Constitutional law 1

Society is the product of man's instinctive desire for association, which in turn is expressed in terms of an aggregation or assemblage of people having common interests and who unite together by the *consciousness* of those common purposes, be they religious, economic or political

1.2 State as a Juristic Person

From the point of Political Science, the concept of state comprises three fundamental elements

(1) A community of people,

(2) With a definite territory, and

(3) A political power.

State, in Political Science, is a quality attached to a community of people(s) inhabiting a definite territory, under a political authority; i.e. a *body politic*. The term stateis sometimes interchangeably used with *nation*. The term nation puts more emphasis on the quality of the community of people than on the politicality of the entity; i.e. the state

State

With regards to issues of the nature of state and power, some writers, by attributing government as qualifying characteristics of state, try to typify state in the following

Manner:

There are, therefore, four conditions which must be fulfilled for the existence of a state. There must first, be a people – an aggregate of individual who live together as a community, though they may belong to different ethnic, creed, cultures or be of different colors.

There must, second, be a territory on which the people are settled; although there is no strict rule that the frontiers of a state must be fully demarcated and defined; they may still be disputed. But it matters not whether the country is small or large, or may consist, as in the case of city-states, only the expanse of and by such cry.

Thirdly, there must be a government, which acts on behalf of the people and governs according to the law. A state calls for a community to be organized as a political unit – a distinguished polity from, say, a tribe. But, once a state is established as an entity, interruption of the effectiveness of its government temporarily, as in the cases such as a civil war or occupation, would not necessarily amount to the non-existence of the state.

Lastly, there must be a sovereign government. Sovereignty is supreme authority, which at the international plane means not legal authority over any other state, but rather legal authority which is not dependent on any other sovereignty; in the strict and narrowest sense of the term, it implies, therefore, independence all around, within and with out the borders of the country.

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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, *ipso facto,* subject to the jurisdictional authority of the state. Conversely, other state(s) may not exercise its (their) power within the boundaries of the home territory. International treaties may, however, restrict the jurisdictional sovereignty of a state in the exercise of its sovereignty. There should exist on one and the same territory only one, full sovereign state; i.e. the rule of the exclusiveness of a single sovereignty over the same territory.[28]The first and perhaps the true exception in this respect is the so-called *state-condominium*, where more than one state exercises sovereignty conjointly.

By consent, a territory may well be vested in and under the sovereign power of a state other than the home–state, as mandate trusteeship and the like do also fall in this bracket of exception.
Federalism may seem to present a conflicting picture. On the one hand, the federal state (U.S.A) is itself a state side-by-side with each and every member state, while, on the other hand, competence is shared between member states and the federal state – but this is strictly on domestic matters or affairs. On international level, member states of a federation are not particularly singularly subject of International Law. A few federal state constitutions had by their constitution, allowed member states to sign international treaties and participate in the works of international organizations. This was the case with a few Republics of the former U.S.S.R.; and on permission, the former F.R. of Germany. The cantons of Switzerland's federation do have such powers, even now.

States may be linked together in various ways. This linkage may create one single international entity or, despite the linkage, the

linked entities may still remain to be recognized as separate i.e. be considered as subjects of International Law. Typical points in this respect are unions/leagues and confederations. In all of them, the components maintain their international status of statehood. Thus, under International Law, *confederations* are separate entities.

In federation the incidence of linkage is intense (and pervasive) when compared to confederation. On the other hand, the organ of power created to manage a union or confederation has no authority on the individual citizen of constituent/member states. Among other things, this seems to be the most important distinguishing feature between *Federation* and *Confederation*; in the former, the federal state has, in some aspect, authority over the individual on top, along or besides the government of the member state and, as such, a federal state is endowed with a legal personality in the eyes of International Law; whereas the general typology presents a different picture in the case of *confederation.*

The fact that the laws made by member states can derogate the law made by the center is one other fact that generally characterizes *confederation.*

1.2.3.1 Forms of Sovereignty in International Law

Sovereignty is a multifaceted concept. Schwarzenberger[36] discussed six main forms of sovereignty:

a. Internal or Territorial Sovereignty

At present, (apart from some international areas, such as the high seas, the deep sea-bed and perhaps Antarctica) our planet is legally divided into approximately 200 sovereign states. Within its own territory, each of these states is exclusively sovereign, in the sense that it has *"exclusive competence"* or *"domestic jurisdiction"* and the *monopoly of power* over its territory and nationals. It was observed that sovereignty, in regard to a portion of the globe, is the right to exercise therein the functions of state, to the exclusion of any other state i.e. territorial sovereignty involves the exclusive right to display the activities of state.[37]

b. External Sovereignty

The state is externally sovereign, in the sense that it is not subjected (against its will) to another state or to any higher authority. International Law, however, imposes certain limits to both the internal and external aspects of sovereignty of states. The most important ones are formulated in the UN Charter and the 1970 Declaration on Principles of International Relations.[38] They include the obligation that states, in their international relations, 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.

c. Sovereign Equality

All states are juridically equal, in the sense that, formally they have identical rights at the international level. Both the League of Nations and the United Nations have been established as inter-governmental organizations based on the sovereignty of the member states. The main aims of these two organizations were, in fact, the protection of political independence of their members and, thus, maintain the *status quo*. In the U.N. Charter, this is enshrined as its very first principle,[39]despite the fact that the U.N. Security Council,[40] acting under Chapter VII, can impose binding decisions on member states even against their will.

d. Extraterritorial Sovereignty

In the 19th Century, some Asian and African states were forced to sign *capitulation treaties* with European states, whereby European nationals and their property were made immune from local authority and jurisdiction. In this way, the European states could directly protect the lives and properties of their nationals abroad. Thus, European states deprived African states of accomplishing one of their international functions; which is that of protecting the life and the property of nationals of other states within their territories.

Whereas the days of this kind of *capitulation* are definitely over, some African states have tried in recent years to impose their home policies on foreigners and their properties. Reference can be made to Anti-Trust Laws and Export Administration Regulations. Through these laws, the U.S., for instance, seeks to extend its jurisdiction to foreign subsidiaries of U.S. companies. This has seldom caused friction with other (sovereign) states. An example is the so called *Russian pipeline affaire, [the 2003 French fries affaire.* After the invasion of Afghanistan by the former U.S.S.R. in December 1980, the U.S.A. sought to prevent subsidiaries of American companies in a number of European countries, including the Federal Republic of Germany, and the Netherlands took a different stand, which led to conflicts of jurisdiction.[43]

E. Permanent Sovereignty over Natural Resources

It is a well-established principle of International Law that every state can freely dispose of the natural wealth and resources within its territory a principle which is commonly known as *permanent sovereignty over natural resources*.[44]From this principle some important state rights arise, including the right to regulate entry and operations of foreign investors and the right of the state to pursue its own social-economic and environmental policies.[45] Yet, it is increasingly recognized by the principles of international law that these rights have duties as their corollaries. These entail, among wealth and resources, due care for the environment, and equitable use and management of trans-boundary resources.

