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# Center - State Relations in the Ethiopian Federal Setup: Towards Coercive Federalism?

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*A view from the Practice*

A DISSERTATION SUBMITTED TO THE SCHOOL OF LAW OF ADDIS ABABA UNIVERSITY, IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE DEGREE OF MASTER OF LAWS (LL.M CONSTITUTIONAL AND PUBLIC LAW).

BY

KALKIDAN KASSAYE

PREPARED UNDER THE SUPERVISION OF

Dr. SOLOMON NEGUSSIE

December 2010

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## DECLARATION

I, **Kalkidan Kassaye**, hereby declare that this dissertation is original and has never been presented in any other institution. To the best of my knowledge and belief, I also declare that any information used has been duly acknowledged.

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This dissertation has been submitted for examination with my approval as University supervisor.

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December 2010

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## **LIST OF ABBREVIATIONS**

<b>ANDM</b>	Amhara National Democratic Movement
<b>CCI</b>	Council of Constitutional Inquiry
<b>CUD</b>	Coalition for Unity and Democracy
<b>EDP</b>	Ethiopian Democratic Party
<b>ELF</b>	Eritrean Liberation Front
<b>EPLF</b>	Eritrean People's Liberation Front
<b>EPDM</b>	Ethiopian People's Democratic Movement
<b>EPRDF</b>	Ethiopian People's Revolutionary Democratic Front
<b>EU</b>	European Union
<b>FDRE</b>	Federal Democratic Republic of Ethiopia
<b>HoF</b>	House of Federation
<b>HPR</b>	House of Peoples' Representatives
<b>ICG</b>	International Crisis Group
<b>IGR</b>	Inter Governmental Relation
<b>MoFA</b>	Ministry of Federal Affairs
<b>OLF</b>	Oromo Liberation Front
<b>OPDO</b>	Oromo Peoples Democratic Organization
<b>SEPDF</b>	Southern Ethiopia Peoples Democratic Front
<b>SNNPR</b>	Southern Nations, Nationalities, and Peoples Region
<b>TGE</b>	Transitional Government of Ethiopia
<b>TPLF</b>	Tigrayan Peoples Liberation Front
<b>UDHR</b>	United Nations Declaration of Human Rights
<b>UDJP</b>	Unity for Democracy and Justice Party

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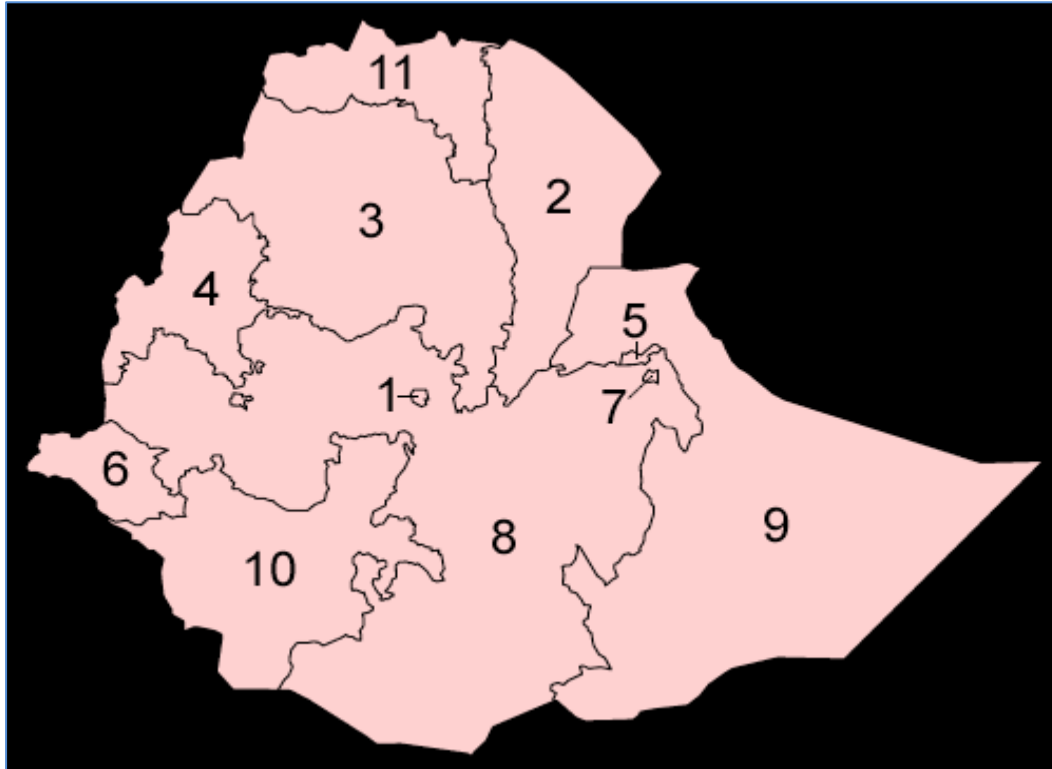
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**Map: the Nine Regional States and the two City Councils of Federal Ethiopia**

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10. *The Southern Nations, Nationalities and Peoples* Regional State
11. *Tigray* Regional State

## **Abstract**

*A comprehensive understanding of the operational part of a federal system calls for the study of the comportment on which the center-state relationship is based. Keeping this line, the Ethiopian federal setup which is suspected of being coercive as regards the rapport between the orders of government, is an interesting area of academic as well as political significance. The paper aims at exploring whether such suspicion is valid or not by scrutinizing the prevailing politico-economic as well as constitutional stratum in which the federal experiment is functioning.*

# 1. Introduction

## 1.1. Background of the study

Following the demise of the long-lived historical *de facto* federal<sup>1</sup> setup, prominent political elites of the 20<sup>th</sup> century by and large labeled Haileselassie I as the chief architect of modern state of Ethiopia through the Western ideal of nation-state. His majesty, who reigned for forty-four years up until his forceful removal from the crown in 1974 by the radical military group led by Mengistu Hailemariam, otherwise branded as *Dergue*, was principally celebrated as the one who revealed the *better days of Ethiopia* and honored to be a modernizer and avant-garde sovereign who fiercely guarded the sovereignty and independence of this northeast African polity.

Weakened by a protracted revolutionary war in Eritrea and by withdrawals of Soviet support, Mengistu's regime was overthrown by the Tigrayan People's Liberation Front (hereafter TPLF) and its allies in May 1991.<sup>2</sup> The new Transitional Government of Ethiopia (TGE) is dominated by the Ethiopian People's Revolutionary Democratic Front (hereafter EPRDF), a party created by ethnic oriented alliances. Most governmental and opposition groups attended the July 1991 Conference that approved the Charter under which the TGE operated, and which forecast the contents of the new Constitution.

The Transitional Government that was established by the Charter and elaborated by the subsequent proclamations was not explicitly designated as federal. Neither the Charter nor the Proclamation that provided for the establishment of self governments referred to

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<sup>1</sup> The long lived historical decentralization in Ethiopia has been at the forefront of the academic as well as political debate concerning its correspondence or otherwise with the concept of *de facto* federalism. Some notable federalism writers for example enunciate such a pedigree in Ethiopia as a *de facto* federal experience (at least the time until the coming into power of emperor Haileselassie I) while some others considers it as lack of centralization. Though, the argument still goes, for my purpose, it is not as such relevant to boil down all the concerns and issues here. What I need to explain here is there was no unified strong central governance in much of the country's political history. See for example Assefa Fiseha (*infra*), and Tsegaye Regassa, Comparative Relevance of the Ethiopian Federal System to other African Polities of the Horn, *Bahir Dar University Journal of Law*, Vol.1 No. 1 at 14 for such a debate.

<sup>2</sup> Paul H. Brietzke, Ethiopia's "Leap in the Dark": Federalism and Self-Determination in the New Constitution, *Journal of African Law*, Vol. 39, No. 1 (1995) at 19.

this government as federal or decentralized for that matter. Subsequently however, on the way to illuminate the Ethiopian choice and after this enough margin of transition, in December 1994, a constitutional assembly ratified the new constitution, which was lauded for its commitment to a fully fledged federalism attached with liberal democracy and respect of political freedoms and human rights.<sup>3</sup>

The Constitution, after adopting a federal governmental configuration characterized by a coordinate relationship between the center and the constituent units, tries to emphasize on the equality, even in some cases the states (under the guise of Nations, Nationalities and Peoples) supremacy. The two tiers of government are constitutionally empowered to act exclusively on their affairs which fall under their respective jurisdiction. This is to signify the *de jure* equality of the parties to the federal bargain. Thus, constitutionally speaking, the FDRE Constitution opted for the American replica of dual federalism as opposed to the executive or administrative model of German or Swiss. There is nothing provided about federal supremacy unlike its US counterpart or federal preemption principle as the case in some federations.<sup>4</sup>

The concept of Coercive federalism<sup>5</sup>, as it was used by federalist advocates, indicates the situation by which one level (perhaps in most cases by the center) dominate the whole politico-social affair of a country that is constitutionally established as federation. Thus, *Coercive (Controlled) Federalism* is a term used mainly by political theorists who sought to examine the constitutional and political space (room) available to members of

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<sup>3</sup> The constitution was ratified on 8 December 1994 and entered into force on 21 August 1995 (The Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No. 1/1995, and Proclamation of the Constitution of Federal Democratic Republic of Ethiopia, *Federal Negarit Gazeta*, 1<sup>st</sup> Year No. 1, and Addis Ababa-21<sup>st</sup> August, 1995, (Here in after referred as The Constitution or the FDRE constitution)). So, as of this date Ethiopia is a federation *de jure*. However, many argued against the composition of the constituent assembly by labeling it as an affiliated group of individuals to the ideology of EPRDF. Such contest was exacerbated by the highly rigged election took place sometime after the constitutional making and very recently.

<sup>4</sup>The concept has got its origin from the American constitutional history. Accordingly, after an agreement has been reached on the federal option, a large measure of the States' sovereignty was ceded under the Constitution to the federal government by virtue of the Supremacy Clause in Article VI, which declared that all laws of the United States "*shall be the supreme Law of the Land*".

