

Chapter Three

Constitutional Development In Ethiopia

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Introduction

- **The Ancient Ethiopian Polity**
- In ancient Ethiopia Political power is vested in the King, the Nobility and the church. The three pillars of Ethiopian state.
- The Ethiopian Ruling class is considered to have been drawn from the blood line of King Solomon of Israel.
- Accordingly, blood relationship with Christ in the House of David, all the promises of the Bible and the honor of being a chosen nation (Israel) were, inherited by Ethiopia.
- For the Solomonic Dynasty, this legitimized its rule and helped inculcate its divinity and supremacy in the minds of its subjects.
- It as a powerful unchallenged source of authority for nearly two thousand years.

- **The King**

- The imperial omnipotence was elucidated by an Ethiopian historian in the following words:
- “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”
- The Emperor’s position at the pinnacle of power was so pervasive that he was the sole arbiter and source of governmental action, whatever this may constitute.
- The super-human virtue attributed to him by the royal ideology manifested itself in the belief that his mere presence guaranteed order by virtue inherent in the person of the king.

- The person of the Emperor provided also a common symbol for national unity.
- The nobility, as a class and individually were totally dependent on the Emperor for the acquisition, of land, office and title, which confer status and dignity – highly cherished things in Ethiopia.
- The continued possession of land and office title was made contingent on the sovereign's wishes.

- **The Nobility**

- As shown above, the mere presence of the king was seen as a precondition for civil order, the existence of the “Mekuanent” and the “Kahenat” (the nobility and the clergy, respectively) was, likewise, upheld as another significant factor for the maintenance of the status quo.
- The class of nobility consisted of the royal nobility, landed gentry and the high clergy.
- Like the king, their power was all encompassing with respect to the particular material and local jurisdiction.
- Status was made dependent on the possession of three dimensional factors, i.e. land governmental office and honorific title, which inclined to reinforce one another.
- More importantly, they were vassals of the king, whose benefices could be withdrawn inter vivo or morti causa, at his pleasure.

- **The Church**

- Constitutionally, church and state were, in form and in essence, one and the same thing in traditional Ethiopian polity.
- Their respective source of authority was different.
- The king's authority emanated from Solomoic, king David and Jerusalem, whereas that of the —Abuna||, the patriarch, was appointed by the patriarch of Alexanderia,²⁷ Egypt.
- The fortunes of the Solomonic Dynasty were interwoven by historical associations and mutual interest with those of the church.
- The Emperor and the church working together —provided the unifying elements which continually countered the centrifugal forces of geography, ethnicity and aristocracy.

- The patriarch sat in “solemn significance” upon the Emperor’s right hand at all public occasions. He alone could crown the Emperor.
- The power of the church includes blessing the altar, excommunicating rebels, commanding obedience, tendering oath for allegiance to the Emperor and intervening for clemency.
- For restoring the Solomonic Dynasty from usurpation, the church was awarded one third of the land in perpetuity to the emissary.
- All these shows that the high clergy constituted a sub- class of the nobility;
- The church was an inalienable institutional partner of the crown until it was deposed during the 1974 Popular Revolution.

3.1. Constitutional development of traditional Ethiopia till 1931

- **Ancient and Medieval Documents of Constitutional Nature**
- Prior to 1931 there was no modern written constitution in the history of Ethiopia.
- Absence of written constitution does not imply or signify the absence of constitution.
- There exists a sophisticated constitutionally significant traditional document which serves as a supreme law of the land.
- These traditional unwritten constitutional documents were Kibre Negest, Feteha Negest and Serate Mengist

- **1. Kibre Negest (The Glory of the Kings)**

- The Kibre Negest also known as the glory of kings vividly dealt with the legend of a Solomonic Dynasty and thus served certain political-religious needs of the time in the constitutional process.
- It regulated the power of the emperor. It tried to relate Queen Sheba of Axum with king Solomon of Israel.
- The legend history of such relation created Menelik I and as a result the

- **2. The Ser'ata Mengist**

- May be considered as the initial document of the Axumite Civilization.
- It was reinstituted during the time of Amda Tsion (1314-1344) culminating at the time of Fasiladas (1632-1667).
- The text was written in medieval Geez. It contained some twenty one articles of law.
- Ser'ata Mengest was an important guideline for the political life of the royal court as well as for the ruling elements connected with it.
- It was in fact a protocol of ceremonies, which had to be consulted whenever occasions required it.
- The writing and rewriting of the Serate Mengist have been necessitated by complex of problems among which are the problem of succession to the throne and need for term of reference.

- It is the first document known to have been used for allocating power among the Crown, its dignitaries and the Church.
- It contains the description of a series of ceremonial activities such as the ceremonies attending the kings ascending to the throne and the ceremonial naming of the Queen.
- It tried to lay out a pattern of succession to power through primogeniture.
- It contains the rules of succession to the throne and the role of the Army in it. It shows to what extent in Ethiopia the succession was left to the decision of the late king and the consent of the army.
- *“If a king Died , they wuld put his dead body in the Grad House. They would bring out one of his sons or brothers , chosen by the late king and his army, and they would enthrone him.”*

- It also contains the investiture of dignitaries in their functions as administrative and judicial officers.
- It contains Church ceremonies and hierarchical rank list. It also concerns itself with the competence of the law in cases of conflict between laity and the church.
- Naturally we **cannot expect to find human rights** constitutional instrument which quite clearly states the hierarchical power .
- The large text of organization power – rules shows a typical **feature of a feudal system trying to centralize the imperial power.**
- The leader being crowned used to be referred to as ‘Atse’ meaning King or ‘Niguse Negest’ meaning King of Kings. Referring to the executive power of the king.
- He also was referred to as ‘Jhan’ meaning Judge reflecting his judicial power.
- The **judicial power of the king** and the dignitaries is mentioned in describing the process of decision making.
- The process ends with the following statement: “Finally the King would give verdict and all would be finished.”