In comparison with the 1919 Covenant of the League of Nations, the UN Charter gave rise to a dilution of some aspects of sovereignty. Reference can be made to:

a) decision-making by a qualified majority in both the General

Assembly and the Security Council (Arts. 18 and 27 of the Charter) as opposed to the *Unanimity Rule* of the League (cf. Art. 5 of the Covenant);

b) the allocation of permanent seats and the right of veto to the five *Great Powers* in the Security Council;

c) the *collective security system*, by which the UN Security Council, acting under Chapter VII, can impose binding decisions on member states, even against their will; and

d) the duty of states to co-operate for the achievement of respect for human rights, social-economic development, etc. (cf. Chapter IX) notwithstanding the *domestic jurisdiction* clause as included in Article 2, Paragraph 7.

To sum up, more attributes of states can be and is, more often than not, supplied with further designating attributes such as national flag, national anthem, national emblem, national currency and other national symbols. The whole purpose is designation of a state in the international community and signifying the creation of nation-statehood in the heart and minds of people. It is as well a mechanism of reaction enhancement and/or assertion of the feeling of nationalism, the significance of which the lowest denomination is the individual, be that physical or juridical.

4 The Concept of Nationality

Nationality of an individual is his quality of being a subject of a certain state. Hence, it is one of the attributes given to a physical person. It owes its origin in the notion of allegiance given by the subject to the king. Accepting the protection of a state actually required owing allegiance to it.

"Although it is for the international law of each state to determine who is and who is not a national of the state[2] it is nevertheless of legal and practical interest to a certain how nationality can be aqcuired under such laws. The five most common modes of aqcuiring nationality are birth, naturalisation, reintegration, annexation and cession.[3] No state is obliged to employ all five, but in practice they usually do so. ***§ 384 Acquisition of nationality by birth*** *Nationality is normally aqcuired by birth; the vast majority of people aqcuire nationality by birth, … Some states make parentage alone the decisive fator (iussanguins), so that a child born of their nationals becomes 'ipso facto' by birth their national likewise, be the child born at home or abroad; under such a rule illegitimate children usually aqcuire the nationality of their mother. Other states make the territory on which birth occurs the decisive factor (ius soli).[1] According to this rule, every child[2] born on the territory of such a state, whether the parents be citizens or aliens becomes a national of such state, whereas a child born abroad is foreign although the parents may be nationals. Many states including the United Kingdom[3] adopt a …"*

This tribunals. What one can say in this respect is that the document issued by the state, evidencing nationality, exerts a very strong presumption, debatable though.

State domestic law may also make distinction between and among different kinds of nationals. Those who enjoy full personal and political rights may, on these accounts be designated as citizens – as is the case in the U.S.A. and India. Nationality is, thus, a legal quality that connects the individual to the state. It also links the individual to international law, as these cases fall under Private International Law (conflict of laws).

Democracy and Constitutionalism

Democratic theory is based on a notion of human dignity; dignity taking the central and highest value worthy of respect. And adults ought to be endowed with a large degree of political autonomy – a status principally attainable by being able to share in the governance of the state they belong to. Because direct rule is not feasible, people can engage themselves in self-government only by delegating authority to freely chosen representatives. Thus, what justice – Hugo L. Black expressed – is a critical tenet of democratic theory is very much true: *"[n]o right is more precious in a free country than that of having a voice in the election of those who make the laws under which [the]...must live."*

Constitutionalism enshrines respect for human worth and dignity as its central principle, too. To protect that value, citizens must have a right to political participation, and their government must be hedged in by substantive limits on what it can do, even when perfectly mirroring the popular will. What constitutionalism insists on is having limited government. Predictability of governmental actions is also a characteristic feature of its typology

- ✓ Constitutionalists tend to be more pessimistic about human nature, fearing that people are sufficiently clever to oppress without hurting themselves. Constitutional theorists do not deny the importance of institutional checks but see those as insufficient. They are constantly concerned with the human propensity to act selfishly and abuse power.
- ✓ Democracy is taken as essentially referring to being governed by duly elected representatives, of which the group which won the majority becomes the ruling party, and wherein decisions are normally made by majority vote. Does *Rule by Majority* guarantee the security and wellbeing of minorities and that of the individual? is the question that democracy and theories of democracy have not yet fully answered

- ✓ Constitutionalism, therefore, pertains to two kinds of relationships. The relationship between government and nationals/citizens, residents/ is the first category – the substantive. The second (the formal) refers to the appraisal of one branch of government vis-à-vis the other; and to their inter-relationship. It is these two aspects of constitutionalism which are the quit-essentials of a constitution, be that written, rigid, flexible, etc…

The Concept of "Constitution"

- ✓ a nation's constitution should pattern a political system.
- ✓ A Constitution as a Charter for Governments
- ✓ A constitution as a guardian of fundamental rights: If a text is authoritative, for it embodies democratic theory, it must protect rights to political participation; and if it is authoritative and embodies constitutionalism, it must protect substantive rights by limiting the power of those even freely chosen representatives.
- ✓ The constitution as covenant, symbol, and aspiration: In so far as a constitution is a covenant by which a group of people agree to (re) transform themselves from mere *state* into a *nation*, it may function for the founding generation like a *marriage* consummated through the pledging partners; consenting to remain a nation – for better or worse, through prosperity and poverty, in peace and war.
- ✓ , a constitution may serve as a binding statement of people's aspirations for themselves as a nation. A text may silhouette the sort of community its member would like to become: not only their governmental structures, procedures, and basic rights, but also their goals, ideals, and the moral standards by which they want others, including their own posterity. In short, a constitutional text may guide as well as *express hopes* for peoples themselves as a society. The ideals, the words enshrined in their constitutions, the processes they describe and the actions they legitimize must either help to change the citizenry or, at least, reflect their current values.

❖ **What does *"the constitution"* include?**

- ✓ The most obvious candidate is the whole text and nothing but the text.
- ✓ Anything less than the full text would sound a less attractive option, but every constitutional document drawn up in a free society is likely to reflect a bundle of compromises, necessary to obtain approval from the *drafters* and *ratifiers that,* perhaps, are not mutually compatible.

❖ **Rule of Law**

- ✓ *Of law* stand out as the most comprehensive and vital doctrine, principle and/or concept
- ✓ identified eight elements of law, recognized as necessary for a society aspiring to institute the *Rule of law* state as follows:-

1. Laws must exist and those laws should be able to win obedience.
2. Laws must be published.
3. Laws must be prospective in nature so that the effect of the law may only take place after the law has been passed. Laws should be written with reasonable clarity to avoid unfair enforcement.
4. Law must avoid contradictions. (intelligibility)
5. Law must not command the impossible. (Non self-contradictoriness)
6. Law must be general.
7. Laws must stay constant through time to allow the formalization of rules; however; law also must allow for timely revision when

the underlying and political circumstances have changed.

