have a meeting twice a year
- Other argue he can entrusted other members of him by establishing committee ad hoc or permanent see art 62/10/ and 11

Council of Constitutional Inquiry art 82

- The Council of Constitutional Inquiry shall have eleven members comprising: The President of the Federal Supreme Court, who shall serve as its President; The vice-president of the Federal Supreme Court, who shall serve as its Vice-President;
- **Six legal experts**, appointed by the President of the Republic on recommendation by the House of Peoples' Representatives, **who shall have proven professional competence and high moral standing**;
- Three persons designated by the House of the Federation from among its members. The Council of Constitutional Inquiry shall establish organizational structure which can ensure expeditious execution of its responsibilities.

• List of CCI at 2000 E.C

- 1. የተከበሩ አቶ ከማል በድሪ ሰብሳቢ
- 2. የተከበሩ አቶ መንበር ፀሀይታደሰ....ም/ሰብሳቢ
- 3. የተከበሩ አቶ ደግፌ ቡላ..... አባል
- 4. የተከበሩ አቶ አባይ ወልዱ አባል
- 5. የተከበሩ አቶ ሀሰን ኢብራሂም አባል
- 6. የተከበሩ አቶ ኩማ ደመቅሳ አባል
- 7. የተከበሩ ዶክተር ፊሲል ናሆም አባል
- 8. የተከበሩ ዶክተር ሃሺም ቶሬቅ አባል
- 9. የተከበሩ አቶ ጌታሁን ካሳ አባል
- 10. የተከበሩ አቶ ሙሉጌታ አያሌው አባል
- 11. የተከበሩ አቶ በየነ ቡልቲ አባል

Latest information on member of CIC www.hofethiopia.gov.et seen Dec.05, 16

- 1 Mr. Tegene Getanh Chairman
- 2. Mr. Medihen Kiros.....Vice Chairman
- 3. Dr. Hasim Tofik
- 4. Mr. Melese Alemu
- 5. Mr. Getachew Ambaye
- 6. Mr. Eshetu W/semayat
- 7. Mr. Million Aseffa
- 8. Dr . Fasil Nahom
- 9 Mr. KifleTeshone Mamo
- 10. Mrs. Demitu Hmbisa
- 11. Mrs. Ayerot Ahamed

- Since a constitution is a law, and the supreme law within its domain, and authorizes statutes and other official acts which have a textual expression, the principles of constitutional interpretation are essentially the same as the principles of statutory or judicial interpretation
- Most legal scholars recognize seven main *methods of interpretation: textual, historical, functional, doctrinal, prudential, equitable, and natural*, although they may differ on what each includes, and there is some overlap among them.
- **Textual.** Since a law is a command, then it must mean what it meant to the lawgiver, and if the meaning of the words used in it have changed since it was issued, then textual analysis must be of the words as understood by the lawgiver, which for a constitution would be the understanding of the ratifying convention or, if that is unclear, of the drafters.
- Some Latin maxims: *A verbis legis non est recedendum*. From the **words of the law there is not any departure**. Meaning of words may be ascertained by associated words

- **Historical.** A textual analysis for words whose meanings have changed therefore overlaps historical analysis.
- It arises out of such Latin maxims as *Animus hominis est anima scripti*. **Intention is the soul of an instrument.**
- **Functional.** (Also called *structural*.) Decision based on analysis of the structures the law constituted and how they are apparently intended to function as a coherent, harmonious system.
- A Latin maxim is *Nemo aliquam partem recte intelligere potest antequam totum perlegit*. **No one can properly understand a part until he has read the whole.**
- **Doctrinal.** Decision based on the prevailing practices or opinions of legal professionals, mainly legislative, executive, or judicial *precedents*, according to the meta-doctrine of *stare decisis*, which treats the principles according to which court decisions have been made as not merely *advisory* but as *normative*.