- **3. 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 Abu-I Fada'il Ibn al-Assal (commonly known as Ibn al-'Assal) when Cyril III was the Patriarch of Alexandria (1235-1243).
- The document was named Nomo Canon and later changed in to Fetha Nagast (the Law of the Kings) when it reached the Ethiopian soil in the middle of 15th century during the reign of Emperor Zera yaqob.
- The Fetha Nagast consisted of two parts; the first part of the document dealt with mostly ecclesiastic affairs and outlining the structure of the church hierarchy.

- The second part deals with issues pertaining to the laity, like family law, debt, civil administration.
- Feteha Negest came into force or used as a constitution during the reign of Sarsa Dengel.
- Starting from the reign of Sarsa Dengel up to the promulgation of the first written constitution of Ethiopia in 1931, Fetha Negest remained officially the supreme law of the land.

3.2. Constitutional Development in Other parts of Ethiopia

- **The Oromo Gadaa Democracy**
- The indigenous *gadaa* system organized and ordered society around political, economic, social, cultural, and religious institutions.
- We do not know when and how this system emerged. However, we know that it existed as a full-fledged system at the beginning of the sixteenth century. During this century, the Oromo were under one *gadaa* administration.
- Bonnie Holcomb (1991: 4) asserts that the *gadaa* system “organized the Oromo people in an all-encompassing democratic republic even before the few European pilgrims arrived from England on the shores of North America and only later built a democracy.”

- *Gadaa* government comprised a hierarchy of triple levels of government: the national, the regional and the local.
- At the pan-Oromo level, the national government was led by an elected ***luba council [leaders]*** formed from representatives of the major Oromo moieties, clan families and clans, under the presidency of the *abbaa gadaa* and his two deputies.
- The national leadership was responsible for such important matters as legislation and enforcement of general laws, handling issues of war and peace and coordinating the nation's defense, management of intra-Oromo clan conflicts and dealing with non-Oromo people.

- **The four Gadaa Organs of Governance:**

- The Gadaa Government has four Major Organs of Governance i.e.

- Gadaa Council (Adula) (Executive),
- Gadaa General Assembly (gumigayo) (Legislative);
- Gadaa Justice System (Judiciary)
- the religious institution the Qallu (independent Electoral Board)

- **The Gadaa Council (Adula) (Executive)**

- The Gadaa Council (adula) is a body of executive Gadaa leadership and it consists of six members.

- They are:

- A President (Abba Gadaa fixe) (It is also known also as Abba Gadaa Arbora);
- Two vice-presidents (Abba Gadaa knontoma);
- Three senior councillors (hayyuu adula).

- The president and the two vice presidents form **the Gadaa triumvirate** or it may be considered as government by committee.
- All members of the Gadaa Council are regarded as equals despite the fact that they exercise different functions and play different roles.
- **Gadaa Council is an entity.** As an entity the concept of legal person and natural person applies to the Gadaa Council.
- That is where a member of Gadaa Council acts in official capacity it is regarded as if it was conducted by the Gadaa Council.
- Hence while the members of Gadaa Council are mere agents, Gadaa Council is a separate body of Gadaa government.

- **Gadaa General Assembly (Gumigayo)**

- Gadaa General Assembly (Gumigayo) is the legislative body of Gadaa government.
- In principle **every Oromo is allowed to convene** to the Gadaa General Assembly regardless of Age or social status.
- Most scholars consider it as the most inclusive political discussion and decision making scene.
- It is considered so as it gives structural subsistence to the notion that in a democracy **powers rests ultimately with the people**—a right they exercise by direct participation or by delegating power to some leaders of their choosing.
- The Gadaa General Assembly meeting takes place once **every four years**, i.e. in the middle of the term office of the Gadaa leadership.

- It is mandatory for all living Abba Gadaas, Gadaa Council (inclusive of junior and senior councils), age-set councillors, clan elders and Qallus to convene to the assembly.
- It is often led by a speaker of the Gadaa General Assembly (Abba kora)
- When it comes to the powers and functions of the Gadaa General Assembly, it is discernible that it exercises supreme legislative authority in Oromo land.
- The Oromo strongly believe that the **Gadaa General Assembly has the highest political authority** as compared to the powers and functions of Gadaa Council and other Gadaa institutions.
- the Gadaa General Assembly exercises ultimate authority but also the fact that **its supremacy** is deeply rooted principle.
- “what the gumi decides cannot be reversed by any other assembly” (Asmarom 1973: 93)

- Another peculiar features of the Gadaa General Assembly is its **impartiality and transparency**.
- For example, where the discussion and deliberation is to be taken on issues that concerns Abba Gada in power, he has to withdraw from the assembly and will be replaced by Another Abba Gada.
- Unlike the modern legislative bodies, the Gadaa General Assembly may preside over cases of conflicts involving two or more clans.

- **The Qallu (“religious”) Institution**

- Qallu is non-secular institution interconnected with other Gadaa institutions and its role in the Gadaa system cannot be undermined.
- Qallu is at the **moral side of public administration**. For example, Abbaa Qallu (religious leaders) are empowered to oversee as **observers the election process** (lallaba) of Gadaa leaders.
- They and their kin are **banned from holding secular office**, and they may not bear arms or shed blood.
- The powers and functions of the Abba Gadaa and Abba Qallu (religious leader) is quite different.

- Where the Abbaa Gadaa actively participate in the political activities and passive in rituals; the Abba Qallu are active in ritual activities and passive (just observers) in politics.
- The only exception where Abba Qallu may participate actively in political affairs is where he had to bless the incoming Gadaa class during the transfer of power.
- Accordingly, Abba Gadaa pays homage to the senior Qallu and receives his blessings.

- **Gadaa Justice System**

- The Oromo handle the issue of justice at various levels.
- Issues may also vary from breach of smallest taboo to serious offences.
- Cases are usually settled by clan elders at two levels;
- Qee'ee Milloo (lineage level court) and Qee'ee gosaa (clan level court).
- With the exception of a few, most cases are not taken beyond clan level.