8. Official action should be consistent with the declared rule. (Congruency)

❖ **Important Components of Rule of Law Reforms**

Court Reforms

- ✓ The efficiency of the courts is an important component in rule of law reforms as the existence of a judiciary is a fundamental aspect of downfall of law
- ✓ To increase accountability and transparency, information technology systems may be installed to provide greater public access. To increase independence of the courts, the government can provide them with funding that will allow them to make their own financial and administrative decisions. Furthermore, for countries that have already established these structural reforms to encourage the adoption of the rule of law, court performance should be evaluated on a periodic basis.
- ✓ Independence, accountability, efficiency, access, affordability, alternative dispute resolution mechanisms, and the quality of professionals are some of the characteristics that may provide an accurate measurement of the system's success.

II. Developing Legal Rules and Legal Systems

- ✓ Another important goal for rule of law reform is to develop the legal rules first and fore- most as Fuller stated, *"law must exist"*, before one begins to talk about rule of law
- ✓ The very term R*ule of Law* suggests that the law itself is the sovereign, or the ruler, in a society. As an idea, the rule of law stands for the proposition that no person or particular branch of government may rise above rules made by selected political officials. These laws reflect the morals of a society, and in a Western Democracy they are supposed to be pre-established, formalized, neutral, and objective. Everyone is subject to their dictates in the same way.
- ✓ The rule of law, therefore, is supposed to promote equality under the law. Thus, *rule of law* should be clearly differentiated from *rule by law; i.e.*the latter does not necessarily mean that the law is legitimate for it might not satisfy most of the *desederatas*.

❖ **Sustainable Development, Good Governance and Constitutional Order**

Constitutional Orders for Sustainable Development

- ✓ Constitutional Order should help address the State's Constitution and the existing social reality. The latter is especially relevant in respect to constitution and institution building in developmental context and should allow to capture and to understand better the evolutionary potential inherent in its socio-political sub-stratum.
- ✓ Sustainable development requires an interaction between government and its people; for that matter, it requires a sufficient degree of clarification and identification of the civic and interest group leaders and active promoters, service providers of

the private and governmental civil services, representatives, the elite and the polity.

- ✓ Developing societies usually lack properly structured social organization just as they suffer from weak statehood. Under structured means that there is a gap of communication and interaction between government and people, due to, among other things, lack of sufficiently developed meditational organization i.e. a properly organized civil populace.

❖ **Good Governance as an Element of Sustainable Development**

- ✓ Governance means the management of the relations between government and its populace within a given constitutional order. Good governance is the opposite of poor or bad governance, which reaches from denial of political and civil as well as economic, social and cultural rights, administrative inefficiency and corruption, to deficient legal protection and political repression, and ultimately to mass violations of human rights and tyranny. It entails waste of human power and natural resources; it leads to environmental degradation and prevents sustainable development.
- ✓ Good governance is called for to de-legitimize and to overcome governmental and administrative malpractices and non-democratic structures withstanding the realization of sustainable development.
- ✓ In substantive terms, ensuring good governance requires that the working of the political system is made transparent, that the political leaders are held publicly accountable, that fairness and equality before the law prevail and that access to and distribution of assets, mainly land, are regulated in an equitable manner.
- ✓ In operational terms the realization of good governance requires that key sectors of society and the people participate, as much as possible in cooperation with the government, in shaping governance

Unit two

The 1931 Constitution

- ✓ The constitution was meant to serve as an instrument of centralization under the Emperor, reflecting the traditional institution of absolute imperial power without any limitation and modification.
- ✓ The constitution was not intended to serve as an instrument of modernization, albeit the establishment of parliament, which had, but only the power of discussion.
- ✓ this constitution is nothing less or nothing more than a mere confirmation of the powers and prerogatives of the Emperor, which he would, in any case have exercised.
- ✓

❖ **The 1955 Revised Constitution**

- ✓ This constitution, like any other constitution, defined and distributed powers, rights and obligations within the Empire, notably between the Emperor who had the most *self sufficient*

source of political authority, on the one hand, the rest of branches of government (which enjoy derivative power, either or both from the crown and the people), on the other, and finally the constitution had also incorporate, the basic tenets of fundamental human and political rights from the united Nation Universal Declaration of Human Rights[13] to which Ethiopia was, then a signatory, which did not matter much, for it was a mere declaration, not a convention.

- ✓ The Emperor held a pre-eminent place in the constitution.[14] He stood apart from other agencies of government and at the same time, he was the embodiment of them all; and as such he enjoyed a lot of executive, legislative and judiciary prerogatives. There were others with respect to which he shared power also.
- ✓ This time his power seemed to have been circumscribed by the terms of the constitution, nominally, though. The Emperor is most closely connected with the executive, with respect to which he had power to appoint and dismiss all officials including the prime Minister and members of the cabinet, for they owe their position and were answerable to him and to him only
- ✓ The power to determine the organization and jurisdiction of government departments, as well as to constitute the civil service belonged to him. He had wide discretionary power concerning foreign policy.
- ✓ Although the cabinet and the members had some limited constitutional powers in their own right, the office of the Prime Minister and that of the ministers were adjucts of the Emperor with no organic linkage to the legislative body.
- ✓ The legislative body was bi-cameral: Senators were appointed from the nobility and a few from the commons for their meritorious achievements, while 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[14]. 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 yet to come and which was supposed to regulate manner of selection, tenure, appointment and dismissal. Judges were to submit to no other authority", but to the law-law in the absence of contrary stipulation, presumably included the constitution
- ✓ The Emperor had also judicial function, in the capacity of final appellate court of equity,[45] may be comparable to that of the Queen's Bench. Other than this, the Emperor had a sort of

umbrella power of "maintaining justice through courts".[15]

- ✓ 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.

❖ **1974 Revolution and the 1987 Constitution:**

- ✓ The organ of state machinery was also curved 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. This is a contradiction in terms, for the council itself was the mainstay of parliamentary and presidential powers.[62]
- ✓ 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 through him members of the council of Minister to the Parliament, as well as the power to ensure that the council of Ministry discharged its responsibilities, and presided over the council as necessary.[63] Upon the occurrence of compelling circumstances, the President had the power to dismiss and appoint the Prime Minster 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 with that of the parliament. Although judges were in those days, as in the past, to be guided by "no other authority than the law", it was clear more than over 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 consciouness".[64] Unfortunately, revolution knows very little of law.

❖ **The Transitional Charter: A Prelude to Federalism**

- ✓ 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 constitutions would make the Country a federal one. Party pluralism has also been an innovation of the Charter.*

The Charter declared that the provisions of the Universal Declaration of Human Rights were respected fully.

Article 1: *Based on the Universal Declaration of Human Rights of the United Nations of December 10, 1948, Individual Human Rights shall be respected fully and without any limitation whatsoever. Particularly every individual shall have*

- ✓ *The freedom of conscience, expression, association and peaceful assembly;*
- ✓ *The right to engage in unrestricted political activity and to organize political parties, provided the exercise of such right does not infringe upon the rights of others.*
- ✓ The Charter in its preamble declared the overthrow of the military dictatorship that has ruled Ethiopia for seventeen years. It 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.
- ✓ It was considered that the Transitional Period Charter has served as a precursor to the 1994 F.D.R.E. Constitution.
- ✓ The Charter in its preamble having declared the *"starting of a new chapter in Ethiopian history in which freedom, equal rights and self-determination of all peoples shall be the governing principles of political, economic and social life,"*
- ✓ With respect to the central government, the Charter having stated that the Transitional Government shall exercise all legal and political responsibilities for the governance of Ethiopia, proceeded to establish the Council of Representatives, which exercised legislative functions and oversaw the work of the Council of Ministers.
- ✓ 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.