- Some Latin maxims are: *Argumentum à simili valet in lege*. **An argument from a case avails in law.**
- **Prudential.** Decision based on factors external to the law or interests of the parties in the case, such as the convenience of overburdened officials, efficiency of governmental operations, avoidance of stimulating more cases, or response to political pressure. It also includes such considerations as whether a case is "ripe" for decision, or whether lesser or administrative remedies have first been exhausted. A Latin maxim is *Boni judicis est lites dirimere*. **The duty of a good judge is to prevent litigation.**
- **Equitable.** Also called *ethical*. Decision based on an innate sense of justice, balancing the interests of the parties, and what is right and wrong, regardless of what the written law might provide.
- Some scholars put various balancing tests of interests and values in the prudential category, but it works better to distinguish between **prudential as balancing the interests and values of the legal system** from **equitable as balancing the interests and values of the parties..**

- It arises out of the Latin maxim, *Æquitas est perfecta quædam ratio quæ jus scriptum interpretatur et emendat; nulla scriptura comprehensa, sed sola ratione consistens*. **Equity** is a sort of perfect reason which interprets and amends written law; comprehended in no code, but consistent with reason alone.
- **Natural.** Decision based on what is required or advised by the laws of nature, or perhaps of human nature, and on what is physically or economically possible or practical, or on what is actually likely to occur. This has its origin in such ancient Latin maxims as: *Jura naturæ sunt immutabilia*. **The laws of nature are unchangeable.**

- Art 84/2/ does it tell about law enacted by the legislature or include the law made by executive?
- With regard to the concept of Law, it must be considered that law in Article 84 No. 2 seems only to refer to formal enactments of Parliament.
- See art 2/2 proclamation No. 251/2001

“Law” shall mean proclamation issued by the Federal or State legislative organs, and regulations and directives issued by the Federal and States government institutions and it shall also include international agreements that have been ratified by Ethiopia;

- In Ethiopia, there is the so called authentic interpretation by the law-giver.

Pro.# 798/2013 art 3, Principle

*When the unconstitutionality of **any law or customary practice or decision of government organ or decision of government official is submitted in writing** to the Council, it shall consider the matter. Should the Council , upon consideration of the matter, **find it necessary to interpret the Constitution**, it **shall submit its recommendation** thereon to the House of the Federation.*

Issue of constitutional interpretation to be submitted to the Council in accordance with sub-article (1) of this Article shall:

- a) if it is **justiciable matter** of court, when it has been brought to, and heard by **the court having jurisdiction**;
- b) if it is justiciable matter of administrative organ, **when a final decision** has been rendered by the competent **executive organ with due hierarchy** to

Person competent to submit

- The **court or the interested party** may submit the issue to the Council.
- The interested party shall, before submitting the issue to the Council, require the court that has being see the case to refer the issue of **constitutional interpretation to the Council**
- *The court being see the case shall refer the issue of CCI when it believes that the interpretation of the constitution is necessary to decide the case.*
- Where the court rejects the request, the interested party shall submit his case to the Council within 90 days from the date he knows such decision of the court.

Submitting Issues of Constitutional Interpretation

Outside Courts of Law

5/1/ Any person who alleges that his fundamental right and freedom provided under the Constitution have been violated due to the final decision rendered by government organ or official may submit his case to the Council for constitutional interpretation.

5/2/Issue of constitutional interpretation may be submitted to the Council in accordance with sub-article (I) of this Article, when a final decision has been rendered by government organ having competency to decide on the claim for violation of right with due hierarchy to consider it.

5/3/ Where any law issued by federal government or state legislative organs is contested as being unconstitutional, the concerned court or interested party may submit the case to the Council.

Land mark cases of HF

- Benshangul election case

Do you think decision of HF against article 8 of the Cons?

What about article 38 nondiscriminatory and 25 equality provision?

- Kadja Beshiri case

Art. 34/5/, 78/5/ Proc.# 188/92 Article 4/2

- Silite national identity question

Art 39/4/, Art 47/3/,52/A/,62/3/

HF

-Question should fulfill Art 39/5/

- Question should submit to state council

- Regional gov't should conduct study about question

- Prepared referendum

- One year is enough to answer the question of National question?

Questions that requires answer

- What will happen if decision of religious courts contrary to the constitution?
- Is it necessary to gave ordinary courts power to review decision of religious courts?
- What if the regional gov't denied the question of national identity? Does the HF decided on question national question? Or return the question to be reconsidered by regional gov't ?
- How many people can raise question of national identity ?
- Which organ gov't prepare the referendum election board or regional state ?
- Can member of Nation who live out side the region participate in election?
- How the government certain about the question national identity is genuine?