<sup>5</sup> For further analysis of this federal jargon, see John Kincaid, Contemporary U.S. Federalism: Coercive Change with Cooperative Continuity, *Reaf*, no. 6, April 2008, p. 10-36, John Kincaid, From Cooperative to Coercive Federalism, *Annals of the American Academy of Political and Social Science*, Vol. 509, American Federalism: The Third Century (May, 1990), at 139-152, *Sage Publications*, Inc. Note also that, I have used terms like, the federation, central government or the center, general government interchangeably to refer to the federal government.

the federation. To this end, whenever there exist no or little space for political pluralism and diversification other than those determined by the politically dominant general government, the federal bargain is characterized as coercive Federalism/ Federation as the case maybe.

The idea has emerged mainly in the American context as the competencies of the federal government have got predominance through various post-constitutional developments. Among others, the different grant systems and the supreme courts position can be mentioned. As John Kincaid argued, the ideal dual thinking has lost currency when the federal government invented the cooperative scheme of arrangement as a viable means to come up with a common understanding.<sup>6</sup> However, recent developments are coming into the political scene and resulted in usurpation of the cooperative arrangement to take dominance over the states. This has undoubtedly resulted in a biased relationship between the two tiers and vividly resulted in a coercive trend of relationship.

Therefore, it is wise to analyze such a leaning in a federal country which can be considered by many as on its infant or experimental stage and always suspicious for its nonfederal character.<sup>7</sup>

## 1.2. Statement of the Problem

According to the Federal Constitution, which is taken as a turning point of the previously centralized state structure (especially after the reign of Haileselassie I), while serving the role of being a *covenant* of the federal bargain, uniquely (or as some prefer to explain, confusingly) among the ethno-linguistic groups of the country; Ethiopia is a federation operating under the Republican principle.<sup>8</sup> Consequently, the ethno nationalities, through their representatives preserve all the sovereign powers. Hence, they are the *loci* of sovereign authority in this country.<sup>9</sup> The constituent units are shaped in line with such understanding and vested with powers that can be viewed by many as

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<sup>6</sup> An extensive personal discussion with John Kincaid by the author. December 6, 2010, Addis Ababa.

<sup>7</sup> A cursory look at recent reports by many International Organizations reveals such a scenario.

<sup>8</sup> See Article 1 of the Constitution of the Federal Democratic Republic of Ethiopia (*supra* 3). But note that, Federal non-centralization was formally adopted in 1995 with the adoption of the Constitution though hinted by the Transitional charter alongside the regime change.

<sup>9</sup> *Ibid*, Article 8.

overwhelming. Constitutionally speaking, the states power extends from those routine businesses of local authority to self determination, secession included.<sup>10</sup> Some also contends that, the Ethiopian states are in a much better position than any other federal experience.<sup>11</sup> In connection with this view, as the prevailing view suggests, the constitution adopts an incomplete federal structure that leaves enough constitutional space to the members of the federation back from its inception. Thus, by adopting a dual federal setup, it establishes a two- fold lawmaking scenario which is described by the federal jargon; Legislative Federalism as opposed to the German replica of Executive (Administrative) Federalism. Therefore, states are in a position to legislate and thereby to follow up execution on matters reserved under their competencies. Moreover, member states can have their own constitution which can be treated as an expression of their sovereignty. Under its unique *modus operandi* of '*Nations, Nationalities and Peoples*', the constitution also acknowledged other tangible privileges. Among others, members of the Federation may by law determine their respective working language and such a choice shall enjoy equal state recognition.<sup>12</sup> The establishment of the House of Nationalities, with all its critics (on its composition and power), is another concrete measure in the position of states under the pretext of defending ethno-national groups from *assimilationist* policy.

This House, which is the second chamber in the Ethiopian parliamentary edifice, is equipped with important powers that make it the vanguard of the constitutional rights and interests of the *contracting parties* to the union. It interpret the *covenant*, decides on the right to self determination of groups; it also exclusively determines the allocation of revenue derived from the joint federal and state tax basis and the subsidies that the federal government may grant the states.<sup>13</sup> This all underscore the central position, at least in the words of the constitution, the Ethiopian states have. Legal pluralism, in the course of the constitutional recognition of customary and religious laws and courts has been effected and sensibly went into action in the areas of family and personal matter on the way to reflect the self identity of various groups residing in the constituent

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<sup>10</sup> Ibid, Article 39.

<sup>11</sup> See for example, Assefa Fiseha, *Theory versus Practice in the Implementation of Ethiopia's Ethnic Federalism*, in David Turton (ed.), *Ethnic Federalism: The Ethiopian Experience in Comparative perspective* (Oxford: James Currey, 2006) at 131-164.

<sup>12</sup> Article 5 of the Constitution, *supra* note 4.

<sup>13</sup> Article 62 Of the FDRE constitution.

units.<sup>14</sup> Some also argued that, the Ethiopian federal understanding is characterized by a *soft center*.<sup>15</sup>

Earlier, we have noted that, under the previous regimes, political and economic supremacy was concentrated at the center. This scenario has condemned most of the country and its residents to backwardness and underdevelopment. It is by taking full account of this that the constitution made an attempt to lay emphasis on the autonomy of member states of the federation through an ethnic based federal arrangement. Political theorists see the decentralization policy as a way to foster democratization process inasmuch as it enables more people to influence the political process.<sup>16</sup>

However many doubt the commitment of the government to realize such constitutional aspirations. To many critics, Ethiopia's federal arrangement is a *de facto* one party state in which ethnic organizations are mere satellites of one vanguard political party; EPRDF (Ethiopian People's Revolutionary Democratic Front) which is a multiethnic ruling coalition.<sup>17</sup> Particularly, there are a number of *signals* that Ethiopia's government has failed to devolve real power to the Regions and bring about decentralization as opposed to the constitutional framework. There is a continued policy of power centralization which resulted in the diminishing autonomy of member states. Consequently, the federal-state relation is becoming un(federal). There are both constitutional and extra constitutional factors for this leaning. This is the main subject that this study seeks to deal with. It examines how the federal practice influenced the intergovernmental relation enunciated by the federal compact. In particular, it examines the basis of the relationship between the two orders of government and whether such underpinnings are anticipated by the constitutional framers or/and whether such arrangements are the true facets of federal political systems.

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<sup>14</sup> Ibid, Articles 34 and 78.

<sup>15</sup> Assefa Fiseha, *Federalism and Accommodation of Diversity in Ethiopia*, Nijmegen, Wolf Legal Publishers, the Netherlands (2006), Assefa Fiseha (*supra* note 11). The softness of the center connotes the fact that, there is no well established federal institution in the regional states to take care of the implementation of federal laws as some times considered as an extreme understanding of duality.

<sup>16</sup> Among others M.A.M Salih and John Markakis can be mentioned, see Salih and Markakis: *Ethnicity and the State*, Cambridge: Cambridge University Press (1987) at 8.

<sup>17</sup> See Alem Habtu, *Multiethnic Federalism in Ethiopia: A study of the secession clause in the constitution*, Oxford University Press, published by Publius/Spring 2005 at 313-335, Kidane Mengisteab, Ethiopia's Ethnic Based Federalism: 10 years after, *African Issues*, Vol. 29, No. 1-2, African Studies Association, 2001, at 20\_25.

### 1.3. Research Questions

After examining the theoretical frameworks on the idea of federalism and federations, cumulative with the unique features that Ethiopia reveals, the subsequent research questions will be raised and addressed in brief throughout the study:

Which category does the Ethiopian Federal setup, especially from the perspective of state-center relation fit in? Is it competitive? Cooperative or What?

What centralizing predispositions characterize the Ethiopian federal system? Are these tendencies constitutionally anticipated by the architect(s)? Did the political atmosphere by which the federal framework is tinted contribute to such a tendency?

What significant ramifications it enclose on the overall state-federal relations? Does the idea of “*Coercive Federalism*” fit the Ethiopian current situations though cooperative federal configuration is implicit in the covenant?

### 1.4. Justification and Significance of the study

A comprehensible understanding of the operation of federal system requires an analysis of the institutional framework and the character of intergovernmental relations which are usually dependent on the underlying politico-social and economic factors. Livingston for example judges a state as federal not by its federal constitutions or legal structures but by the way social, political and economic interests were organized. For many observers, in order to consider a specific polity as federal, its political, economic and social diversity should be expressed at all levels and at all times. Political pluralism, a relationship based on agreed terms (as between the orders of government), financial autonomy etc are the basics of healthy federations.

In consonance with this view, Intergovernmental cooperation becomes a moderate way of bridging the gap between the governments of a federation. However, in some countries, the center tends to usurp the idea of cooperation to influence the whole operation of the federation and at the end to install its policies and ideologies in the

constituent units. There are institutional and non-formal ways of doing this. Whenever the informal ways got prevalence, the federal formula may be challenged since the constitutional principles are susceptible to be ignored. Therefore it is advisable to bed in the institutional mechanisms also.