Unit 3

❖ **Making a Constitution**

What a Constitution should contain

- ✓ the major purpose of a constitution is to establish the main organs of a government and ensure appropriate power division among them and also to control the exercise of governmental power, especially as affects the rights and interests of individual citizens and those of different communities in a multiethnic community, the constitution is supposed to set standards against which governmental actions could be measured.
- ✓ It should also reflect or 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? are few of the questions that need to be addressed by the constitution?

- ✓ Finally, when we come to the question whether the public should be involved in the constitution – making, it seems quite obvious to see public participation as much as possible. This depends very much on the method of constitution making. The open process of decision-making and referendums are optimal methods for ensuring public participation.

- ❖ **Classification of Constitution**
- ❖ **By looking at the Nature of the Constitution itself: Traditional approach**
- ❖ **Written/unwritten, codified/uncodified**

- ✓ It is generally agreed that the written /unwritten dichotomy is false distinction as there is no constitution which is entirely unwritten and nor is there a constitution which is entirely written. What is meant by a written constitution is, therefore, one that is reduced into a form of a document having special sanctity. The term written constitution, according to C.F. Strong, also designates a rather complete document/instrument in which the framers of the constitution have attempted to arrange for every foreseeable contingency in its operation.

- ✓ Unwritten constitution on the other hand is one which has grown up on the basis of custom rather than of written law. Notable in this regard is the United Kingdom. But then, there is a great deal of statute law that could properly fit into the realm of constitutional law, and much of it treats fundamental political institutions in the same way as "written" constitution does.
- ✓ To restate what has been said at the beginning of this section, the classification of constitution on the basis of whether they are unwritten or written is illusory. But we can adopt 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.

- ➢ The degree of codification could be established only if an agreed list of 'basic constitutional constituents' were accepted, as it is only with such a bench mark that one could have a measure. Many constitutional texts deal only with the skeletal outlines of topics, leaving the details to be regulated by organic laws or ordinary statutes
- ➢ The origin of the constitutional text may supply descriptive classifications as "organic", or "evolved" and "resolved". The distinction roughly corresponds to that drawn in England and the United states, between common law and statute law, or to the Roman distribution between *jux* and *lex*. Some are natural growths, unsymmetrical both in their form and their contents.

They consist of a variety of specific enactments or agreements of different dates, possibly proceeding from different sources, intertwined with customary rules which rest only on tradition or precedent, but are deemed of practically equal authority. Other constitutions are works of conscious art, the result of a deliberate effort to lay down once and for all a body of coherent provisions under which a government shall be established and conducted.

❖ **Rigid/flexible,Conditional/ unconditional Classification**

- The true ground of division by virtue of the nature of the constitution itself is whether it is flexible or rigid. A written constitution is a standard of reference for classifying constitutions as rigid or flexible as unwritten/uncodified or non-documentary constitution cannot be other than flexible, and it is possible for codified/documentary constitution to be either flexible or rigid.
- The rigidity or otherwise flexibility of a constitution hinges on whether or not its making is identical to the making of other ordinary laws. Accordingly, if the amendment or alteration procedure of a constitution is not made to depend on some conditions or special procedures, then it may be called flexible constitution
- If some conditions or a special procedure has to be met before the amendment of a constitution, then it is a rigid constitution. In the case of Great Britain for instance, the same procedure is followed to amend an ordinary law or the constitution. This renders it a flexible.
- Thus, 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. Rigid constitutions, on the other hand, are those whose lines are hard fixed.
- In short, a constitution, according to C.F. Strong, that cannot be bent without being broken is a rigid constitution.

❖ **Federal/Unitary classification By looking at the Nature of the State itself**

- The legislature being the most important machinery in a modern constitutional state, constitutions can be classified on the basis of the nature of the legislature. Some states need a bicameral legislature by virtue of their federalism and yet others such as New Zealand, Denmark, and Finland may find that they can fully achieve their legislative purpose with a unicameral parliament. This renders classifying legislatives on the basis of chambers useless. According to C.F. Strong, it is wise to adopt a triple approach to the classification of constitutions from the perspective of the legislative.
  - First, he says, we may divide legislatures on the ground of electoral system by which voters, by virtue of either universal adult suffrage or qualified adult suffrage, choose the member of the lower House, or of the only House in unicameral systems.

- Secondly, we may divide constitutions on the ground of the nature of the upper house (in bicameral systems) whether it is elective or non-elective or partially elective.
- Thirdly, we must note that several contemporary constitutions give the electorate direct popular checks on the activities of the legislative which can be exercised by a referendum or plebiscite[1] or recall and that in other states the electorate do not have such rights.

- The classification of constitutions into federal, unitary and confederate is based upon the principle by which the powers of government are distributed in the constitution between the government for the whole country and governments which may be established for its constituent part. In other words, the classification of constitutions as federal /unitary constitution relates to the method by which power is divided between the two tiers of governments i.e., government of the whole country and local governments which exercise authority over parts of the country.

- 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 on the other hand, 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.
- If the government of the whole country is rather subordinate to the governments of the parts, the constitution of such state would come to have another name - a confederate constitution. These are not very convenient terms though. They are often used as words tantamount to the words "federation" or federal, as the Swiss constitution which is federal describes itself officially as '*constitution federal de co confederation Suisse*' while it is customary in Canada to speak of the union of the provinces as confederation.
- Despite all these difficulties the word confederation may be used to describe a form of association between governments whereby they set up a common organization to regulate matters of common concern but retain to themselves, to a greater or less degree, some control over this common organization
  - ❖ **By looking at the nature of the Governmentitself: Presidential/ParliamentaryClassification and Republican/Monarchical Classification**
  - ❖ **Presidential/Parliamentary Classification**
  - ✓ It goes without saying that it is up to the executive to formulate policies and execute same upon gaining the sanction of the law through legislature. This in turn

[1]

calls for checks or limitation upon the executive as misuse/abuse of power might arise in the absence of control. Thus the executive should necessarily be answerable to somebody whether this somebody is the legislature or the public at large (through periodic election).

- **But the question that needs closer attention, at this juncture, is in whom is the immediate responsibility confided? This question takes us to the crux of the matter, i.e. to dividing constitutional states into two classes: States with parliamentary executive and those with presidential executive.**

If the executive is immediately answerable to the parliament, then it can be called parliamentary executive. But if it is immediately responsible at definitely arranged intervals to some wider body and is not amenable to removal by the action of the legislature, then it is called presidential executive. Differently stated, in constitutions that provide for 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). In constitutions that provide for parliamentary executive, although the great majority of the members of the executive (civil servants and office holders) are excluded from the parliament, the heads of department and ministers may sit in the parliament and hence may be accountable to the parliament. As a rule a country which has presidential executive will have that form of government embodied explicitly in its constitution and in a country where parliamentary executive has prevails

❖ **Republican/Monarchical Classification**

✓ A constitution can be classified as republican or monarchical though such classification has a lesser significance nowadays. The classification on the basis of this distribution is so less significant that it means little more than that 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

✓ In fact, the distribution between a republican and a monarchical constitution once had considerable meaning and importance as it stood for the difference between what may be called popular/democratic government and absolutism, autocracy, or dictatorship.