- Human Rights are Universal legal guarantees protecting individuals and groups against actions by **Governments**, which interfere with **fundamental freedoms** and **Human dignity**.
- Human Rights oblige governments **to do some things**, and prevent them from **doing others**.
- Human Rights are generally defined as **Universal Moral Rights** that belong equally to all peoples simply because they are Human beings. (**Human Rights are inherent**)
- Human Rights are also often described as generally **accepted principles of fairness and justice**.
- Universality of Human Rights implies that **all people** have and should enjoy them.
- Independency of Human Rights implies that they exist and are available as standards whether or not they are recognized or implemented by the legal system or officials of the country.

Characteristics of Human Rights

The most frequently cited characteristics of Human rights are:

- I. Focus on the **dignity of Human being**
- II. Legally protected
- III. Internationally guaranteed
- IV. Protect the individual and groups
- V. Oblige state and state actors
- VI. Cannot be waived/taken away/ inalienable/
- VII. Equal and interdependent
- VIII. Universal
- IX. Indivisible
- X. Inviolable

Art 10 FDRE, Human rights and freedoms, emanating from the nature of mankind, are inviolable and inalienable.

Types of Human Rights

Divided into two categories

Negative Human Rights

- Rights to be free from
- Follow mainly from the Anglo-American legal tradition
- Denote actions that a government should not take.
- E.g. freedom of speech, religion and assembly
- Codified in the US bill of rights, The English bill of rights and freedom

Positive Human Rights

- Follow mainly from Continental European legal tradition
- Denote rights that the state is obliged to protect and provide
- E.g. the right to education, to a livelihood, to legal equality.
- Codified in the Universal declaration of Human Rights.

Three generations of Human Rights

- Civil and Political Rights (first generation Rights)
- Economic, social and Cultural Rights (Second Generation Rights)
- Right to peace and clean environment (Third generation Right) (Solidarity Rights)
- **First Generation rights (Civil and Political Rights)**
- One category of **UDHR** - Often called '**Blue Rights**' and deals with **liberty** and **participation in political life**. - protect the individual from the arbitrary exercise of power by the state.
- Generally include:-
 1. Right to Life, integrity, liberty and security of person
 2. Right with respect to the administration of Justice
 3. The Right to privacy
 4. Freedom from religion and belief
 5. Freedom of opinion and expression
 6. Freedom of movement and residence
 7. Freedom of assembly and association
 8. The right to political participation

Second Generation rights (Economic, social and cultural Rights) - Another category of UDHR

- Often called '**Red Rights**' because, they impose upon the government the duty to respect and promote and fulfill them, but this **depends on the availability of resources**. The duty is imposed on the state because **it controls its own resources**.
- The duty of government in the realization of these rights is a **positive one**. began to be **recognized** by the government **after World War II**
- They guarantee **different members** of the citizenry **equal conditions and treatment**
 1. The Right to work and favorable condition of work
 2. Trade union freedoms
 3. The Right to an adequate standard of living, including food, clothing and house
 4. The Right to health, rest and leisure
 5. The Right to education
 6. The Right to take part in the cultural life of the community

Third Generation rights (Economic, social and cultural Rights)

- Third-generation human rights are those rights that **go beyond the mere civil and social rights**
- They are about the **Right to peace and clean environment**
- Because of the present day **tension between states** towards national **sovereignty and global warming issues**, these rights **have been hard to enact in legally binding documents**
- The term "third-generation human rights" remains largely unofficial, Generally include:-
 - Group and collective Rights
 - Right to self-determination
 - Right to healthy environment
 - Right to natural resources
 - Right to communicate and communication rights and so on
- Some countries have **constitutional mechanisms** for **safeguarding third-generation rights**.

Individual and Group rights

- Another distinction made between individual and collective rights.
- Human Rights are individual in nature. But some Human Rights combine individual and collective aspects. E.g. freedom of religion or belief, Rights of a family, trade union rights.....
- There are rights which give attention to special needs of groups. They are called collective Rights. E.g. the Rights of ethnic minorities, the right of indigenous peoples
- People's rights include the Right to self-determination, to development, to peace and security.
- The African charter on Human and people's Rights (1981) was the first Human Right instrument to recognize the relationship between individual and collective Rights.