Fundamental Constitutional Principles in *Gadaa* System

- The Gadaa system embodies many of the fundamental principles in Modern constitutional Governance.
- The fundamental principles such as rule of law, accountability of state officials, transparency of government businesses; principles of equality, sovereignty of the people and supremacy of the constitution are the most notable ones.
- **1. Rule of Law**
- Conceptually, rule of law suggests that the law itself is the sovereign in a society.
- According to the Oromo, rule of law signifies not only liability of individuals rather it also mean that everything and every being has rules.
- That is the law stands not only for the benefit individuals or to discipline officials but it also extends to animals.
- The Boran say in this respect that seerri muummee, seera saree!
- The principle of rule of law is at the heart of the Gadaa democracy.

- the rule of law is entrenched value among the Boran society to the extent that the Abba Gadaa himself is subject of the same laws as ordinary Boran.
- For example, the Abba Gadaa and his cabinet are answerable to the Gadaa General Assembly in the mid of his term office.
- And legally speaking, where the Gadaa leaders commit serious offences they will be punished and can eventually be uprooted from the office. This is a clear indication of genuine rule of law as opposed to rule of men.

- **2. Sovereignty of the People**

- Despite the fact that the Oromo people under *Gada* system democratically elect their leaders and transfer power to successful winners of the election process, they retain the ultimate power to oversee the conduct of the later through the *Gummii Gayo* or *Caffee*.
- Asmarom describes this reluctance of the society towards transferring all public power to officials of the system as follows:
- *“At no point ... does the [Oromo] society [under Gada system] wholly transfers authority to any group of people. The society delegates limited kinds of power to the leaders of a luba, for a limited period of time, but that power is always subject to the higher authority of the Assembled Multitudes (Gummii).”*

- *Gummii* is the most inclusive of the Oromo traditional polity.
- According to Asmarom the Assembly which meets once every eight years brings together every important leader, individuals and any interested member of the society who wants to bring matters to the attention of the *Gummii*.
- The *Gummii* assembles in the middle of the *Gada* period, *inter alia*, **to review the conduct** of the elected officials, **amend or proclaim new laws** if necessary and to **settle major disputes** referred to it from lower levels.
- By deciding on cases that has a far reaching consequence on the life of the society at large the *Gummii* as such functions the same way as a **Constitutional Court** of modern Democracies.

- **3. The concept of Qixee and Balance In Gadaa**

- The traditional Oromo society settles matters of public importance through deliberation on which the public takes part directly and indirectly.
- Decisions are made after deliberation and every participant is not only encouraged but is also expected to contribute.
- One of the basic foundations of *Gada* system, therefore, is the notion that everyone who takes part in the *Gada* Councils or any such assemblies addressing matters of public nature is equal (*qixee*) and from this flows equal rights and responsibilities.
- This notion is crucial because most of the democratic features of the system hinges upon it.

- **4. Minority rights in Majority Rule—consensual democracy**

- Unlike any modern democracy where minority rights are not given voice, the Gadaa System embraces the minorities' views through its General Assembly meetings.
- For example, a single opponent is sufficient to stop the most serious measures. Hence, in Gadaa democracy what matters is not only overwhelming majority decisions but also minorities' views have to be convinced to be part of the majority vote.
- As soon as the Abba Gadaa hears the view of an opponent he says the word of custom: qabadhe (I stop the discussion).
- The chair person solemnly postpones the session to another day until consensus is reached.
- In this regard, Gadaa System potentially relies on deliberative system and there must be “full” consent to pass any binding laws.

- The concept of majority rule and quorum does not exist in Gadaa democracy.
- One of the draw backs of the Gadaa General Assembly is that it is time consuming as compared to modern parliamentary system where majority vote fastens the decision to be passed.
- The principle leading the Gadaa General Assembly is not majority vote but consensus.
- Building consensus requires members of the gumi convincing every deviating member and consequently it consumes time.
- Despite its limitations consensual or deliberative democracy is far better than majoritarian democracy, especially in relation to protection of minority rights.
- In contemporary political system establishing deliberative parliament is challenging given the diversity of minorities interests especially in multi-ethnic country like Ethiopia.
- However, at a regional state level consisting homogeneous society, ORNS for example, viable (i.e. time efficient and representative) deliberative democracy can be sought.

- **4.. Democratic Election Process**

- The *Gada* system has a sophisticated election process in which the society gets to elect its representative for a seat at different levels of assemblies of the System including for the post of the *Abba Gada*.
- All *gadaa* officials were elected for eight years by **universal adult male suffrage**.
- Posts in various councils of the system are held by candidates who proved to be fit for the position.
- The elections are administered by *Ya'a Qallu* (*Qallu* Council) which has the authority to convene electoral meetings and evaluate candidates presented to them.
- From his account of the 1963 election of the Borana Oromo Asmarom noted the *Qallu* Council which is responsible for administering the election consisted of six men from the *Qallu* lineage (the *Oditu* clan) elected by a general meeting of the clan every eight years.
- This is especially interesting aspect of the election process since the mandate to supervise election is given for an independent institution constituted by men who could not compete for political office of *Gada* system which ensures there will not be a **conflict of interest**.

- **6. Period of Practical Testing of candidates**

- In western political system any citizen can compete to be a leader and can win an election base on his charismatic, skill of speech and personal experiences shown during an election campaign. (eg. Election of President Trump)
- Under Gadaa system, candidates **have to prove they deserve offices** of the system during a **period of testing** that may take eight years in a usually highly competitive campaign.
- The most important factors that are considered in selection process include :
- **Personal qualities** such as knowledge of traditions and the ability to convey one's thoughts with eloquence
- **Achievements** and their public service during period of testing.
- The people have to know him not in theory but in practice.