❖ **By looking at the Legislature**

- **Unicameral/Bicameral/ Tricameral/Tetracameral**

(i) Unicameralism

✓ **Unilateralism** is the practice of having only one legislative or parliamentary chamber. Many countries with unicameral legislatures are often small and homogeneous unitary states and consider an upper house or second chamber unnecessary.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. A theory in favor of this view is that the 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.

- ✓ In many instances, the governments that now have unicameral legislatures were once bicameral and subsequently eliminated the upper chamber. One reason for such a change is because an elected upper house has overlapped the lower house and obstructed passage of legislation,
- ✓ Other nations, such as the United Kingdom and Canada, have technically bicameral systems that function much as unicameral systems, because one house is largely ceremonial and retains few powers. Thus, in the United Kingdom, control of the House of Commons determines control of the government, and the unelected House of Lords have the power only to delay legislation and to recommend amendments. Although there is widespread agreement that the House of Lords needs to be reformed, there is little support for simply abolishing it.

(ii) **Bicameralism**

- In subsequent constitution making, federal states have often adopted bicameralism, and the solution remains popular when regional differences or sensitivities require more explicit representation, with the second chamber representing the constituent states. Nevertheless, the older justification for second chambers — providing opportunities for second thoughts about legislation — has survived
- ***Growing awareness of the complexity of the notion of representation and the multifunctional nature of modern legislatures may be affording incipient new rationales for second chambers, though these do generally remain contested institutions in ways that first chambers are not***
- The relationship between the two chambers varies; in some cases, they have equal power, while in others, one chamber is clearly superior in its powers. The first tends to be the case in federal systems and those with presidential governments. The latter tends to be the case in unitary states with parliamentary systems.

- Some political scientists believe that bicameralism makes meaningful political reforms more difficult to achieve and increases the risk of deadlock (particularly in cases where both chambers have similar powers). Others argue strongly for the merits of the 'checks and balances' provided by the bicameral model, which they believe helps prevent the passage into law of ill-considered legislation.

(iii) **Tricameralism**

- **Tricameralism** is the practice of having three legislative or parliamentary chambers. It is contrasted to unicameralism and bicameralism, both of which are far more common.

Bolivar's tricameralism

Simón Bolívar, the South American revolutionary leader, included a tricameral legislature as part of his proposals for a model government. Bolivar described the three houses as follows:

- **Chamber of Tribunes**, holding powers relating to government finance, foreign affairs, and war. The tribunes would, unlike the other two houses, be popularly elected.
- **Senate**, an apolitical body holding powers to enact law, supervise the judiciary, and appoint regional officials. Bolivar believed that the senate should be hereditary, saying that this was the only way to ensure its neutrality. There are parallels between Bolivar's Senate and other houses such as the BritishHouse of Lords.
- **Censors**, a group who would act as a check against the powers of the other two. Bolivar described them as "prosecuting attorneys against the government in defense of the Constitution and popular rights". He also said that they should ensure that the executive was functioning satisfactorily, perhaps having powers of impeachment.

Bolivar intended his model government to have a presidential system, and so the trilateral parliament was not expected to govern. Bolivar was explicit that the legislature should not have an active role in administration- it merely made law and supervised other branches of government.

❖ The Upper House

An upper House is one of two chambers of a bicameral legislature, the other chamber being the lower house.

(i) Features

An upper house is usually distinct from the lower house in at least one of the following respects:

- It is given less power than the lower house, with special reservations, e.g. only when seizing a proposal by evocation, not on the budget, not the house of reference for majority assent.
- Only limited legislative matters, such as constitutional amendments, may require its approval.
- 'Houses of review', in that they cannot start legislation, only consider the lower houses' initiatives. Also, they may not be able to outright veto legislation.
- In presidential systems, the upper house usually has the sole power to try impeachments against the executive following enabling resolutions passed by the lower house.
- Composed of members selected in a manner other than by popular election. Examples include hereditary membership or Government appointment.
- Used to represent the states of a federation.
- Fewer seats than the lower house (or more if hereditary).
- If elected, often for longer terms than those of the lower house; if composed of peers or nobles, they generally hold their hereditary seats for life.
- Elected in portions for staggered terms, rather than all at once.

In parliamentary systems the upper house is frequently seen as an advisory or "revising" chamber, for this reason its powers of direct

action are often reduced in some way. Some or all of the following restrictions are often placed on upper houses:

- Lack of control over the executive branch.
- No absolute veto of proposed legislation (though sus pensive vetoes are permitted in some states)
- A reduced role in initiating legislation.
- It cannot block or modify *supply* (Though see the Australian Constitutional Crisis of 1975 for an example of an upper house blocking supply).

❖ **Lower House**

- A Lower House is one of two chambers of a bicameral legislature, the other chamber being the upper house. Despite its theoretical position "below" the upper house, in many legislatures worldwide the lower house has come to wield more power. The supremacy of the lower house usually arises from special restrictions placed (either explicitly by legislation or implicitly by convention) on the powers of the upper house, which often can only delay rather than veto legislation or has less control over money bills. Under parliamentary systems it is usually the lower house alone that designates the head of government or prime minister, and may remove them through a vote of no confidence

Common attributes

In comparison with the upper house, lower houses frequently display certain characteristics:

- Given greater power, usually based on restrictions against the upper house.
- Directly elected (apportionment is usually based on population).
- Given more members.
- Elected more often, and all at once.
- Given total or original control over budget and monetary laws.
- Able to override the upper house in some ways.
- In a presidential system, given the sole power to impeach the executive (the upper house then has to try the impeached.

Many lower Houses are named in the following manner: House/Chamber of Representatives/the People/Commons/Deputies, i.e. Deputies, Chamber, House, Commons, House, Legislative, and National Assembly (hence also Bundestag, German for *federal assembly*)

❖ **Reflections on the Ethiopian Constitution**

❖ as the law alone cannot tell us how “rigid” a particular constitution really is and other factors, particularly, political forces play an equally important role and the existence of a legal procedure may in itself act as a political brake restraining impetuous changes; we can have the audacity to dub the 1931 constitutions as a flexible constitution. We can give two reasons for this: for one thing, there is no provision in the constitution providing for an avenue for amendment let alone making it difficult to amend by putting in place a special procedure. For the other, the constitution is rather a grant by

the emperor or a royal document particularly tuned to safeguard the interest of the emperor and the royal family thereby bestowing upon the emperor the power to do everything he wishes as he is the ultimate law maker (see Art 46 of the constitution). He is the Head of State and Government and he is the ultimate umpire as the "Zufanchilot" or crown court, wherein the Emperor is the presiding judge, can reverse the decision of the Supreme Court.