Restrictions(limitations)

- When a right is subject to a limitation, no other limitations are permitted and any limitation must comply with the following minimum requirements:
 - 1.The limitation must not be interpreted so as to jeopardize the essence of the right concerned;
 - 2.The limitation must be interpreted strictly in the light and context of the particular right;
 - 3.The limitation must be prescribed by law and be compatible with the object and purpose of the instrument; The restriction must be based on a law;
 - 4.The restriction must be necessary; there must be a pressing social need, assessed on a case-by-case basis.
 - 5.That the law would be useful is in itself not sufficient; it must be consistent with other protected rights.

- In some treaties, the condition that it be necessary" (in a democratic society) is added; and
- The restriction must be justified by the protection of a strictly limited set of well-defined public interests, which usually includes one or more of the following grounds: **national security, public safety, public order (*ordre public*), the protection of health or morals, and the protection of the rights and freedoms of others.**
- In sum, any restriction on the enjoyment of the rights enshrined in human rights instruments must be **legally established, non-discriminatory, proportional, compatible with the nature of the rights, and designed to further the general welfare.**

- Derogating measures must be of an exceptional and temporary nature.
- The rationale for derogation provisions is to strike a balance between the sovereign right of a government to maintain peace and order during public emergencies, and the protection of the rights of the individual from abuse by the state.
- Thus, the state is allowed to suspend the exercise of some rights when necessary to deal with an emergency situation (*e.g.*, *derogation of the right* to peaceful assembly), provided it complies with safeguards against any abuse of these derogation provisions.

When derogation measures are allowed, such derogations have to meet several criteria:

1. There must be a war or general state of emergency threatening the life of the nation;
2. The state of emergency must be officially proclaimed;
3. Measures may not go beyond the extent strictly required by the situation;
4. Measures may not be inconsistent with other obligations under international law; and
5. Measures may not be discriminatory solely on grounds of race, color, sex, language, religion or social origin.

Tips about Ethiopia art 39/4/

1. What will be the fate of NNP which doesn't have one nation council e.g Amhara, SNNP? E.g Russia
2. What is the reason for Ethiopia constitution to entitled nation nationality rather than regional governments right to secession? E.g Russia for republics
3. Do think the time for reconsideration of the decision secessions by NNP after the referendum is necessary? Russia five year after referendum
4. Do you think majority requirement for secession such big issue has a negative effect? Saint Kits and Nevis require 2/3
5. The secessionist loss they get a second chance but if they succeeded no second chance to unionist do you think that it is fair? Russia ten year after referendum
6. Who will vote for referendum only NNP who raise secession right and lives in the specific area or other NNP live in that region? E.g Russia all
7. What about member NNP who lives in other regional state do they give their vote? E.g Eritrean who lives in Ethiopia

- 7. Do you think consent of another member of the federation necessary for NNP to realize their quest to secession? E.g. Canada
- 8. Who will prepare the election HF or election board? E.g. Saint Nevis by states
- 9. Do you think HF has the power to check the fairness and other requirements of election and invalid referendum conducted without appropriate procedure process of? Russian HPR check the process of referendum
- 10. What does mean property division based law?
- 11. Who will own Lucy? AU seat? Renaissance Dam? Ethiopian international loan?

List of cases

#1. State Vs Tayewoldesemayat

Right to have opportunity to **communicate with once own choosing** Art 20/5/, 21(2), 14(3)B of ICCPR

#2. State vs. Suspects of Armed robbery

Bail Right, Presumption of innocence Art 19/6/, Art 20/3/

#3. State Vs AmareTadesse

- Art 17/1/ right of liberty Just cause + Procedure
- Speedy trial and denial of bail right by demanding high money

4. State Vs Siye Abraha

Right to speedy trial and non- retroactivity

#5. State Vs Mr. xxxxxx

Right not to be compelled to confess

The balance must stuck between interest of Public to prevent crimes and protection of individual interest

Art 19/5/ Cr.P.C 27/2/,35/1/,2,3

6. Right to speedy trial. The street children's criminal cases in Eth. Courts

Art 19/4/, 20/1/

#7. state vs Lidetu Ayalew

Art 19/4/ Habeas corpus

#8. State Vs Birtukan Medekisa

Art 21/1/, Art 21(2)

9. State Vs Dr. Negasso Gidada

Art 25, Art 38/2/, Art 70/3/,