- The time of election of Gadaa leader is at **Kusa Gadaa grade** (the 4th Gadaa grade at Age 24-30).
- Once they are elected freely and fairly, they will remain **de facto** councilors of their Gadaa class for two consecutive Gadaa grades
- But It is only at the sixth Gadaa grades (Age 40-48) that they can take power through power transfer ceremony.
- That is, their service at the 4th and 5th Gadaa grades is a testimony to be honorably inaugurated to the office or banned from coming to power.
- This way the Gadaa system :
 - Allows the de facto leaders become **more skilful and prepared** for public responsibilities.
 - **Ensures the practical competence** of the Gadaa officials even before taking power.
- One could imagine if the modern nation states adopt this value in a sense that a leader elected five or ten years ago could only come to power based on his achievements

- **7. Limited and single Terms of Office**

- Transfer of power every eight years is one of the main characteristics of *Gada* system that makes conform with one of the basic principles of constitutionalism of modern democracies through limiting the term of political office.
- The time reckoning experts called '**Ayyantu**' who are in charge of keeping the unique '**Oromo Calendar**' and determining '*Gada* chronology' have the duty to **fix the exact time and place** for the transfer of power every eight years.
- This term limit is supplemented by another mechanism in which the society may **recall their representative** before the end of the eight year term if they lost confidence through a procedure called ***buqissuu* (which literally means to uproot)**.
- This is especially crucial for Ethiopia where there is no tradition of transfer of power. Past experience shows leaders stay in office for life, were deposed by force or as in the current government it is a pseudo transfer among individuals from the same political party.

- **8. Division of Power**

- The Oromo under the *Gada* system are skeptical of public power concentrated on one institution or one man.
- As such **power is highly distributed across age groups and generations** (*Gada Classes*).
- Every male member of the society passes through different levels of *Gada grades* every eight years assuming different rights and responsibilities.
- The system organized male Oromos according to age-sets (*hirya*) based on chronological age, and
- according to generation-sets (*luba*) based on genealogical generation, for social, political and economic purposes.
- Asmarom argues unlike the western model of democracy this classification enables the **youth and the elderly to actively** take part within the political life of the society.
- There is no generational gap in political power in Oromo society.

- Political power under *Gada* system is divided both **horizontally and vertically** although there are overlaps of mainly legislative and judicial powers.
- The *Gada* Assemblies at different levels, the *Luba* which is led by the *Abba Gada* being at the top of the hierarchy, exercise both legislative and judicial powers.
- Every eight year during the power transfer (*baallii dabarsuu*) the winning *Gada* Council re-enacts *Gada* laws in a ceremony called ***lallaba* (which literally meant proclaiming)**.
- **The ultimate power**, however, is retained by the ***Gummii Gayo (Caffee)*** through which the people at large exercises its sovereignty including over the ruling *Gada* Council.

- More **clear division of power** is rather seen in what are known to be **executive functions** in modern democracies.
- **Various distinct public offices** of Gada system are held by different individuals in order to **avoid concentration of power** on the hands of one person.
- While the ***Abba Gada***, also known as *Abba Boku*, functions as the head of the system, ***Abba Dula*** is responsible for the command of the 'army' to conduct 'war' and defend the people.
- ***Abba Sa'a*** is responsible for the administration of public property.
- This way the system **minimizes** the possibility of **concentration of power** on the hands of individuals or a centralized authority.

- **9. System of Checks and Balances**

- The *gadaa* system has the principles of **checks and balances** through:
 - Periodic succession of every eight years,
 - Division of power (among executive, legislative, and judicial branches),
 - Balanced opposition (among five parties), and
 - Power sharing between higher and lower administrative organs to prevent power from falling into the hands of despots.
- Other principles of the system have included **balanced representation** of all clans, regions (confederacies), and Parties in government.
- All the five Oromo **Caffee centers (Odas)** are represented to the national government.
- There have been **five miseensas (parties)** in *Gadaa* that take turns in holding political office.
- These parties have different names in different parts of Oromia as the result of Oromo expansion and the establishment of different autonomous administrative systems.

- In case the dispute brought before the *Gummii* directly or indirectly involves the interest of the incumbent *Abba Gada* he will be replaced by another *Abba Gada* for the purpose of resolving the dispute avoiding the possibility of him being a judge on his own matter.
- This way the people effectively retains the sovereign power to itself and further limits the power of officials elected to political posts of *Gada* system.
- **10. The Umpiring role of the Qallu**
- *Qallu* is an independent institution, led by *Abba Muda* or simply *Qallu*, mainly concerned with the ritual life of the Oromo people.
- Descendants of the *Qallu* lineage are also **prohibited from assuming political office** of the *Gada* system.
- This is complemented by a **prohibition to take arms** and involve in conflict making it more an institution which **oversees or umpires** the proper functioning of *Gada* system.

- The *Qallu* performs this task through various mechanisms.
- Firstly, by acting as an 'Electoral Board' through the *Qallu* Council (*Ya'a Qallu*) and Monitoring the election process of the *Gada* officials.
- The *Qallu* institution serves as an independent organ that makes sure the election process is conducted in accordance with the established *Gada* laws, values and customs of the people.
- Secondly, the *Qallu* institution also has the role of **supervising peaceful power transfer** at the end of the term of political office and shortly after the winner of the new office is known.
- The transfer is conducted at a ritual called *lallaba/baallii dabarsuu* and the new leaders will receive a blessing from *Abbaa Qallu/Abbaa Mudda*.
- These vital roles of the *Qallu* institution put it in a position to umpire the healthy function of the System.

- **11. Form of Government—Presidential-Parliamentarian System**

- Gadaa System of governance can be considered as **polysepalous** that is governance by more than one head as opposed to monosepalous (i.e. single head) led system of governance.
- All the constituencies (the moieties) and clans' representatives and all bodies of Gadaa assemblies (senior council and junior councils), the office of Abba Gada fixe(a president at apex), and the Gadaa General Assembly follows functions inter- dependently.
- However, Abba Gadaa has no authority to crush all the authorities of the clan councillors and Gadaa councillors to undertake whatever he feels right.
- Unlike the direct election of Gadaa leaders by the people, the national premier is indirect, that is conducted through the House of Peoples' representatives. This is perhaps typical nature of parliamentary form of government.

- The nature of Gadaa System resembles to **both presidential and parliamentary** form of government.
- That is it may be likened to presidential system especially in a relation to the **direct election of its leaders** (Abbaa Gadaa and the two vices) by the people for fixed term office.
- However, when it comes to the **responsibility** of Gadaa leaders to the General Assembly and **their membership** of the Gadaa Assembly it exhibits the feature of distinct parliamentary system.
- In this sense the Gadaa government can be regarded as presidential-parliamentary system.