The principal reason for selecting this study area is to look into the actual state-center relationship in our federal experiment from the practical point of view. The way I look at the issue is not strictly lined with the analysis of the constitutional lexis on the concept of Intergovernmental relation (hereafter IGR) rather it is to glance from the operational reality whether the existing system of IGR reveals what federal writers enunciate as coercive federalism. The research is conducted with the full recognition of the fact that, many Ethiopian as well as foreign federal writers touched or at least attempted to tell us the operational paradigm of the Ethiopian federation. In addition, there are some efforts by some writers to look the Intergovernmental relation and allied facets. But, no one has dealt with real political practice of the Intergovernmental Relations in a comprehensive manner and sort out how the political realities exactly influence the federal practice, mainly the relationship of the levels of governments. On top of that, the attitude and actual response of both level of governments for the federal practice has not yet well researched. It is also aimed at taking the debate one step further by including new phenomenon and notions of looking the center-state relationship from the very idea of federalism. More importantly, the idea of coercive federalism is not well-known in our federal literatures as well as academic debate. Therefore I am trying to bring in the prospect of looking the center-state relationship from this perspective. An important approach of looking the federal idea in comparison with the practice of intergovernmental relationship is not as such familiar in our federal discourse and academic research. So, mine will be the pathfinder even if not the pioneer of such a technique. The other important thing is the detailed analysis of party politics and its impact on the federal practice in general and in the relations of the governments in particular. It is true that parliamentary system of government is tied with party structure and it is inevitable to look the politics without its party dynamics. Nevertheless, the exact nexus between party politics together with decision-making, organizational structure, ideological orientation and other related aspects with the federal notion and practice needs to be studied to evaluate the successes or otherwise of

the system. In this regard, even if some authors tried to raise the issue, mine is a pioneer to evaluate the Ethiopian federation from this angle. The reason is clear, the party structure and its concomitant issues is the driving force not only of the Intergovernmental relation aspect but also the Ethiopian federal discourse in general. Accordingly, a comprehensive and all-embracing research is needed in this regard. From this angle too, my effort is acceptable though not enough to boil down all the debates and thoughts here. In sum, the main theme of the study is evaluating the factors and features that lead the system of IGR to exhibit a coercive trend, if any. In fact, it is not the prime objective of the study to deal with the concept and variables of IGR in Ethiopia, rather, it specifically seeks to examine the politico-legal or socioeconomic factors that are inherent and practiced in the IGR process.

As I have mentioned above, the practice will tell us how the federal idea (specifically in determining the relationship between the two levels) is put into practice. The bottom line is; a federal government must be a device by which federal qualities of a society are articulated and protected. The underlying assumption of this thesis is that examining the manner and basics of the relationship between the federal bargainers will undeniably helps us to take a relatively more objective stance as we assess the success or failure of Ethiopia's federalism. After analyzing the realities of the federal-state relation now operating in Ethiopia, the research will strive to provide some suggestions that must be considered by all the concerned especially by the political actors if the federal structure is meant to give the required political pluralism and democracy.

### **1.5. Methodology and Sources of Information**

Predictably, the analysis of the Ethiopian federal system relies on three different kinds of sources: qualitative interviews, documents and academic literature. The information's used in this thesis therefore are gathered from books, laws, cases and periodicals. Moreover, official reports of the council of Representatives, other international organizations and personal observation are also taken as a source of information. To substantiate the practical trends of the federal set up, interviews with concerned groups has also been conducted. Legal as well as socio-legal method will be applied in analyzing the information collected.

## 2. Federalism and Federations, General

### Introduction

This chapter dwells on the examination of different theoretical perspectives on federalism and federal systems. It has tried to incorporate both a brief exploration of federal theory in general and some more specific aspects of the issue under consideration. In the first part, I have attempted to provide definitions on basic concepts that are related in one way or another to federalism and federations.

In this connection, it has to be noted that, federalism as a political idea and federations as institutional expressions is among the rapidly accepted political trend in the last two centuries.<sup>18</sup> Besides serving as a panacea of maintaining unity under a single strong central government, contemporary discourse reveals the fact that, federalism is more than a form of government but it is also a solution to conflict ridden societies.

To elucidate this trend, federalists glimpse the issue from different theoretical perspectives. Among others, putting a clear borderline between the concept of federalism and federation is common. The reason seems clear; the distinction will guide the purpose and prospect of federal option. There are perceptible and concrete stimuli for such an undertaking. The way the country opted for this political decision will shape the definition thereof. There are noticeable distinctions between these ideals with imperative ramifications that one need to take up. In this line of understanding, by this section, I have attempted to look the theoretical underpinning of the issue that I believe will have a lot to contribute in future analysis of the concept with other sensible variables.

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<sup>18</sup> When the twentieth century began, there were nine formally constituted federal states in the world: Argentina, Australia, Brazil, Canada, Germany, Mexico, Switzerland, The United States of America, and Venezuela. As the twentieth century comes to an end, this number has grown to twenty plus, with Austria, Belgium, Comoros, India, Ethiopia, Malaysia, Nigeria, Pakistan, Russia, Tanzania, the United Arab Emirates and South Africa added to the club. Since, these federations include some of the largest and most populous countries in the world, this means that more than half of the world's space and almost half of its population are governed by federalism.

As a caution, my readers have to be systematic in understanding my attempt to provide for the conceptual frameworks and related theoretical dilemmas which are not yet fully addressed even by notable federalist scholars. Mine is a petite effort to give a brief clue on these points, not to raise and discuss in detail all these complexities. Hopefully, they will be addressed in meticulously designed researches that give emphasis on the theoretical and ideological aspects of federal structure. Undeniably, the addressee in this particular work is Ethiopia. So, the discussion under consideration is projected to give and also to take a brief account of the Ethiopian way at least impliedly.

The subsequent section is deliberately designed to look at the governmental structure of the world with the evolving federalism ideal and the historical responses therein before the system attains its current understanding. Full evaluation of the long way that a federal structure has gone through remains unfeasible task in the academics. But efforts are made to create a visible appraisal of this 17<sup>th</sup> century phenomenon. Without losing sight of such unattainable endeavor, my vision in this section is only to generate a bird's eye view on the mind of my readers concerning the historical aspects of federalism and federations along with world history.

Federalism as a political system is not something that can be randomly introduced to rectify internal political unrests or to rally round state building attempts. There are factors that need serious considerations before a country or a realm opted for federal system. In some cases, there are *naturally federal* polities while on the other spectrum there are nations that best suit unitary arrangements leads us to ascertain factors that have a significant portion to play in making a state either federally suitable or not.

Keeping this line, I have taken a brief account of these factors that on one or another way determines the state's ability to federate together with its concomitant agendas. Some of these features antedate the coming into picture of the state itself which I identified as *naturally federal* or these factors may represent an artificial creation of the political elites that supervise the nation building process of the particular polity. In addition, some of these realities may carve up similarities with other countries features while most of them are atypical to some polities. As per the dictates of notorious federalism writers, I have tried to look into some of the facets that will probably justify federal option.

Hence, this chapter can be viewed as a holistic account of preliminary issues of the system in general and their ramifications in the changing world of politics as well as the concept itself. To many observers, the most difficult task in studying federalism and federal systems is the quest by many to find out one size fits all scenarios which is far from being real. Every system explains its own exceptionalities and peculiar tenets rather than replicate the features of others. This needs solemn thought of federal writers. Even, internal and external politics, Economy, social realities etc can shape and reshape the federal bargain. The main reason behind dealing with the theoretical framework of federalism and federations while studying one aspect of the Ethiopian federalism may be useless or irrelevant as some may think. However, this chapter is designed to shed lights on the major issues and principles of federalism and federal systems that will ultimately contribute its own in analyzing the Intergovernmental relation aspect of the Ethiopian federation. As pointed out in the introductory chapter, the study will attempt to compare the federal practice with the basic tenets of the concept.

## 2.1. Federalism and Federations: Conceptual Frameworks

In federal studies, it has become common to distinguish between federation and federalism as two separate concepts, each describing different aspects of federal theory.<sup>19</sup> To this end, federalism as opposed to federation is considered to be an ideology or a value concept including philosophical perspectives promoting federal solution.<sup>20</sup> Here the emphasis is to consider federalism as organizing principle advocates a 'multi-tiered' government combining elements of 'shared rule' through common institutions for some purposes and the regional 'self rule' for constituent units for some other purposes, thereby accommodating unity and diversity within a larger political union.<sup>21</sup> On the other hand, federation is an empirical reality; a specific type of institutional arrangement which refers to essentially an institution defined by federalism. As King

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<sup>19</sup> Lovise Aalen, *Ethnic Federalism in a Dominant Party State: The Ethiopian Experience 1991 2000*, Chr. Michelsen Institute Development Studies and Human Rights (Report 2000) at 12. Treating federalism as a concept means that when we refer to the classical writers, such as K. C. Wheare and William Riker, we shall employ the term "federation" where they often used "federalism."

<sup>20</sup> Michael Burgess, *Federalism and Federation: a reappraisal* in Burgess, M. and Gagnon, A. (ed.) *Comparative federalism and federation*. New York: Harvester Wheatsheaf (1993). Preston King, *federalism and federation*, London: Croom Helm (1982). Ronald Watts, federalism, federal systems and federations, *Annual Review of political Science* (1998).

<sup>21</sup> Raoul Blindenbacher and Ronald Watts, *Federalism in a changing world: A conceptual framework* in Raoul Blindenbacher and Arnold Koller (eds.), *Federalism in a changing World: Learning from each other* (Montreal and Kingston: McGill Queens University press) at 9. Assefa Fiseha, *Federalism and accommodation of diversity in Ethiopia*, *supra* note 15 at 102.

noted, federation is a descriptive concept referring to the actual system of government.<sup>22</sup> Note that, this distinction not still win the hearts and minds of all writers on the subject, thus it is not consensual.

In a purely legalistic definition, the essence of federation is that, the territorially based regional units<sup>23</sup> are represented at the central level of government not by the will of the national government but rather through a supreme constitution which is presumably beyond the reach of both levels. But still, the bargain is always guided by the dictates and principles of federalism. The institutional expression is backed by ideological rules and philosophical perspectives of division of autonomy between the central and regional forces. Therefore, as Smith rightly articulated, federalism is more than an ideology in the ordinary sense of the term; it is more of a “pragmatic orientation”.<sup>24</sup> It could be a perspective guide for action recommending and promoting the support for federation.

Commonly, as a matter of understanding and ordinary aphorism, federalism is a perspective guide to the values of “*unity in diversity*” or “*shared rule and self rule*” giving regional interests some authority of their own inside the frame of a wider unity.<sup>25</sup> The term has been seen to be applied to many successful combinations of unity with diversity, pluralism and cooperation within and among nations. For this reason, federalism is defined as the division of powers of government between national and sub-national levels, with each level possessing and exercising important powers.<sup>26</sup> One reason that I like to use the term “federalism” to describe a governmental structure with (at least) two different, significant levels of governments-one national unit and several sub-national units-is to emphasize that federalism is compatible with many different kinds of values and substantive rules. It even is compatible with many different kinds of governmental structures.