- Thus, we can conclude that the emperor can amend/charge the constitution if he so wishes. The then State was also unitary in that the empire under the imperial rule of the emperor. Hence a monarchial form of government was in place.
- It should also be remembered that the constitution acknowledges a bicameral parliament namely: the Chamber of the Senates (yehigMewossegnaMikirbet) and the Chamber of Deputies ("YehigmemriaMikirbet")

The constitution institutionalizes the ministerial system wherein collective and individual ministerial responsibilities resided in the person of the emperor thereby rendering the centralization of power inevitable.

- When we come to the judiciary, the 1931 constitution belongs to the second category, i.e., the prerogative state in which the executive is under the protective shield of a special system of administrative law, as the constitution in its Art. 54, clearly states that suits related to administrative affairs are entertained by a special court staffed by judges withdrawn from the jurisdiction of other courts.
- More or less, we can say the same thing about the 1955 constitution except that the country adopted a federal form of government as of the federation of Eritrea to Ethiopia by the resolution of the UN General Assembly on the 2nd of Dec. 1950.
- The emperor also had the power to appoint or dismiss anyone in the various branches of the government including the prime minister and other ministers, judges and diplomats. He also had a co-legislative power as he had veto power on legislation. This makes the emperor an absolute monarch who has the ultimate say in every walk of life.
- Thus, the level of centralization is so immense that every decision should get the blessing of the emperor. The destruction of the federation in 1962 was an additional measure of centralization. Such devolution of power in the hands of the emperor, obviously, puts the fate of the constitution at the mercy of the emperor.

The 1987 PDRF constitution is also written and codified constitution rendering the country a unitary state in which all nationalities live in equality. The constitution had conferred ultimate state power on the National Shengo and its Standing Council. It also endorses a unicameral parliament. the National Shengo which along with the Council of State, the president of the Republic, Commissions of the National Shengo, the Council of Ministers, the Supreme Court, the

Procurator General, Shengos of higher administrative and autonomous religions, and mass organizations, has the right to i Therefore, although the constitution stipulates/provides for a special procedure for amendment, it is not as simple as it looks on the surface to conclude the constitution is a rigid constitution.

Therefore, although the constitution stipulates/provides for a special procedure for amendment, it is not as simple as it looks on the surface to conclude the constitution is a rigid constitution.

- **Coming back to the 1995 FDRE constitution, in much the same way as its predecessors, this constitution is a written and codified document having 106 articles.**
- Just like the PDRE constitution, the incumbent constitution provides for a republican form of government although the former provides for a unitary single-party system and the later provides for a federal multi-party system.
- The 1995 constitution establishes a parliamentary democracy. The constitution also provides for a bicameral/two-chamber parliament, namely the House of Peoples' Representatives and the House of Federation both of which are federal houses.

- ✓ It also provides for a one chamber State Council at State level which is the highest organ of State authority as much as the House of Peoples' Representatives is the highest authority of the federal government.
- ✓ The other chamber, i.e., the House of Federation which is composed of representative of nations, nationalities and peoples is entrusted with the power to interpret the constitution and to decide on serious constitutional concerns such as the right to secession.
- **When we come to the amendment procedure of the constitution, we find it to be a rigid constitution as it puts in place a stringent requirement for amendment.**
- Just like any other federal system, the FDRE constitution's amendment procedure involves both regional and federal legislative organs. Thus the initiation could be made by either of the two tiers of governments. Where the initiatives come from the regions, one third of the state council must support the proposal by simple majority vote"
- **Amendment under the FDRE constitution is categorized into two:**
  - ordinary constitutional amendment which requires two-third majority vote in a joint meeting of the federal houses as well as a majority vote in two-thirds of state councils and
  - Amendment dealing with provisions related to fundamental rights and freedoms enshrined in the constitution for which a more stringent requirement is put in place as the Federal Houses must each accept the proposal by a two-thirds majority and all State Councils must pass the draft by majority vote.
- **<u>Forms of Government and Electoral systems</u>**

- Generally, there are two forms of governments: these are presidential and Parliamentary forms of governments.
- **The presidential system**

The presidential system, also called the congressional system, is a system of government where an executive branch exists and presides (hence the name presidential) separately from the legislature. Under this political system the president is both the Head of Stateand the Head of Government. The incumbent for the position of presidency is elected nation - wide at a time that has been predetermined in the constitution.

Thus in the presidential system, the president is said to enjoy a direct mandate from the people and hence is not accountable to the parliament and the latter cannot dismiss him have on exceptional grounds through a process known as impeachment.

- ✓ 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. That is, the president is the Head of State and the Head of Government and hence the chief executive. He has the mandate to administer the country and appoint or remove executive officers and thus can effectively control government department. Heads of government departments, ministers, commissioners, or secretaries are under the president.The president enjoys ultimate power decision and, therefore, has complete political responsibility for all executive actions.
- ✓ **In presidential system, the executive branch, headed by the president, is distinct from other branches of the government which are all independent from one another. This separation of power serves to check and balance the powers of the three branches of government.**
- ✓ The president has a fixed term of office/tenure and his government has a fixed tenure. Thus, he cannot be removed or dismissed from office before the expiry of his term unless under highly unusual and exceptional process of impeachment. The president can be removed from office only through death, resignation, inability to discharge his responsibilities, or by congressional impeachment and conviction on charges of treason, bribery, or other serious crimes.
- ✓ 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. Presidential governments make no distinction between the positions of head of state and head of government both of which are confided in the person of the president.

(i) Merits

The first advantage of presidential government is the fact that the executive is stable by virtue of a fixed term. Since the existence of the executive doesn't depend on parliamentary whim, it is more stable than a prime minister (in parliamentary form of government) who can be dismissed at any time

- ✓ 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, even if the legislative body was itself elected, to rule.
- ✓ By way of making more than one electoral choice, voters in presidential system can more accurately indicate their policy preferences
- ✓ The existence of separation of powers is another advantage of this system. The fact that a presidential system separates the executive from the legislature is sometimes considered as an advantage, in that each branch may scrutinize the actions of the other.
- ✓ The other advantage of this system is that the president can recruit ministers of highest caliber as he can appoint his ministers from people who do not belong to the legislature. This is so because the president selects persons of greater competence and integrity without any need to make political considerations or party affiliations.

(ii) Demerits

Although the president's fixed tenure has its own advantages, it has disadvantages as well because it brings with it the difficulty in removing an unsuitable president from office before his/her term has expired.

The reason for saying this is that political governance is a continuous process, which introduces changing circumstances into the system in an uninterrupted manner. This system to some extent has the effect of arresting this continuous process.

❖ **Parliamentary System**

- ✓ A parliamentary system also known as parliamentarianism or parliamentarism, is a system of government in which the executive is dependent on the direct or indirect support of the legislature (often termed the parliament) often expressed through a vote of confidence.

A parliamentary system of government is a government that is led by a party or a coalition of parties that has the largest number of seats in the parliament. Absence of clear-cut separation of power between the executive and the legislative is the main characteristic of this system.