- **Challenges of accommodating the Gadaa System in modern times**

- 1. Gadaa Favours Male Generations: Whether Democratic Rights of Oromo-women in Jeopardy?
- It is basically the male who take major role in political administration and governance.
- Females are considered *alagaa* and do not have a direct role in governance.
- The ***siiqee institution*** and the **safuu (wayyuu) moral code** may protect their **individual rights** but it is not sufficient to ensure their democratic rights.
- 2. Whether Gadaa System **Work Only In Small Community?**
Can Gadaa system work in large communities?
- 3. The time taking system of deliberation and consensus based decision making: can it work in diverse heterogeneous societies?
- Can gadaa function in the present Multinational Federal System of Ethiopia? What are the chances for regional states to adopt the Gadaa system at sub national level? Eg. Oromia Region.

3.3. The 1931 Constitution

- **The first written Imperial Constitution in 1931**
- This constitution was modelled after the 1889 Meiji Constitution of Japan that established an Absolute monarchy and centralized administration.
- The constitution was seen as a benevolent gift of the Emperor to the people.
- The few educated elites of traditional Ethiopia wanted to emulate the Japanese model of a unitary nation state under an imperial government. Hence called the ***Japanizers***. The like of Bejrond Tekle Hawariat, the drafter of the 1931 constitution.
- This constitution gave the first ***written and systematized framework for centralization*** process started by Emperor Tewodros II.
- The political struggle of the years 1913-1929 resulted in the gradual **demolition of autonomous or semi-autonomous provincial power** centralizing power in the Hand of the Emperor.

- The attempts was meant to achieve centralization and consolidation of power not modernization.
- Established a judicial system that was not independent from the executive as the Emperor is at the apex of the judiciary with his ***Zufan Chilot***.
- The text of the Constitution did not include anything concerning human rights or pluralism.
- The constitution also provided for the appointment of ministers whose role was just to provide advice.
- It has established a ***bi cameral parliament*** houses- the senate and the chamber of deputies.
- The senate was composed of members appointed by the Emperor from among the nobility (Mekuanent)
- The composition of the chamber of **deputies** made up representatives elected by the people. Who **were to be nominated by the nobility and the local chiefs**.

- What the Emperor wanted the parliament for **consolidation of his power** over the provinces, and as a device for the dissemination of ideas from the center to the provinces
- The functions of Parliament as a law-making body were limited. Legislative initiative was the monopoly of the Emperor.
- The work of the Parliament from its creation to the time of the Italian invasion is very little.
- The Emperor continued to **issue his own decrees** and the reserve of **absolute power lay in his hands**.
- This constitution is nothing less or nothing more than a **mere confirmation of the powers** and prerogatives of the Emperor.

- At this particular historical juncture, where there was little of modernism and yet so much was wanting.
- This is soon followed by Italian invasion in 1935 and occupation which ended by the war of resistance and support of the allied power in 1941.
- After the war of liberation two trends were set in motion-the continuation of the process of modernization and the reorganization of the status quo.
- As regards the former, the legal order was established, new laws were enacted and the corresponding political structures were either reorganized or new ones were established.
- The powers and duties of the various organs of government were better articulated and administrative units redefined. Parallel to this, the old order was renovating and institutionalizing itself in the direction of constitutional monarchy.

3.4. The 1955 Revised Constitution

- In the 1950s there were several developments that necessitated reform in the government and constitution.
- Particularly the role of the newly educated elite and the reunification of Eritrea with Ethiopia in 1952 were significant developments that pushed for reform.
- By the 1950s there were a good number of educated elite in Ethiopia. Most of them were oriented towards Western Europe type of democracy.
- Together with this and sometimes standing against this group, there were the traditional elites, who stood for the maintenance of the old order – the crown, the church, the land system and Ethiopianism – isolation and independence.
- The compromise was sought in the English system of government to which both members of the old and the new elite turned their eyes.
- In effect they opted for the establishment of a government on the **Westminster model of the English**.

- The background of the model, there is, politically speaking, the belief or commitment in non-violent evolutionary or gradual development.
- The model itself composes the following basic elements.
- **Firstly**, they **continued devolution of power** to a parliament that contains two houses one for the nobility and the other elected popular representatives.
- **Secondly**, is an **elected government** coming out of party holding a majority seat in parliament and constituting a cabinet of which the Prime Minister is the Head of Government .
- **Thirdly, popular will expressed**, not only formally through parliament, but also **through other agencies of interest articulation**.
- **Finally**, all theses are accompanied by **a strong and independent judiciary**.

- the revised constitution of 1955 was largely the cumulative and resultant effect of external and internal pressure that was brought to bear on the status quo.
- This constitution, defined and distributed powers, rights and obligations, between the Emperor and the rest of branches of government (which enjoy derivative power)
- The constitution had also incorporate, the basic tenets of fundamental human and political rights from the UN UDHR to which Ethiopia was, then a signatory.
- The Emperor held a pre-eminent place in the constitution. As such he enjoyed a lot of executive, legislative and judiciary prerogatives.
- Art. “the sovereignty of the Empire is vested in the Emperor and the supreme authority over all the affairs of the Empire is exercised by him as a Head of state, in the manner provided for in the present constitution”

- The legislative body was bi-cameral: Senators were appointed from the nobility and a few from the commons for their meritorious achievements.
- The Deputies were directly elected from equally populated constituencies. Election was made purely on personal basis, for there was none in the nature of political party.
- Member of Parliament enjoyed, constitutionally, some privileges such as free debate, immunity from arrest.
- They had also the power only to call the prime Minister or other ministers to answer questions concerning the conduct of government affairs or legislative proposals.
- Essentially, the cabinet, particularly the Prime Minister stood between the Emperor and the Parliament-stood may be as liaison officer.

- The judiciary was appointed by the Emperor, subject to a special law, which was to be enacted.
- Judges were to submit to no other authority, but to the law including the constitution.
- The Emperor had also judicial function, in the capacity of final appellate court of equity.
- Finally, the constitution was declared to be the supreme law of the Empire and as such, acts or enactments which were found inconsistent with the constitution were rendered null and void.
- In Ethiopian history, it was this constitution, which for the first time, articulated the power structure of the Ethiopian polity and it was this same document which spelt out fundamental rights of citizens.
- None the less, it was prerogatives and other powers of the emperor which was considered too much a restriction for the people and found to be intolerable.
- This led to the popular revolution of 1974.