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<sup>22</sup> King, *Supra* note 20 at 74.

<sup>23</sup> The name of the regional units varies enormously all the way through the federations. But typically, province, state, canton, länder, republic and autonomous units are amongst the commonly established labels.

<sup>24</sup> Graham Smith, *Federation, de federation and re federation: from the Soviet Union to Russian statehood* in Smith ed. *Federalism the Multiethnic challenge*. London New York: Longman (1995) at 34.

<sup>25</sup> See also Daniel J. Elazar: *Exploring Federalism*, Tuscaloosa, AL: University of Alabama Press, (1987) at 12.

<sup>26</sup> Martha A Field' The structures of federalism, *Emory University Journal of International law and policy* Volume 8: 445: 1998 at 121.

Thus, the probable consequence of a federal choice, by and large, is to realize the division of legislative, executive and judicial powers among the central and regional governments. In principle, matters that have a direct bearing and importance upon the local people should be left to the units, whereas those matters with a prevailing national application have to be reserved for the national government.<sup>27</sup> By allowing constitutional expression for such a division, it is submitted that, both levels must act within their boundary and the viability of one level of government should not depend on the other.<sup>28</sup>

In strict terms however, federalism and devolution of power or decentralization of competencies are different, even there is no direct and crucial association between the two.<sup>29</sup> This is basically due to the reason that federalism is always constitutionally entrenched while decentralization, in most cases is the mercy of a strong central (unitary) government. From this, the federal political bargain should be based on a pact or a *covenant*, where each unit freely and voluntarily surrenders some degree of autonomy to the central government in exchange for some compensating advantage.<sup>30</sup>

Not very far from the accepted wisdom of the idea of federalism, notable scholars enlightens it from the doctrine of balance.<sup>31</sup> This is an attempt to describe the federal idea as a compromise between integration and diversification, decentralization and centralization. The late Elazar delineates federalism as “a political remedy for political diseases” designed to prevent tyranny without preventing governance.<sup>32</sup>

Besides, federalism can possibly be articulated as a new version of the canon of separation of power thereby preventing the concentration of authority. Constitutional

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<sup>27</sup> Solomon Negussie, *Fiscal Federalism in the Ethiopian Ethnic-based Federal system*, Nijmegen, Wolf Legal Publishers, the Netherlands (2006) at 119 -148.

<sup>28</sup> In practice however, such strict dual existence seems not appealing and some form of coordination is apt. I will come back to such issue of balance of division of power in the next sections.

<sup>29</sup> King, *supra* note 20.

<sup>30</sup> However, it should be noted that, such thoughts of considering federal explanation is a purely American perception. It explains what is identified as a *coming together* federation or a federation created in the course of aggregation (integration). As the subsequent discussions divulges, there are federations evolved through *devolution of power* from a formerly unitary center to a newly created regions. For example in Ethiopia, it was the central government who surrender some of its authorities to the regions.

<sup>31</sup> Smith, *supra* note 24.

<sup>32</sup> Conversely, prudence must be taken so as to treat federalism as a panacea for all political diseases. There are experiences by which federalism has failed to give a solution.

lawyers have started to treat federal solution as a fourth branch of the government. For those who advocates for liberal democracy, federalism is presented as a way of preventing tyranny by creating a more sophisticated type of representation, both nationwide and regionally based.<sup>33</sup>

Recent developments of the concept also reveals that, federalism becomes an instrument to regulate conflicts emerged from ethnicity or other identity differentiations. It is conceived as one better instrument to mute conflicts among groups separated by different cleavages *i.e.* federalism has become an instrument to accommodate diversity in heterogeneous society.<sup>34</sup> This paradigm shift gives rise to a new understanding of federalism, federalism is not only a division of autonomy between the levels of government but also takes in to consideration forces of ethnic, religious or linguistic diversity in multiethnic, multicultural or multilingual states.<sup>35</sup>

Twentieth century political theorists boldly argued that, federalism, together with electoral reform, is the device to change the institutional format in which conflicts occur, 'altering the structure of incentives for political actors without making any promises about ethnic outcomes'.<sup>36</sup> In Nigeria, Ethiopia, India, Sudan (very recently), Sri Lanka, etc, federalism is seen as a stabilizing measure because it meets the claims for autonomy by concession instead of repression.<sup>37</sup> It is important to consider however that, federalism has not yet attained the status of being a remedy for all conflicts based on differences.<sup>38</sup>

Finally, there are also other group of academics who have tried to describe federalism as the most promising way to accommodate incongruence of national identity and

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<sup>33</sup> Aalen, *supra* note 19 at 13.

<sup>34</sup> Donald Horowitz, *Ethnic conflict management for policy makers* in Monteville, Joseph V. (ed.) *Conflict and peacemaking in multiethnic states*. New York: Lexington Books (1997).

<sup>35</sup> The concept in its original form (in America especially) was not perceived as regulatory tool of diversity.

<sup>36</sup> Horowitz *Supra* note 34 at 121.

<sup>37</sup> See also Aalen, *Supra* note 19 at 14.

<sup>38</sup> O'Leary and Mc Garry stated that, the very huge number of minorities who are not satisfied by the federal option in several polities are not satisfied by this option and insisted for secession which indirectly shows the insufficiency of federal elucidation alone.

colonial territory in the postcolonial world.<sup>39</sup> Nevertheless, only few of these postcolonial federations endured as stable federal systems, many more ended in failure which shows that federalism is not a one size fits all remedy.<sup>40</sup>

## 2.2. «From the panacea of Nation-state(s) to Federation(s)»: Historical Overview of Federalism and Federations

Over the past several years, an increasing number of scholars and statesmen have taken note of the fact that the world as a whole is in the midst of a paradigm shift from a world of states, modeled after the ideal of nation-state emerged at the beginning of the modern epoch in the seventieth century, to a world of diminished state sovereignty and increased interstate linkages of a constitutionally accredited federal character.<sup>41</sup> Through this paradigm shift, it is not that states are disappearing, it is that the system is acquiring a new dimension, one that began as a supplement and is now coming to overlay (and, at least in some respects, supersede) the system that prevailed throughout the modern epoch. This overlay is a network of agreements that is not only militarily and economically binding for the *de facto* reasons but is also becoming constitutionally binding, *de jure*.<sup>42</sup>

According to Elazar, this overlay increasingly restricts what was called state sovereignty and forces states into various combinations of self-rule and shared-rule to enable them to survive at all.<sup>43</sup> That means, federalism, understood in the broadest political sense as a genus involving combinations of self-rule and shared rule rather than as the one species of federalism accepted in modern times, namely, federation.

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<sup>39</sup> Proudhon, Pierre Joseph, 1863 *Du Principe Federatif*. J.-L. Puech and Th. Ruysen, (eds.) 1959, Paris: M. Riviere (Translated version is available online [www.joseph/federalcom//th](http://www.joseph/federalcom//th) accessed on February 2010).

<sup>40</sup> Among others, United Arab States and the Federations of the West Indies have broken apart while Libya and Indonesia were transformed into Unitarism and often autocratic systems of governance.

<sup>41</sup> Here, the term "Federal" is used in its larger historical sense, not simply to describe modern federation but all the various federal arrangements including federations, confederations and other confederal arrangements, federacies, associated states, special joint authorities with constitutional standing and others. See also Ronald Watts, *Comparing Federal Systems*, 2<sup>nd</sup> ed., Montreal, McGill-Queen's University press, (1999).

<sup>42</sup> Daniel J. Elazar, From Statism To Federalism: A paradigm shift, *Publius*, Vol. 25, No. 2, Oxford University Press, (1995), at 5-18

<sup>43</sup> *Ibid.*

The post-modern legitimization of ethnic claims for self rule and self expression is also another underpinning in the shift. Consequently, all states are forced to recognize their interdependence over their claim for self sufficiency, heterogeneity over homogeneity and the fact that their centers, if they ever existed, are no longer single centers but parts of a multi-centered network that is increasingly non-centralized.

Federal advocates also justified the shift from political, economic and other social dimensions; stretching from the need to strength security to the preservation of economic interdependence (free trade possibilities). But, one thing seems clear, in the world of interdependence, with the introduction of technological machineries short of boundary (such as Missiles' and Atomic Energy); absolute sovereignty of states is no longer possible. Thus, states started to negotiate for confederation and later federation *i.e.* the move is not only from nation states ideal to federalism but also from confederal arrangements to federal organizations.

In a purely historical scrutiny, from the Western contemplation, Johannes Althusius is often regarded as the father of modern federalist idea.<sup>44</sup> He argued in *Politica Methodice Digesta* for autonomy of his city Emden, both against its Lutheran provincial Lord and against the Catholic Emperor. Althusius was strongly influenced by French Huguenots and Calvinism. As a permanent minority in several states, Calvinists developed a doctrine of resistance as the right and duty of "natural leaders" to resist tyranny. Orthodox Calvinists insisted on sovereignty in the social circles subordinate only to God's laws.<sup>45</sup>

The French Protestant Huguenots developed a theory of legitimacy further, presented by an author with the telling pseudonym "*Junius Brutus*" in *Vindiciae Contra Tyrannos*.<sup>46</sup> The people regarded as a corporate body in territorial hierarchical communities, has a God-granted right to resist rulers without rightful claim.<sup>47</sup> Rejecting theocracy, Althusius developed a non-sectarian, non-religious contractualist political theory of

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<sup>44</sup> Althusius, Johannes, 1603, *Politica Methodice Digesta*, Frederick S. Carney, translated by; Daniel J. Elazar, introduction, (1995), Indianapolis: Liberty Press. See also Stanford Encyclopedia of Philosophy, [Metaphysics Research Lab, CSLI, Stanford University](#), Oct , 2006, Alain de Benoist, *The First Federalist: Johannes Althusius*, *Krisis* 22 (March 1999), at 2-34 Translated by Julia Kostova.