- ✓ But they usually have a distinct heads of state and head of government, the former vested in the person of the president elected either popularly or by the parliament or by a hereditary monarch (often in a constitutional monarchy) and the latter in the person of the prime minister or premier.
- ✓ In parliamentary system, there is a water – tight division between the office of the prime minister (the head of executive) and that of the president /king/queen (the head of state in this system, it is the prime minister who has effective control over the

executive as he is the chief executive. He/she deals with the day-to-day political activities.

- ✓ The head of state, on the other hand, 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.
- ✓ In parliamentary system, ministers are members of the parliament although not the case in all countries. In some countries (e.g. the United Kingdom, and India/ all ministers are members of the parliament but in others (e.g. Ethiopia), ministers may not necessarily be members of the parliament as the prime minister could appoint / recruit cabinets from outside the parliament.
- ✓ In the parliamentary system, 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
- ✓ Parliamentary systems have collective or collegial executives (e.g., a council of ministers, an organ which incorporates the prime minister and his cabinet). The executive in a parliamentary system is responsible to the legislature: the legislature conducts control over the executive's function nearly on a day-to-day basis. Members of the council of ministers may be required to report, respond to questions, etc… to the legislature whenever they are requested to do so.
- ✓ A parliamentary government, though directly responsible to the assembly (House), is only indirectly responsible to the electorate. The government as a whole is not directly elected by the voters but is appointed from amongst the representatives whom they elect to the assembly. In fact, they are elected by the voters as candidates for the assembly in an ordinary way not as members of the government.

(i) Merits

- ✓ Is preferable for countries with an infant democracy as it allows coordination of the executive and the legislative which could in turn result in an effective implementation of the programs and policies of the executive.
- ✓ is that it is a lot easier to pass legislations; this is because the executive branch is dependent upon the direct or indirect support of the legislative branch and often includes members of the legislative. Thus this would amount to the executive (as the majority party or coalition of parties in the legislative) possessing more votes in order to pass legislation.
- ✓ On top of the ease for quicker legislative action, parliamentarianism has attractive features for nations that are ethnically, racially, or ideologically divided.
- ✓ In presidential system, all executive power is vested in the president. In parliamentary

system, however, with a collegial executive, power is more divided.

(ii) Demerits

The fact that the Head of Government is not directly elected is one of the critiques staged against this form of government. In parliamentary system, unlike the presidential system where the president is elected by the public, the prime minister is elected by the legislature often under strong party influence.

- ✓ Absence of clear distinction /separation of power between the executive and the legislative is another criticism. That there is no truly independent body to oppose and vote legislations passed by the parliament and therefore, no substantial check on legislative power disrupts the balance of power. In other words, lack of inherent separation of powers places too much power in the executive.

- ❖ **Electoral systems**
- ❖ To begin with the meaning of election, it refers to a procedure whereby all or some of the members of a given nation choose a smaller number of persons or one person to hold office of authority in the nation.

- ✓ An election is a decision making process by which a population chooses an individual to hold formal offices. It is the usual mechanism by which modern democracy fills offices in the legislature, sometimes in the executive and judiciary, and for regional and local governments.In order for an election to be democratic the authority of the government in democracies should derive solely from the consent of the governed which will be translated into government authority through election.

Types and Features of Electoral systems

There are different types of elections corresponding to different layers of public governance or geographical jurisdiction. This includes: Presidential election, general election, primary election, by- election etc.

- ❖ **Majoritarian Representation systems**
- ❖ In the case of absolute majority, however, a candidate will be declared a winner only if he/she gets an absolute majority of votes (50 percents +). If there is no candidate that has met this minimum requirement, a second round is held between the two candidates who get the highest number of votes and the one who gets the least number of votes will be excluded.
- ❖ **Proportional Representation system**

Whereas the Majoritarian system focuses on governability in the sense that it aims to create a “manufactured majority”, i.e., to exaggerate the shares of seats for the leading party in order to produce an effective working parliamentary majority for the government, while simultaneously penalizing minor parties, especially those whose support is spatially dispersed, proportional systems focus on the inclusion of minority voices. It is meant to achieve real representation at the national level

which the majority system of representation fails to accomplish.
Proportional representation is designed to reduce legislative bodies in which the number of seats held by any group or party is proportional to the number of votes cast for members of that group. In other words seats in a constituency are divided according to the number of votes cast for party lists.
Under Proportional Representation, political parties or candidates will have the percent of seats that reflect their support.

- **Reflection on the Ethiopian Legal Regime**

  Members of the upper chamber- the senate were handpicked/appointed by the emperor from among the nobility (*mekuanint*) and local chiefs (‘*shumoch*’) who served the empire as ministers, judges or military officers. Members of the lower chamber, on the other hand, were elected by the nobility and local chiefs

It was only in 1955 that the idea of election was introduced by the revised constitution as members of the lower chamber begun to assume seats through election. Since the coming into existence of the revised constitution, various laws meant to regulate the country election procedure were issued.

The first electoral law was issued on the 27th day of August, 1956. This law established a National Board for registration and elections and determined the powers and duties of the Board.

- **<u>Making the Constitution Adjustable</u>**
- **Interpretation of a Constitution**

Constitutional interpretation, or constitutional *construction*, the term more often used by the Founders, is the process by which legal decisions are made that are justified by a constitution, although not necessarily correctly. Constitutional controversies are about whether an official act is consistent with, and authorized by, a constitution or constitutional statute or court decision. 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.

- **Methods of Constitutional Interpretation**

Most legal scholars recognize six 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.

1. **Textual**. Decision based on the actual words of the written law, if the meaning of the words is unambiguous. 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 verbislegis non estrecedendum.* From the words

of the law there is not any departure. Meaning of words may be ascertained by associated words.

2. **Historical**. Decision based less on the actual words than on the understanding revealed by analysis of the history of the drafting and ratification of the law, for constitutions and statutes, sometimes called its legislative history, and for judicial edicts, the case history. A textual analysis for words whose meanings have changed therefore overlaps historical analysis. It arises out of such Latin maxims as *Animus hominisest 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 *Nemoaliquampartemrecteintellig erepotestantequamtotumperlegit.* No one can properly understand a part until he has read the whole.
3. **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. *Consuetudoetcommunisassuetud o ... interpretaturlegemscriptam, silex sit generalis.* Custom and common usage ... interpret the written law, if it be general. *Cursuscuriæestlexcuriæ.* The practice of the court is the law of the court. *Judiciisposterioribus fides estadhibenda.* Credit is to be given to the latest decisions. *Res judicata pro veritateaccipitur.* A thing adjudicated is received as true.
4. **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. One such consideration, avoidance of disturbing a stable body of practices, is also the main motivation for the doctrinal method. 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 *Bonijudicisestlitesdirimere.* The duty of a good judge is to prevent litigation.
5. **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. Often resorted to in cases in which the facts were not adequately anticipated or provided for by the lawgivers. 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, *Æquitasest perfecta quædam ratio quæ jus scriptum interpretatur et emendat; nulla scriptura comprehensa, sed sola rationeconsistens.* Equity is a sort of perfect reason which interprets and amends written law; comprehended in no code, but consistent with reason alone.