- **The attempted but Failed Reform**

- The 1960 failed *coup d'etat* had been a clear sign for the reform of his government, but He believed He has done away with the actors as well as the effects.
- Some attempted reforms were however taken. One such attempt was to empower the Prime Minister as per Order 44, to nominate the members of his cabinets; yet, he had to get the approval of the Emperor. This too failed to meet the needs of the time.
- In the eyes of the then elites one of the primordial needs of the time was the establishment of parliamentary form of government maintaining the Crown as a symbol.
- By early 1974, events started to take a different course; the entire cabinet of Aklilu Habtewold resigned and a creeping coup was set in motion.

- A new cabinet was established under Endalkachew Mekonnen, which was, among other things one major step, established a constitution revision commission.
- The commission managed to come up with a draft, the **1974 Draft Constitution** which appeared in one of the daily papers.
- The draft was modeled after what could be characterized as **Constitutional Monarchy** of Western Democracy with separation of power and controlling mechanisms.
- The Emperor as Head of State had only one effective power only – Commander-in-Chief of the army.
- It has also included some form of recognition for the religious, cultural and linguistic diversity of the country. But it was too little too late.
- The draft was not ratified; instead a new government was established by September of the same year (1974) P.M.A.C. was established

The 1974 Revolution and the 1987 Constitution

- At the wake of the 1974 Revolution, In Ethiopia, the slogan was **“Down with Feudalism, land to the tiller”**.
- The slogan against feudalism meant the destruction of the imperial order – the crown, the nobility and the landed gentry.
- **“Land to the tiller”**, on the other hand, meant land to the peasants, which actually ended up with Socialism.
- There were demands of such questions as right of nations and nationalities to self determination.
- Rural and urban **lands were nationalized**. All private production and distribution enterprises, including rental houses were brought under the ownership and control of the state.
- The Emperor, along with ministers, governors, the high nobility and the top brass **were executed**, the rest were detained.

- **Red Terror** was unleashed against opposition and even against individual dissenters.
- In short, the Russian model of revolution and socialism were in the making.
- Under socialism there was **no rule of law**, but socialist legality. **No separation of power**, but Unity of state power.
- In Socialism, the concepts of law, constitution included, were essentially different from those conceived in capitalist society.
- The soviet model provided for **one party** i.e. a vanguard party, **one state the workers state** and that state had oneness characteristic in contradiction to separation of power.
- Finally, all these superstructures were built upon the **social ownership of property** and the progressive development of society into communism

- Since 1974 **a new social order** was in the making.
- After suspension of the 1955 Revised Constitution, the country was governed without a constitution by mere proclamations for 13 years.
- To legitimize itself within and a broad it had, at least, to take off the Military uniform and **appear in a civil dress**. As such the Provisional Military Administration was in the process of reconstituting itself.
- The PMAC presented itself for elections through a new party- the **Workers' Party of Ethiopia**. The party became the vanguard communist party.
- In 1987 the PDRE constitution was adopted that took the **socialist model of state** and constitution.
- The Head of the PMAC became the president. Naturally, the country became the **Peoples Democratic Republic of Ethiopia**.

- The party took upon itself to change the political, economic and cultural life of the country.
- The new order represented a new social order, a new set of values.
- Ministries are entrusted with responsibility of **educating the present society** and molding the coming generation **with ideals of socialism**.
- The organ of state machinery was also carved out from socialist countries.
- The **national “Shengo”** (Parliament) was modeled after the Supreme Soviet of the U.S.S.R.
- It had a standing body, **the Council of state**, which was acting as executive committee of the parliament.
- The president of the council was also the president of the Republic.

- The power to **interpret the constitution** and the constitutionality of other laws were given to this body which was a **contradiction in terms**, for the Council itself was the mainstay of parliamentary and presidential powers.
- The president enjoyed a lot of power. He was the **Head of State** and had no less power than any **head of Government**.
- He had the power to present the Prime Minister, and though him members of the council of Minister to the Parliament. He also presided over the council of Ministers as necessary.
- Upon the occurrence of compelling circumstances, the President had the power to **dismiss and appoint the Prime Minister** and other ministers.

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

- In Ethiopia what the Constitution modeled after the former USSR did was to **replace the aristocrats by totalitarian technocrats.**
- The **power of the emperor** whole sale **transferred** to the **president.**
- Yet, there are certain social, economic, political realities and attitudes that still operate in the present society, which seem to have taken root and would not so easily vanish.
- It is for this very fact that we have been compelled to go so deep into the past, so as to appreciate the present and look forward to the future.

- This Constitution does not merit so much discussion because it died well before it was born.
- Marx and Engels had envisaged “the withering away of the state”. But to the contrary, after seventy years of exercise the whole structure of the U.S.S.R. disintegrated – and withered away.
- Its fall did also symbolize **a new era** – on the international front it seemed to mean **unipolar globalization**.
- There were more than 17 armed liberation fronts fighting the **Derg** government.
- In 1991 some parallel things seemed to happen in Ethiopia. The entire **people revolted**. War engulfed the capital city.
- **Eritrea** declared its **independence**. Mengistu Haile Mariam left for Harare; Zimbabwe.

The Transitional Charter: Prelude to Federalism

- The P.D.R.E. Constitution of 1987 was a short lived one. The Transitional Period Charter of 1991 replaced it.
- Following the downfall of the Derg, a national conference was convened in Addis Ababa from July 1-5, 1991.
- The Conference resulted in the signing of the Charter by the representatives of some 31 political parties, the creation of an 87 seat Council of Representatives and the establishment of Transitional Government of Ethiopia (TGE).
- The most remarkable feature of the conference was that its members were designated almost entirely, save the representatives of professional organizations and the members from the university, on the basis of nationality.
- The center has collapsed and forces of centralisation were totally unrepresented.