<sup>45</sup> *Ibid.*

<sup>46</sup> *Ibid.*

<sup>47</sup> *Ibid.*

federations that prohibited state intervention even for purposes of promoting the right faith. Accordingly, accommodation of dissent and diversity prevailed over any interest in subordinating political powers to religion or vice versa. Borrowing a term originally used for the alliance between God and men, Althusius holds that associations enter into secular agreements — *pactum foederis* — to live together in mutual benevolence.<sup>48</sup>

In *The Spirit of Laws*, Baron de Montesquieu argued for confederal arrangements to ensure the ideal scale of government required for political liberty understood as non-domination — that is, security against abuse of power.<sup>49</sup> A ‘confederate republic’ with separation of powers secures the requisite homogeneity, identification and self-sacrifice within sufficiently small sub-units where the common good subdues private interests thus preventing tyranny and ‘internal imperfection’. The sub-units pool powers sufficient to secure external security, reserving the right to secede.<sup>50</sup> Sub-units also serve as checks on each other, since other sub-units may intervene to quell insurrection and power abuse in one sub-unit.

Several 18<sup>th</sup> century peace plans for Europe recommended confederal arrangements. For instance, the 1713 Peace Plan of *Abbé Charles de Saint-Pierre* would allow intervention in sub-units to quell rebellion and wars on non-members to force them to join an established confederation, and required unanimity for changes to the agreement.<sup>51</sup> Jean-Jacques Rousseau presented and critiqued Saint-Pierre’s proposal, listing several conditions including that all major power must be member, that the joint legislation must be binding, that the joint forces must be stronger than any single state, and that secession must be illegal. Again, unanimity was required for changes to the agreement.<sup>52</sup>

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<sup>48</sup> Ibid.

<sup>49</sup> Montesquieu Baron de, *The Spirit of Laws*, (2002), Prometheus Books. [[Text available online at www.despritlaws//montesque27.fel](http://www.despritlaws//montesque27.fel) accessed on February 2010].

<sup>50</sup> Ibid.

<sup>51</sup> Note that, the historical scrutinies consider with the move either from the independent states to federation (confederation) perspective and quite a few also from the devolutionary trend of the move.

<sup>52</sup> Rousseau, Jean-Jacques, *A Lasting Peace Through the Federation of Europe*. C. E. Vaughan, transl., (1917), London: Constable. This understanding is also accepted as the most important precondition of federal bargain.

Immanuel Kant defended a confederation for peace in *On Perpetual Peace*. His Second Definite Article of a Perpetual Peace holds that the right of Nations shall be based on a pacific federation among Free states rather than a peace treaty or an international state:

This federation does not aim to acquire any power like that of a state, but merely to preserve and secure the freedom of each state in itself, along with that of the other confederated states, although this does not mean that they need to submit to public laws and to a coercive power which enforces them, as do men in a state of nature.<sup>53</sup>

John Stuart Mill, in chapter 17 of *Considerations on Representative Government*, recommended federations among "portions of mankind" not disposed to live under a common government; to prevent wars among themselves and protect against aggression.<sup>54</sup> Last but not least, Pierre-Joseph Proudhon, in *Du Principe fédératif* defended federalism as the best way to retain individual liberty within 'natural' communities such as families and guilds who enter pacts among themselves for necessary and specific purposes. The state is only one of several non-sovereign agents in charge of coordinating, without final authority.<sup>55</sup>

In country specific terms, federalism in its modern understanding backs from the American constitution. The Articles of Confederation of 1781 among the 13 American states fighting British rule is possibly considered as a turning point towards modern conception of federalism. What has latter become known as the U.S. Constitutional Convention met May 25-September 17 1787 was explicitly restricted to revise the Articles, but ended up recommending more fundamental changes.

The proposed constitution prompted widespread debate arguments addressing the benefits and risks of federalism versus confederal arrangements, leading eventually to the Constitution taking effect in 1789. During the negotiations among the Federalist and the anti federalists camp, The "Anti-federalists" were fearful of undue centralization. They worried that the powers of central authorities were not sufficiently

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<sup>53</sup> Kant, Immanuel, 1784, "An Answer to the Question: 'What Is Enlightenment?'" In Hans Reiss, ed., 1970, *Kant's Political Writings*, 54-60. Cambridge: Cambridge University Press.

<sup>54</sup> Mill, John Stuart, 1861, *Considerations on Representative Government*. 1958, New York: Liberal Arts Press.

<sup>55</sup> Proudhon, *supra* note 39.

constrained e.g. by a bill of rights, which was eventually ratified in 1791. They also feared that the center might gradually usurp the sub-units' powers. In what has become known as *The Federalist Papers*, James Madison, Alexander Hamilton and John Jay argued vigorously for the suggested model of interlocking federal arrangements.<sup>56</sup> They have argued in favor of setting (constitutionally) a strong central government that will keep the people of America under a single union by justifying it from different connotations.

In general, it is just after the Americans bright starting that the 20<sup>th</sup> century witnessed a rapid acceptance of federalist idea and federal political arrangement. Even those older federations like Switzerland, though the motive was different, have taken lesson from the American understanding in inventing the federal solution.

Countries of the world are not expected to share a single form of federal arrangement. Rather, in answering their own peculiar characteristic, they tend to adopt a structure that best fits them. As Watts noted, there is no single ideal or pure form of federation.<sup>57</sup> From the very reason of adopting federal accord to the distribution of power between the levels of government and including the degree of political centralization or non centralization is utterly different when we go through federations. The next section deals with some of these grounds of divergence.

### 2.3. Categories of Federal Arrangements

Using different facets, federations can be seen from different angles and all through, there are some major distinctive institutional and operational features of the system. In the real world however, these attempted classifications combine in an almost infinite number of federal variations or types.<sup>58</sup> For the purpose of this study, I have focused on the foremost underlining reasons of departures to consider the nature of the federal

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<sup>56</sup> Federalist papers No. 10, 45, 51, 62, see *The Federalist Papers*, A Penn State Electronic Classics Series publications.

<sup>57</sup> R. Watts, *Supra* note 41.

<sup>58</sup> One particularly meticulous scholar has put together a list of 460 types of federalism mentioned in the literature, ranging from active, amplified or anti-vacuum federalism, via bamboo fence, consultative or minimal federalism, to paternalist, respectable, strict and finally world federalism. See Thomas O. Hueglin, *Conflict Resolution in an Emerging Multilateral world*, Curtin University,(1999) Western Australia.

organizations in various jurisdictions which in due course signify where the Ethiopian set up fit in. In line with this view, the rationale leading to federalization, the functional division of powers between the governments and the style of intergovernmental policymaking provides the basis for my classification though there are different variations between these.

The rationale for federalization of a political system may broadly rest on either cultural or territorial justifications. Since federal states in most cases are the result of compromise among competing elites, the compromise is usually about different cultural interests such as language, religion, or generally distinct cultural histories. In these cases of cultural federalism, the motivation for federalization is the desire to build a strong union without giving up regional cultural autonomies.<sup>59</sup> Switzerland, for instance, is divided into seventeen German, four French, one Italian and four plural-lingual cantons. In Canada, the dividing line runs between nine Anglophone provinces and the Francophone province of Quebec. The Belgian constitution recognizes four linguistic regions; French, Dutch, German, and the bilingual capital region of Brussels.<sup>60</sup> The end behind **cultural federalism** is always the establishment and upholding of cultural peace. In this category, one may also look into the motives and precursors of the Ethiopian federal political bargain.

In some other federations, cultural difference have ceased to be the driving force of compromise and it may be not easy to find out a single cohesion factor that bind together the portion of the community in a state. Instead, such federations have simply retained a territorial division of government. These are cases of **territorial federalism**. In Germany, for instance, traditional cultural cleavages between the protestant north and catholic south are no longer relevant political factors.<sup>61</sup> It is really difficult to find out cultural or ethnical differences in the fifty states of the United States of America—they are culturally diverse, to be sure, but at least in comparative perspective, this diversity is not a prime factor in American federalism. In Australian federation, the

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<sup>59</sup> Ibid.

<sup>60</sup> Wilfried Swenden, *Belgian Federalism Basic Institutional Features and Potential as a Model for the European Union*, the Royal Institute of International Affairs, Robinson College, Cambridge UK, (April 2003).

<sup>61</sup> Wolfram Zunzer, *Key Features of the German Federal System*, Speech given on the occasion of the Sri Lanka Peace Conference, Munich 29.3.03.

rationale for the preservation of territorial federalism is both democratic and pragmatic.<sup>62</sup> In such federal organizations, the pioneers insisted that, the vertical separation of powers brings government closer to the people and they have accepted federalism as a fact of political life. The goal is more of Administrative expediency and effectiveness.

The functional division of powers between the levels of the government in a federation as well furnishes an additional critical distinction between federations. Following the institutional path of dividing powers, most federations construct a division of different legislative tasks.<sup>63</sup> As I have tried to mention elsewhere, the responsibilities of the federal government will typically include such national concerns as defense, monetary, trade and commerce and foreign policies. In these systems of **legislative federalism**, the legislative functions are divided among different levels of government.<sup>64</sup> In their respective domains, each level of governments is responsible for policymaking in its entirety; from policy initiatives and formulation to legislation, implementation and administrative execution. As a result, citizens will not deal with two (or three in instances of local government jurisdiction) separate wisps of public administration.

In the typical German model of **Administrative (Executive) federalism**, at least for the citizens, there is only one stand of public administration. Nearly all administrative tasks in the federation are carried out by the regional governments, or *Länder*. As in more orthodox federations, the *Länder* are autonomous in the administration of their own exclusive legislative power. However, the regional governments of such federation are also responsible for applying most of federally designed policies based on exclusively federal standards even though they have the chance to partake on the deliberations. Such commitment is dependent on how a specific federal law has been stipulated.<sup>65</sup> Sometimes they will do autonomously in their own right but in most cases on behalf of

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<sup>62</sup> *How and Why Australia Became a Federation* (Available at <http://onlineessays.com/essays/history/his104.php>)

<sup>63</sup> Thomas O. Hueglin, *supra* note 58.

<sup>64</sup> Some deems such a strict dissection of legislative autonomy as a basic expression of duality principle in which both levels legislate and as a corollary execute policies fall under their competencies. See Ronald Watts, *New Federations Experience in the commonwealth*, Oxford, (1966), at 177.