6. **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 naturæsuntimmutabilia.* The laws of nature are unchangeable. *Impossibiliumnullaobligatioest.* There is no obligation to do impossible things. *Lex non cogitadimpossibilia.* The law does not compel the impossible. *Lexneminemcogitadvanaseuinutiliaperagenda.* The law requires no one to do vain or useless things. *Legibussumptisdesinentibus, legenaturæutendum est.* Laws of the state failing, we must act by the law of nature. Within these methods, we can, by study of the writings of the Founders, and the writings they read, elicit such principles for interpreting the Constitution for the United States as the following:

1. **The Constitution is the written document**. Although it may be considered to include the understandings of its words as of the time of ratification, it does not include the subsequent body of practices or precedents upon which constitutional decisions might be based, which may or may not be consistent with it, or authorized by it. The written document refers to itself as "this Constitution", and provides for only four methods by which it may be amended, all of which apply only to the written document.
2. **The authority for provisions of the Constitution is the ratifications and state admissions**. Current consent or acquiescence, or lack thereof, to the Constitution or any practice, does not affect the original constitutive acts, and has no authority, unless expressed through adoption of amendments as provided in Article V.
3. **Provisions of the Constitution are mutually consistent**. There are no internal logical contradictions, except that a provision of an amendment inconsistent with a previous provision supersedes that provision.
4. **None of the words are without force and effect, except those superseded by amendments, unless such amendments are repealed**. Except for the statement of purpose in the preamble, every word was intended by the framers to be legally normative, and not just advisory, declaratory, aspirational, or exhortatory. *Verbaintelligiutaliquidoperanturdebent.* Words should be interpreted to give them some effect.
5. **Rights and powers are complementary**. Every right

recognized by the Constitution is immunity, that is, a right against a positive action by government, and is equivalent to a restriction on delegated powers. Conversely, every delegated power is a restriction on immunities. An immunity may be expressed either as a declaration of the right, or as a restriction on powers.

6. **There are no redundancies within the original unamended Constitution**. However, amendments may be alternative ways of expressing equivalent content in the original unamended Constitution or previous amendments. More specifically, the Bill of Rights added no new content not implicit in the original unamended Constitution, except the twenty dollar rule of the Seventh Amendment.
7. **The Constitution was intended to define a functionally complete and harmonious system**. That does not mean, however, that all powers anyone might think the nation or any branch, level, office or department should have, were actually delegated.
8. **Original "intent" is functional, not motivational**. The private motives of the framers or founders are irrelevant and largely unknowable, and likely to have been diverse. The common law rule of interpretation understood by the founders was to discern the functional role of elements of the law, not the private purposes of the lawgivers.
9. **The ratification debates are the best evidence of original understanding**. The arguments of those opposed to ratification are not just the positions of the losers in the debates, which some might dismiss as not indicative of original understanding. As the debates proceeded, understandings evolved and clarified, and positions changed. Most opponents were satisfied by adoption of a Bill of Rights and by assurances by the proponents concerning how the words of the Constitution would be interpreted, and those assurances must be considered part of the original understanding. That means that a construction to which the more significant "anti-federalists" would object is almost certainly incorrect.
10. **Powers are narrow, rights broad**. The entire theme and tenor of the ratification debates was that delegated powers were to be interpreted as strictly as possible, consistent with the words and rights as broadly as possible, with the presumption in favor of the right, and the burden of proof on those claiming a power. *Potestasstricteinterpretatur.* A power is strictly interpreted. *In dubiis, non præsumitur pro potentia.* In cases of doubt, the presumption is not in favor of a power.
11. **Delegated powers cannot be subdelegated**. The U.S. Constitution vests all legislative powers in Congress, and all judicial powers in the Supreme Court and inferior courts, except as specifically expressed. Executive branch officials may subdelegate but

must remain responsible for the actions of their subordinates. There can be no authority exercised that is not accountable through constitutional officials.*Delegatapotestas non potestdelegari.* A delegated power cannot be delegated.

12. **The power to regulate is not the power to prohibit all modalities of something**. It is only the power to issue prescriptions to "make regular", enforceable only by deprivations of property or privileges, not of life, limb, or liberty. There must always be some modality that is not prohibited.
13. **Implied powers are only to "carry into Execution" an expressed power and not to do whatever is necessary to achieve the intent for which a power might be exercised**. Delegation of a power is delegation of the right to make a certain kind of effort, not to do whatever is necessary to get a desired outcome.
14. **There can be no common law crimes**. They are in conflict with the prohibitions on *ex post facto* laws and bills of attainder.
15. **Rights may not be disabled or unduly burdened by legislative or executive process**. "Due" process is judicial only, involving the granting of a petition to disable a right of the defendant, with the burden of proof on the plaintiff or prosecutor, and with the defendant having at least those minimum protections that prevailed during the Founding, with similar disablements having similar standards of proof and protection.
16. **There is no right without a remedy**. *Ubi jus ibiremedium.* There must always be an accessible forum in which a complainant has *oyer* and *terminer* for any petition.

❖ **Amendment of a Constitution**

❖ An **amendment** is a change to the constitution of a nation or a state. In jurisdictions with "rigid" or "entrenched" constitutions amendments require a special procedure different from that used for enacting ordinary laws.

Amendment procedures

❖ A flexible constitution is one that may be amended by a simple act of the legislature, in the same way as it passes ordinary laws

❖ The constitutions of a great many nations provide that they may be amended by the legislature, but only by a special, extra large majority of votes cast (also known as a supermajority, or a "qualified" or "weighted" majority). This is usually a majority of two-thirds the total number of votes cast. In a bicameral parliament it may be required that a special majority be achieved in both chambers of the legislature. In addition, many constitutions require that an amendment receive the votes of a minimum *absolute* number of members, rather than simply the support of those *present* at a meeting of the legislature which is in quorum.

❖ Some constitutions may only be amended with the direct consent of the electorate in a referendum. In some states a decision to submit an amendment to the

electorate must first be taken by the legislature. In others a constitutional referendum may be triggered by a citizen's initiative

- ❖ Some jurisdictions require that an amendment be approved by the legislature on two separate occasions during two separate but consecutive terms, with a general election in the interim. Under some of these constitutions there must be dissolution of the legislature and an immediate general election on the occasion that an amendment is adopted for the first time

Form of changes to the text

- ❖ **The manner in which constitutional amendments are finally recorded takes two main forms**
- ✓ In most jurisdictions, amendments to a constitution take the form of revisions to the main body of the original text. Thus once an amendment has become law, portions of the original text may be deleted or new articles may be inserted among existing ones.
- ✓ The second, less common method is for amendments to be appended to the end of the main text in the form of special *articles of amendment*, leaving the body of the original text intact. Although the wording of the original text is not altered, the doctrine of implied repeal applies. In other words, in the event of conflict, an article of amendment will usually take precedence over the provisions of the original text, or of an earlier amendment.

Nonetheless, there may still be ambiguity as to whether an amendment is intended to supersede an existing article in the text or merely to supplement it. An article of amendment may, however, explicitly express itself as having the effect of repealing a specific existing article. The use of appended articles of amendment is most famous as a feature of the United States Constitution, but it is also the method of amendment in a number of other jurisdictions, such as Venezuela.