The Transitional Period

- Composed primarily of leaders of nationality based parties spawned by the civil war, the conference reflected a dramatic shift of political power from the centre to new politicians from hitherto marginalized regions.
- It aimed at rebuilding the country and restructuring the state democratically. It also sought to mark a break with the past and usher in a new chapter in the history of Ethiopia.
- The political implications that followed the introduction of the Charter and the proclamation issued to establish national/regional self-governments certainly represent departure from the past.
- The choice of **ethnicity as a basic principle** of political organization of the state, and society and the reconstruction of the Ethiopian centrist and unitary state by **introducing a federal system** of government has signified a new era on the way of answering the Question of nationalities.

The Transitional Period

- These two interlinked processes were again anchored on the basic formula of the right to **self-determination** for ethno-national groups.
- The political rationale for such a radical change in the fundamental thinking of state organization among other things has been the view that this formula was a decisive remedy for the resolution of Ethiopia's long-standing problem of the 'nationality question'.
- This is in sharp contrast to the two earlier regimes. It certainly marked an **official acknowledgment** of Ethiopia as a multi-ethnic and multi-religious state.

- The Charter in its preamble declared the overthrow of the military dictatorship that has ruled Ethiopia for 17 years.
- This presented a historical moment and opened a new chapter in Ethiopia in which **freedom, equal rights and self-administration of all the peoples** shall be the governing principles of political, economic and social life.
- 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**.
- Although the Charter mentioned nothing about federalism, the rights given to the nations, nationalities clearly indicated that the envisaged structure of state was federal.

- The Transitional Period Charter has completely changed the structure of the State; i.e., from a unitary to a federal structure.
- Although there was no mention of federal arrangement in the Charter in an explicit manner, it can be inferred from the Charter itself and from the subsequent proclamations that the forthcoming constitution would make the Country a federal one.
- Constitutionally speaking, the political structure established by the charter was **a federal type** but not a full fledged federation.
- See Art. 12, 14, 9(3) of Proc. 7/92. which indicates that National/regional self-government as well as National/Regional Councils are accountable to the central government.
- Even though there were central and regional governments established and there was power division, the regional governments were accountable to the central government.
- This utterly departs from the principle of federalism.

- The National/Regional Transitional **self-governments established** by Proclamation No. 7 of 1991 were mainly based on ethno-linguistic boundaries.
- It was considered that the Transitional Period Charter has served **as a precursor** to the 1994 F.D.R.E. Constitution.
- It is clear that, in the Charter, **ultimate power rests with the central government.** And the regions are subordinate to it.
- The establishment of National Regional Self-Government was provided for in Proclamation 7 of 1991 by the same title. Article 3 of the proclamation **enumerated 63 identified nations,** nationalities, and peoples and **established 14 regions.**
- **Eight of these regions were composite regions** embracing from 3 up to 13 identified nations, nationalities, and peoples.
- **Four regions had one identified nation** each and greater Addis Ababa with its amalgam of urban and rural peoples formed a region by itself.

- Charter and the Proclamation go to the extent of guaranteeing each nation, nationality and people the right to exercise its right to self-determination of independence, if it is convinced of its rights to preserve it.
- It is somewhat difficult to characterize the Ethiopian National/Regional Self-Government set-up either as a **complete or an incomplete federation**, though federal it clearly is.
- The **residue of power rests with the Central Government**, but with strong and authoritative recommendation that the Self-Governments be encouraged to handle their own affairs fully as much as possible.
- In light of this, the best way to characterize the Self-Government set-up of the Provisional Government is an **evolving federal process**.
- The Charter and the Proclamation have set in motion a new experimental process for the governance of Ethiopia.

- The most important of the regional organs was the **Regional State Council**.
- The Council, as the legislative organ of the Self-Government was the **repository of overall political power** regarding the internal affairs of the Region State.
- The highest executive organ of the National/Regional Self-Government was the **Executive Committee** of 11 to 19 members elected by and from the National/Regional Council. The executive Committee was accountable both to the Council of Ministers and to the Council that elected it.
- With respect to the **Court structure**, the Proclamation envisaged a wereda and a superior court system.
- The Proclamation also referred to the Central Government's court system. Thus, it **envisaged two parallel court systems**.

The Transitional Period

- After **a promising start**, the disagreements that ensued at the end of the transitional period, which led to the withdrawal of major opposition groups, like the OLF have **stained the success of the transitional period**.
- This seems to have also **stained the legitimacy** of the federal constitution that followed.
- Based on this some argue that the Transitional Period **has not reversed the process of political domination**.
- The truth however is that Ethiopia has taken **major steps** to reconcile itself with its existing but denied diversity.
- On the basis on the transitional charter, new federal constitution was drafted and adopted establishing the FDRE.

Chapter Four: The FDRE Constitution

Overview Principles and History

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Making of Constitutions

- Countries make a new constitution when they wish to make a fresh start, mostly for compelling political reasons.
- The making of a new constitutions or amendment of the existing ones usually, involves a significant re-allocation of political or other powers.
- The manner in which the constitutions will be made hinges on the nature of the polity.
- Political scientists identify three basic models of political founding and organization, namely, polities founded by conquest in which political organization is hierarchical;
- Politics which evolved organically out of more limited forms of human organization and which over time concretize power centers which govern their peripheries and
- Polities founded by design through covenant or compute in which power is shared through a matrix of centers formed by the government of the whole, on the basis of federal principles.

- In hierarchical polities, constitution making is essentially a process of handing down a constitution from the top, the way medieval kings granted charters.
- In organic polities, the process of constitution making is also an organic one, consisting of a series of acts negotiated among the established bodies that share in the governance of the polity.
- In polities founded by convent or compact, the process of constitution making involves a convention of the partners to the pact, or their representatives.

- As O. Okoth-Ogendo, a constitutional author, pointed out, a constitution is: *"A power map' ' upon which the framers may delineate a whole set of concerns...including the ideals towards which the policy is expected to strive."*
- Hence constitutional-making, is a process which "involves, inter alia, making choices as to which one of those concerns should appear on that map."
- Thus, how this choices made, would necessarily affect some positively and others negatively -- depending on how they involved on the making of the choice.
- Unlike the traditional constitutional making which used to consider the constitution as an act of "completion," modern constitutional making focus on participatory and conversational "new constitutionalism."
- Today there is such a virtual consensus that a constitution should be made democratically. The understanding now prevails that constitutional process is democratic; as long as it is participatory and all-inclusive in each stage preceding the final document.