<sup>65</sup> For more analysis see Articles 83 and 84 of the Basic Law of Germany and see also Philip Blair, *Federalism, Legalism, and Political Reality: The Record of the Federal Constitutional Court, German Federalism Today* (Edited by Charlie Jeffry and Peter Savigear) New York: St. Martin's Press (1991) at 63.

the center.<sup>66</sup>In either case they possess considerable discretion for implementation and execution.<sup>67</sup>

In addition to Germany, Switzerland has also adopted this unique system of Administrative federalism by which administrative responsibility has not coincided with legislative authority; rather administration for many areas of federal legislative authority is constitutionally assigned to the governments of the units.<sup>68</sup>

**Cooperative versus Competitive Policymaking Approaches:**—The way in which federal and regional governments deal with one another can be a point of inquiry into the institutional set-up and performance of federal systems. There are cooperative regimes by which many policy initiatives in a complex and interdependent world is believed to be successful through cooperation. On the other hand, each government wants to be successful and will tend to use their powers to compete against one another on such matters and policy preferences seen as enhancing their respective electoral chances. Even if the borderlines usually are more blurred, there is cooperation and competition in all federations.<sup>69</sup>

In some federations such as Germany, Switzerland or the United States, there is a basic national vision both about the general direction of politics and policy, and about underlying processes of achieving it, which is shared by both levels of government. For instance, the rigidity of basic notions in the constitution, together with the rules of the game is accepted by all, at least in principle. A cooperative predisposition is at least the general norm of political conduct.

In other federal systems, such as Canada, Australia and Belgium, there is considerably less common ground. Fundamental differences exist with regard to political culture, mode of regional representation, division and allocation of powers, and basic questions

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<sup>66</sup> Ibid.

<sup>67</sup> To effectively implement federally designed laws, the *Länder* governments are empowered to pass specific laws of implementation and regulation or in areas of concurrent jurisdiction, they can enact supplementary provisions.

<sup>68</sup> Notable federal authors tend also to consider India as Semi-Executive federalism (R. Watts, *Comparing Federal Systems supra* note 41 at 37).

<sup>69</sup> That is why Watts, Adamovich and Hosp stress the importance of the supplementary coexistence of competitive and cooperative federalism.

of market regulation and welfare.<sup>70</sup> Therefore, in such federations, the competitive nature of federalism will control the whole scene and cannot fade away to be consumed by cooperative aspects.<sup>71</sup>

At times, there are conflicting visions among federal and regional governments that will result in periodic or at least occasional constitutional crises between centralizing and decentralizing forces. Often and particularly so in parliamentary federation; these differences are enhanced by party competition. If different majorities govern in lower and upper chambers of a federal legislature with coequal powers, one may try to obstruct the political will of the other.<sup>72</sup> Policy cooperation and intergovernmental relations can also be strained further when different party configurations tend to prevail at the different levels of government.<sup>73</sup>

With regard to horizontal competition; competition between regional forces, it is possible to envisage the same scenario as existed with the center. Constituent units may vie one another for corporate investment by offering infrastructural and tax incentives, regulating union activities and so on, or by allowing local governments under their supervision to pursue such strategies. They may also seek policy advantages for extraction and marketing of their natural resources.

In sum, one thing has to be clear; the interdependence between the levels of government hinges on the manner in which the federation is formed, the prevailing socio-economic conditions and the political history of the country in question.<sup>74</sup> Unsurprisingly it is expected and apparent that, in exclusively federal or state matters, envisaging competition be idiocy and almost impractical. It is only on those perplexing areas or concurrent (and including framework) competencies that competition between levels of government is lucid.

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<sup>70</sup> Thomas O. Hueglin, *Supra* note 58.

<sup>71</sup> Solomon Negussie, *Supra* note 27 at 41.

<sup>72</sup> Instances of such competitive partisanship have occurred in both Germany and Australia.

<sup>73</sup> In Canada for instance, the electorate in almost every province shows distinct party preferences, and some parties only compete in provincial elections. In Belgium, even some of the major national parties have split up in regional-linguistic organizations.

<sup>74</sup> Solomon Negussie, *Supra* note 27.

In addition to these criteria of taxonomy, federal authors also suggest federations to be seen from the process of origination. In this connection, federations may be classified into **coming together** or federation by aggregation and **holding together** or federation by devolution.<sup>75</sup> And then there is what Stepan calls "**putting-together**" federalism, a heavily coercive effort by a nondemocratic centralizing power to put together a multinational state, some of the components of which had previously been independent states. Note that, such a division is also rooted from the justifications and reasons of adopting a federal system.<sup>76</sup>

Besides, federalist suggests that, federal processes may be territorial or consociational or both.<sup>77</sup> Even if there are non-territorial constituent units recognized in the constitution of some classic federations like Belgium, the constitutional distribution of power among territorial units is by far the most common pattern among federations. This latter thinking implies that, the constitution assumes that all groups can be linked to a particular territory and that the exercise of rights (whether ethnic or group-specific) can happen within and through this territory.<sup>78</sup>

In many federations the constitutional powers are divided equally among the main category of constituent units.<sup>79</sup> It is noteworthy however that in some federations there is some asymmetry in the relationship of the main constituent units.<sup>80</sup> In some others, the main constituent units are classified into two or more categories with "territories" distinguished from the major constituent units by having less autonomy.<sup>81</sup>

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<sup>75</sup> Alfred Stepan, *Federalism and Democracy: Beyond the U.S. Model*, *Journal of Democracy* Vol. 10, No. 4 (1999) at 19-34. Coming-together federations emerge when two or more than two existing sovereign independent states agree to create a federal system for governmental efficiency, economic development, and security purposes. On the other hand, in a holding-together federation, an already existing large polity is subdivided into various sub-units that enjoy sovereignty over certain policy areas. Holding together federalism is an approach used to cope with ethnic divisions, or it is a strategy used to save a disintegrating unitary state.

<sup>76</sup> Through Devolutionary federation, liberty and the power of elected officials could be reconciled within a federal structure that would constrain the power of the government by balancing it in the institutional separation of powers of branches of government and the territorial division of power between the center and the states. While federations through aggregation will have the opportunity to create a larger state and enjoy greater access to economic and military resources.

<sup>77</sup> Watts, *Supra* note 41.

<sup>78</sup> But, it will appear impossible to territorialize the habitat of a particular group or, to put differently, to realize an overlap between ethnic (or any differentiation of a group) and territorial boarder especially in multiethnic federations like Ethiopia.

<sup>79</sup> *Ibid.*

<sup>80</sup> Canada, Malaysia, India, Spain and Russia are among the classic examples of this sort.

<sup>81</sup> Watts, *supra* note 41.

The degree of centralization or decentralization, financial arrangements, the character of federal legislative and executive institutions, institutional arrangements to facilitate intergovernmental relations, judicial arrangements for umpiring internal conflicts, procedures for constitutional amendment and the degree of Asymmetry can also serve as further grounds of taxonomy if we consider the issue critically.

In recent years, federalism is considered as one of those good echo words that evoke a positive response toward many concepts as democracy, progress, constitution, etc. Such popularity is not without reasons, there are some attributes by which this political process reveals and becomes the basic tenets of the system. The following section is devoted to raise and discuss some of these features very briefly and with the view of evaluating the Ethiopian scenario on these values at the end.

#### **2.4. Basic features of Federations**

There has been some disagreement over which governments in the world are to be considered federations and which are not. At one end of the spectrum, there have been "quasi-federations" in which power lies with the national government, while the constituent governments are subordinate. At the other end, there have been confederacies (or confederations) in which the constituent governments have most of the power, and the confederate government is weak and subordinate. Are all of these to be considered federations?

Ronald Watts, having reviewed the works of K.C Wheare, Preston King, Ivo Duchacek, and Daniel Elazar, has summarized the characteristics of federations with a number of propositions. Like the other writers, he has defined a federation in largely American terms.<sup>82</sup> But generally, from whatsoever perspective we are apprising the issue, the term 'federation' would refer to the specific form of federal political system first invented by the founding fathers of the United States at Philadelphia in 1787, a form whose characteristics involve at least the following:

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<sup>82</sup> Ronald Watts, *"Contemporary Views on Federalism"* (Paper presented at the Centre for Constitutional Analysis, Republic of South Africa, 2-6 August 1993), at 11.

- (1). Two orders (not levels) of government;
- (2). A formal distribution of legislative and executive authority with some autonomy for each order;
- (3). A written constitution; A constitution not unilaterally amendable and requiring the consent of all or a majority of the constituent units;
- (4). Provision for the representation of regional views within the national policy-making institutions;
- (5). Revenue resources allocated between the two orders of government;
- (6). An umpire (courts or referenda) to rule on disputes between governments; and
- (7). Processes to facilitate intergovernmental relations.

Therefore, a political setup which is described as a federation should demonstrate the above mentioned features. In essence, it is the constitutionally guaranteed autonomy of both the federal and state governments and their ability to act directly upon the citizens that distinguishes federations from other types of political configurations.<sup>83</sup>

Basically in a federation, the political authority is territorially divided between two autonomous sets of separate jurisdictions, one national and other provincial, which both operate directly from the people. As well, the existence of a single, indivisible but yet composite federal nation is simultaneously asserted.

In this regard K.C Wheare made an important observation that for the existence of a federal principle, it is important that the power of governance is divided between coordinate and independent authorities.<sup>84</sup> Further, an examination of the U.S. Constitution shows that, the principle of organization upon which it is based, (the federal principle) is that, the field of government is divided between a general authority and regional authorities which are not subordinate to one another. The basic notion of a

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<sup>83</sup> However, it is also argued that for the state in order to be called as 'federal', it is not necessary that the Constitution should adopt the federal principle completely. It is enough if the federal principle is the predominant principle in the Constitution.

<sup>84</sup> Wheare defined a federation as a system in which the relationship between the national and constituent governments, in law and in practice, is not subordinate but rather coordinate. Both orders of government are governed by the Constitution, which is supreme. It is also important to note that this coordinate principle of power division is puzzling as to its exact connotation.

federal arrangement therefore remains to be the existence of (basically) two orders of government which are autonomous to some extent and administer their own affairs.

The natural consequence of this will turn out to be adopting a constitution which is envisioned as the power basis and far-off from the reach of both parties to the bargain. It is obviously a written and precise document that briefly embraces the respective rights and duties of the states as well as the center. In order to accommodate future developments, the *covenant* may provide for the possibilities of amendment but only based on the consent of both orders.

The other basic institutional characteristic of a federation as I have mentioned is the representation of regional interest to have a real say at the central decision-making. This is usually done through adopting a bicameral legislature at the center. Such array is found to be the most suitable in combining regional and central representation. The first chamber would normally fill the function of representing the interests of the federation as a whole and serve as a power base for central government. While, the second chamber serves as representative institutions for the constituent units of the federation by which real regional interest will be protected *via* special devices.

As indicated elsewhere, a federation is a type of government in which the two tiers of government coexist in a coordinate manner, both exercising sovereign power in their respective jurisdiction. This is inclusive of government finance which is closely related to governmental structure and organization. Idyllically, any order of government within a federation should meet its expenditure or, at least; its revenue on core services should come from its own resources. According to Watts, these resources enable governments in achieving their policy objectives within their constitutionally assigned legislative and executive responsibilities. Division of fiscal prerogatives is as a result regarded as one additional feature of federal system. It is a key in determining the actual implementation of constitutionally entrenched rights.<sup>85</sup>

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<sup>85</sup> Aalen, *Supra* note 19 at 19, Fiscal issues are also treated as essential parts of intergovernmental relations, and reflect the interplay between structures (the provisions in the federal constitution), processes (the actual fiscal policies that are implemented), and society (the economic realities of the federation).

However, there is no comprehensible consensus as to the literal way of dividing the revenue power as well as the expenditure responsibilities between the orders of government. Conventionally however, those sources with a wider macroeconomic impact will be assigned to the national level while the rest reside on the constituent unit's control.

Burgess and King also add constitutionalism and Democracy as another attributes of a federal system of government.<sup>86</sup> King emphatically concludes that, only those governments which are subordinated to the law, and there by practice democracy, are judged as federations. Consequently, one can argue that, the Soviet and Yugoslav federations should not be considered as genuine, because the unity of their ethno regional parts was maintained from above through coercion.

Watts demonstrate that, a strong predisposition to democracy is among the significant characteristics of federal processes since they presume the voluntary consent of citizens in the constituent units; non-centralization as a principle expressed through multiple centers of political decision making; open political bargaining as a major feature of the way in which decisions are arrived at; the operation of checks and balances to avoid the concentration of political power; and a respect for constitutionalism and the rule of law, since each order of government derives its authority from the constitution.<sup>87</sup>

Furthermore, because most of the federal institutions are based on direct election by the citizens, federation as a form of government provides all citizens with an opportunity to participate fully through democratic processes in the legislative and executive operations of shared-rule thereby taken as an additional avenue of democratization and democratic thought. Note also that, proliferating points of access to government, competing power centers, the right of exit, and local experimentation relates to the attributes of federalism.

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<sup>86</sup> Nevertheless, it is also essential to note that, there are other writers who have a more moderate view upon the relationship between democracy and federations. Riker claims that the link between federalism and freedom and democracy is an ideological fallacy. See Riker, William, *Federalism; Origin, operation, significance*, Boston: Little Brown, (1964) at 74. Alfred Stepan also considers the American model of federalism as demos constraining, See Stepan, *supra* note 75.

<sup>87</sup> Watts, *supra* note 41.

## 2.5. Rationales and Motives for Federal Arrangements and The Capacity to Federate

In this section, I have found interesting to recur what Watts asked in dealing with the formation of federations in his pioneer work. *What factors and processes have led to the adoption of federations?* This is essential in understanding the fundamental justifications that have something to say concerning federal option in a given polity. Federal writers also suggest many casual factors for such process. For instance, Riker attributed a significant external or internal threat as a motive common to the creation of all federations. But, while this factor has been important in some cases, notably Switzerland, Canada and Mexico, it doesn't explain all federations that are now operational. In my view, this Rikerian notion on the creation of federations has lose its currency since there is an obvious leeway of forming military alliance rather than going through federal arrangement which is often tends to be complex, legalized and rigid from different perspectives.

Accommodation of ethnic diversity in multiethnic, multilingual and multicultural states is also considered by many as the underlying reason for adopting a federal system of government. This is true even though it is not the exclusive rationale in many federations. The prevalence of cleavages of different sort is the chief reason to come up with a federal solution in Ethiopia, Nigeria, etc. But, there are also some additional motives behind federal discourses. There are purely democratic and political arguments from the American and German perception for instance. It is neither the need for secured nation nor the existence of deep-rooted ethnic diversity that leads the adoption of the Philadelphia accord.

By far, consensus has been reached on the fact that, political elites will take into account a combination of factors that are responsible for the choice of federation as a form of government. Such factors will take a variety of forms according to the federation we are referring. In federations which are labeled as *coming together*, the existence of some desire to manage the degree of spillover,<sup>88</sup> geographic proximity of constituent units, the desire for security and greater international influence can be the major justifications of

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<sup>88</sup> The level of homogeneity or heterogeneity, differences in the level of modernization, economic development and political ideology or outlook, the degree of disparity in relative wealth and potential influence among constituent units can be cited as the basis of spillover.

the federal pact. On the other hand, the demand for self-expression, dignity and self-rule is the core reason (but not the exclusive) of federal option in societies marked by differences of language, race, religion, social structure, and cultural tradition. As a result, politico social, historic and economic reasons will contribute their own towards the choice of federal organization.

Contemporary writers on the issue insisted that, the increasing worldwide interdependence on the one hand and direct and indirect external influence upon regional consciousness on the other should not be overlooked when one indulges the catalysts of federal bargain.<sup>89</sup>

As Wheare noted, the desire for federation and those factors that contributed to the capacity to create and operate a federal form of government should be differentiated though there exist a strong link between these. A strong sense of joint identity and interest to achieve loyalty for common interest together with a strong sense of distinct identities to maintain real autonomy are raised by Watts as instances for the capacity to operate a federal system. Nonetheless, for the purpose of dealing the issue in a moderately comprehensive fashion, the following cases, as to my understanding, will contribute something towards the working and upholding of a federal system. In one way or another, the stability or instability, success or failure of a particular federation can be determined by analyzing the contextual variables that the system reveals. Let I glance them!

**Geographic Size and Population:** federations vary enormously in size, and there seems to be no general prototype which would make stability predictable. There are or have been large stable federations (United States, Australia), large unstable federations (Soviet Union, Pakistan), small stable federations (Switzerland, Austria), and small unstable federations (Czechoslovakia, Yugoslavia). An argument can be made, however, that large countries are more likely to adopt a federal form of governance.<sup>90</sup> But, I do believe also on the argument that, size and population is not the

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<sup>89</sup> Watts for instance considers Quebec (Canada), Biafra (Nigeria) and Jura (Switzerland) as powerful examples of the impact of direct encouragement of regional separatist movement by foreign government. See Watts *supra* note 41, at 66.

<sup>90</sup> Thomas O. Hueglin, *supra* note 58. Of the world eight largest states, Russia, Canada, China, the United States of America, Brazil, India, Australia and Argentina, seven are formally constituted as federations.

exclusive reason to maintain the federal balance of power, rather political stability requires more than this. There are some extra federal factors that need serious consideration such as party structure and the prevailing political ideology in the federation we are referring.

**Number of Constituent Units:** The number of constituent units ranges from two (former Czechoslovakia) to fifty (United States). Some of the largest federations are subdivided into only a few units (six states in Australia); some of the smallest federations contain a large number of units (26 cantons in Switzerland). Obviously again, there is no general correlation between size and number of units. But there may be one between number of units and stability.<sup>91</sup>

The main argument has been that a large number of units contribute to the overall stability of a federal system because it facilitates changing interest coalitions. The obvious example is the United States of America.<sup>92</sup> By the same token, the argument has made that a small number of unit governments tends to strengthen their influence upon the overall system. They can gang up on the federal government more easily.<sup>93</sup> The so-called bi-communal federation in which the number of the constituent interest parties is essentially reduced to two is the most extreme case of this latter scenario.<sup>94</sup>

Finally, **Demographic and Socioeconomic Asymmetry** that exists between constituent units, as I have mentioned elsewhere, is treated as an additional variable that will determine the working or otherwise of a federal system. In an increasingly globalized and interdependent world, different size, uneven numbers and glaring asymmetries more than ever will be the contextual norm for the conduct of politics and the design of

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Common sense alone would lead one to believe that countries of this magnitude cannot be governed, at least not democratically, without some form of federalism.

<sup>91</sup> Ibid.

<sup>92</sup> At least since the Civil War, in the United States of America, there neither have been deeply entrenched regional cleavages, nor have the fifty states ever challenged the federal government collectively. See also Id.

<sup>93</sup> Ibid.

<sup>94</sup> Ibid. Czechoslovakia has been the most extreme case of this kind because there were indeed only two constituent units, the Czech and Slovak Socialist Republics, inhabited by two different cultural groups, Bohemian/Moravian and Slovak, who were moreover divided by different stages in their economic development. Belgium is also another example of this sort since the federation is predominantly divided between the Dutch speaking Flemish and the French speaking Walloons.

policy. Uneven concentration of population<sup>95</sup> or economic resources<sup>96</sup> therefore will have equally significant impact on the operation of a federation.<sup>97</sup>

## 2.6. Conclusions

Any effort to provide real clarity on the study of federalism must discern the term *federalism* from related terms like *federations* and attempt to map the conceptual topography of the entire underlying issue. To this end, in this particular chapter, following the others path, I have argued that, federalism and federations must be clearly distinguished as two different but related concepts. Federalism connotes an abstract and normative concept which guides those state craftsmen. It is more of an ideology with its own peculiar dialects. Federations on the other hand refer a political institution crafted on the dictates of the federal idea. Therefore it is more of descriptive.