- Constitution-making as it involves “essentially the distribution of power,” the way constitutions made, as well as its substance, is of crucial importance in the political and governance transitions of every polity.
- Particularly for polities in short of national consensus, the participation of all the political, ethnic and socio-economic groups in this power distribution agenda fosters and strengthens in all of them the awareness that they are part of the same polity.
- It endorses and sustains their feeling of “sense of commonality” i.e. “the sociological claim of ‘We’ that defines a people.” This legitimacy ---- the sense of “We” minimizes the threat to the political stability.
- Accordingly, if it is properly organized, given adequate attention and resources, constitution-making can therefore transform societies from the worst to the better, otherwise to a continued unrest.
- These are among the lessons that are drawn from an ongoing study that has been conducted over the past several years by the United States Institute of Peace on constitution making, peace building, and national reconciliation.

Salient Features of the FDRE Constitution

- **1. Federalism:** Previous Constitutions of Ethiopia established a Unitary system of government
- **2. Multinational Federalism:** The Constitution Recognizes the existence of different Ethnic groups and empowered the Sovereign power on them
- **3. Sovereignty:** Sovereign power resides on the NNPs of Ethiopia
- **4. Self Determination:** Right to develop the language, culture, history and identity; and also the right to succession.
- **5. Ownership of rural and urban land:** as common property of Ethiopians owned by the state and the People but administered by government

- **6. Secularism:** State and Religion are Separate
- **7. Accountability:**
- **8. Constitutional Supremacy**
- **9. Non Judicial Constitutional Interpretation:** HOF is empowered to interpret the constitution
- **10. Unicameral Parliamentary Form of Government**
- **11. Fundamental Rights and Freedoms** 32 articles devoted to discuss it

Fundamental Principles of FDRE Constitution

- **Article 8**
Sovereignty of the people
- All sovereign power resides in the Nations, Nationalities and Peoples of Ethiopia.
- This Constitution is an expression of their sovereignty.
- Their sovereignty shall be expressed through their representatives elected in accordance with this Constitution and through their direct democratic participation

- **Article 9**

- Supremacy of the Constitution**

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

- **Article 10**

- Human and Democratic Rights**

- Human rights and freedoms, emanating from the nature of mankind, are inviolable and inalienable.
 - Human and democratic rights of citizens and peoples shall be respected.

- **Article 11**

- Separation of State and Religion**

- State and religion are separate.
 - There shall be no state religion.
 - The state shall not interfere in religious matters and religion shall not interfere in state affairs.

- **Article 12**

- Conduct and Accountability of Government**

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

4.4. Policy Objectives under FDRE Constitution

- **4.1. Political Regulation of National and Ethnic Conflicts**
- Elimination of Diversity
 - Genocide
 - Forced Mass Population transfers
 - Partition/ Secession (Self Determination)
 - Integration/Assimilation
- Accommodation of Diversity
 - Hegemonic Control
 - Federalism
 - Consociation/ Power Sharing

• **4.2. Management of Diversity in Ethiopia**

- Assimilationist policy of the Past
 - Monolingualism,
 - Legal Centrism,
 - Centralization of Political Power
- Policies For ensuring Political participation of diverse cultural groups
 - Power sharing through Federal Arrangements
 - Power Sharing through Consociation:
Proportionality and Representative Electoral Arrangements

- **4.3. Policies on Religion and Religious Practices**

- Secularism (Art. 90(2))
- Separation of State and Religion (Art. 11)
- Freedom of Religion (Art 27)

- **4.4. Policies on Customary Law and Legal Pluralism**
- Cultural Objectives
- Promotion of Cultural Diversity in Ethiopia: Article 91(1)
- Legal Pluralism and Accommodation of Customary and Religious law on Personal Matters: (Art 34(5) & Art 78(5))

- **4.5. Policies on the use of Multiple Languages**

- The Language Policy of Ethiopia

- **Art. 5 Languages**

- Recognition of all languages
- The Working language of Federal Government
- The working language of Regional States

- **Language Policy in Education**

- Multilingualism

- Mother tongue
- Language of wider communication
- Language of international communication
- Language of Cultural communication

- **4.6. Policies for Redressing Socio-Economic Exclusion**

- Affirmative actions for Redressing Past exclusion
- Women Article 35(Sub 3)
- National Minorities Art. Article 89(Sub 4)-
Economic Objectives

4.5. Status of International Instruments under Ethiopian Constitutional Framework

- What is the place of international agreements to which Ethiopia is a party in the hierarchy of laws in Ethiopia.
- Pursuant to Art 9(4) of the FDRE constitution, international agreements ratified by Ethiopia make an integral part of the law of the land.
- If international instruments are regarded as part and parcel of the law of the land, what is their hierarchy in the Ethiopian legal system?
- To begin with, it is provided under Article 9(1) of the FDRE constitution that the constitution is the supreme law of the land and any law (emphasis added) contradicting with the constitution is null and void.
- As international agreements which are ratified by Ethiopia will become an integral part of the law of the land by virtue of Article 9(4) of the constitution and the phrase —**any law** in sub-article 1 of Article 9 includes international treaties, one can have the audacity to conclude that international treaties are subordinate to the constitution as much as other subsidiary legislations are.

- But, it is provided in Article 13(2) of the FDRE Constitution that the third chapter shall be interpreted in a manner conforming to (emphasis added) the principle of the UDHR, International Conventions on Human Rights and international instruments adopted by Ethiopia.
- Therefore, international instruments are not always subordinate to the constitution, at least, partly.
- Pursuant to the aforementioned article, where never there arises the need for interpretation of any of the provisions under the third chapter of the constitution, resort should be made to relevant international instruments such as the UHDR and other human rights instruments to which Ethiopia is a party.
- Thus, as long as the application of any of the provisions under the third chapter of the constitution meshes well with the spirit of those international instruments and there is no need for interpretation, all international instruments ratified by Ethiopia are subordinate, in hierarchy, to the constitution.