From the earliest works of Johann Althaus (who has been celebrated as the inventor of the federal idea) down to contemporary inventions, federalism has gone through many variants. One can look several historic attempts of federal system throughout literatures. But, as a matter of conclusion, the Philadelphia conference among the representatives of the American states can possibly marked the turning point towards modern federal thinking. Following the Americans experiment, now we have more than twenty-five federal countries, Ethiopia being the one and among the recent, which constitute forty percent of the world's population.

Based on some distinguishing marks, federations and federal arrangements may be seen from different perspectives. Among others, the rationale for federalization, the process of origination, the prevailing policymaking approach, the functional divisions of powers between the levels of the government etc are the obvious grounds of classifications as discussed in this introductory part.

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<sup>95</sup> The overpowering role of Russia in the Soviet Union was the most extreme case of this kind, dominating all aspects of Communist party rule and deeply resented by all others. See also Id.

<sup>96</sup> In Spain, one of the seventeen so-called Autonomous Communities, Catalonia, produces nearly a quarter of the national GDP.

<sup>97</sup> Thomas O. Hueglin *supra* note 58.

Division of power between the regional forces and the center which is backed by a written constitution that can only be amended through joint decision can be mentioned as the basic and common feature of true federations. In addition, there are other auxiliary federal features. An impartial umpire of federal disputes, democracy and rule of law, financial autonomy of governments and many others will fall under these latter categories of federal attribute.

The reason to go through federal arrangement varies enormously among jurisdictions. Some tend to justify it as a panacea for ethnic, linguistic and religious oriented clashes while the early version of the American and German federalism has been vindicated by democratic and rule of law reasons. There are also economic, security and ideological justifications for the adoption of federalism as a political ideology and system of government in a specific nation. Currently, the argument that espouses circumstantial causation (combination of factors) as a factor for federal choice wins the hearts and minds of federal advocates. The working of the system however is determined by the prevailing politico, economic and social realities.

Having said this much about the basics of the concept of federalism and federations, the next chapter is devoted to address the specific features of the Ethiopian federal structure which reveals outstanding exceptions in the discipline.

## 3. The Ethiopian Federal Experiment: Salient Features

### Introduction

The previous chapter presented theoretical and conceptual approaches to federalism and federations, the historical account of the system, its major attributes and also related issues of sustainability in a particular polity. This chapter aims at providing a general background about the politics of federalism in Ethiopia from different angles. In the first part, since it will endow my readers a general explanation on the choice, the historical incidences that lead to the adoption of federalism will go to be dealt in a relatively illustrative manner. In this connection, the divergent views that explains state making, the countries experience (at least *de facto*) of decentralized governance before the reign of Haileselassie I will be evaluated to substantiate the precursors and motives behind the federal choice.

In order to appraise whether the initial objectives for the state building process are achieved, it is mandatory to thrash out what has been the point of discussion during the constitutional making sessions that gave rise to the present form of government *i.e.* parliamentary federalism. As many argued, including I, the very basis to decide on the federal discourse was the prevailing consideration of 'the then Ethiopia' as *a prison of nationalities* even if historians and many observers wrote as regards the countries unique character as a *museum of nationalities*. As the President of the Transitional Government (the incumbent Prime Minister) noted in the early days of the negotiations, Ethiopia is a nation that will only continue as a country if and only if ethnic federalism become the prime factor of nation building. So, the emphasis was on realizing ethnics' right to self governance. How much this has been went into practice having the prevailing socio political realities will be the point of discussion that will contribute its own for future analysis of the federal practice.

Without losing sight on the basic theoretical frameworks that explains federalism, each country in the globe elucidates its own exceptionalities through its political configuration. As I have tried to pinpoint in the introductory part, there is no single

formula of federalism. There is no one size fits all scenario. In line with this view, the Ethiopian federal setup, though shares some communalities with other systems, is full of distinctive traits that proves my argument. In this particular section, the salient features of our federal organization will be the point of discussion. Generally, this chapter aims at raising issues of the federal plan in Ethiopia both its antecedents and what is pointed out in the federal covenant essentially to relate the federal features with the overall federal-state relations.

### **3.1. «From Unitarism to Federalism»: Brief Historical Account of Nation Building in Ethiopia**

Conventionally, the historical foundation of the Ethiopian state goes back at least three thousand years.<sup>98</sup> The mythology begins in the days of the Old Testament and the reign of King Solomon of Israel and Queen of Sheba of Ethiopia in the tenth century B.C. According to this legend the Queen while paying a visit to the King of Israel conceived a baby who latter become a king. This legend has in fact been propagated by church and state and served as a powerful source of legitimization by the subsequent Ethiopian monarchs. In spite of Ethiopia's recognition as a polity for three thousand years the current geographical boundary is of recent phenomenon. The polity is rather known for its fluid territorial boarder which is later shaped by the extent of conquest made by the Ethiopian Emperors of the 19th and 20th century.<sup>99</sup>

Despite the country's long history, let alone federalism, the concepts of separation of powers, secularism and generally the fundamental constitutional principles were alien to the political system. It was after the first written constitution (in 1931) that such principles began to be incorporated. For a long period, the majority of the country was dominated by the cultural prevalence of the north, especially by the Amhara and Tigrayans. It is possible to argue that the southern part was completely ignored from being incorporated into these predominant culture and civilization except little efforts to collect tributes by some kingdoms.

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<sup>98</sup> See Teshale Tibebe, *The Making of Modern Ethiopia 1896-1974* (Lawrenceville, NJ: The Red Sea Press Inc., 1995); Harold Marcus, *A History of Ethiopia* (Berkeley: University of California Press, 1994).

<sup>99</sup> Abate Nikodimos, *Ethnic Federalism in Ethiopia: Challenges and Opportunities* (Master thesis), Faculty of Law, University of Lund, fall 2004 at 28.

Among others, the long history of the country can be characterized by conflicts among regional lords to expand their political hegemony and with some attempt to realize a centralized administration. Real power was exercised by the regional lords rather than the unstable kingdoms. For this reason some argues that,<sup>100</sup> except for the twentieth century, a cursory reading of history reveals that Ethiopia has for the most part been under a decentralized rather than a centralized system of governance.<sup>101</sup> This observation essentially characterizes all periods that preceded the coming to power of Emperor Haile Sellassie in 1930, leaving certain exceptions of brief unitary attempts by Emperors Tewodros (1847-1868) and Menelik II (1889-1913).<sup>102</sup>

For the sake of convenience and as the main objective of this section, in the following, the process that leads to the current federal set up should be seen together with the modern political history of the country and its concomitants towards shaping the polity.

### *3.1.1. The Imperial Regime*

The modern Ethiopian state emerged in the second half of the nineteenth century with the ascension of Tewodros in 1855 to the throne.<sup>103</sup> Emperor Tewodros initiated the first effort to unify and modernize the fragmented entities of the early Abyssinian Empire during his reign from 1855 to 1868. Although he tried to instigate and as the same time implement many modernization agendas, oppositions from the clergy and outside sparked all of his efforts and his army was eventually defeated by the British forces at Maqdela.

After Tewodros's heroic death in 1868, Kassa Mircha of Temben (Tigray) came to the throne following his coronation as Yohannes IV in 1872. He adopted a much less confrontational stance towards the church and powerful principalities though indirectly

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<sup>100</sup> For example Assefa Fiseha and Solomon Negussie. See Assefa Fiseha, *Federalism and Accommodation of Diversity in Ethiopia*, *supra* note 15. Solomon Negussie, *Fiscal Federalism in the Ethiopian Ethnic-based Federal system*, *supra* note 27.

<sup>101</sup> Aberra Jembere states that until 1854 Ethiopia consisted of loosely united territorial states. Aberra Jembere 'Ethiopia: The Major Institutional Arrangements of Federation and Decentralization,' in Lidija Basta, Jibri Ibrahim (eds.), *Federalism and Decentralization in Africa: The Multicultural Challenge* v. 24 (Fribourg: PIFF, 1999) at 167-169.

<sup>102</sup> Assefa Fiseha, *supra* note 10.

<sup>103</sup> As Bahru noted, this historical fact heralded the emergence of the country out of two centuries of decline and endless squabble between provisional rulers. Bahru Zewde, *A History of Modern Ethiopia 1855-1974* (Athens, Ohio: Ohio University Press, 1991) at 11.

pursued his predecessor's policy of unification. Yohannes devolves power to some regional aristocrats who recognized his status as '*Neguse Negast*' (king of kings).<sup>104</sup> Therefore, in contrast to Tewodros, he was less centralist and satisfied in so far as the regional nobility were ready to recognize his authority to pay their tribute and respect his title as '*Neguse Negast*'. Since his period was marked by increasing international interference, Yohannes's rule ultimately came to its end at the battle of Metma defeated by the Sudanese Mehadist forces.

Menelik (1889–1913) who managed to control the imperial throne after Yohanes's death followed the twin imperial policies of modernization and centralization. He embarked on an aggressive, at times brutal, westward and southward expansion, subjugating and incorporating some of the ethnic groups such as Oromo, Sidama, Gurage, Wolayta and etc.<sup>105</sup> However, his expansion was coupled with advances in road construction, electricity and education, development of a central taxation system and foundation of the new capital, Addis Ababa.<sup>106</sup>

Undoubtedly, Minilik's lasting legacy has been the emergence of Ethiopia with its present geographic shape (excepting the Eritrean recent situation), capital and ethnic makeup. Bahru noted that, the present-day Ethiopia is mainly the result of the incorporation process of emperor Minilik. Further he stated that “the creation of modern Ethiopia was started by Tewodros, incorporated by Yohannes, consolidated by Minilik and completed by Haileselassie”. Misunderstandings and the resultant tensions on the treaty of *Wuchalie* between Minilik and his Italian friends culminated with the Ethiopian victory at the battle of Adwa on March 1896 and led to international recognition of the countries boundary.<sup>107</sup> By and large, Menilik's era (with all its discontents) brought together different ethno-national groups that had their own

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<sup>104</sup> African Report by International Crisis Group: *Ethiopia: Ethnic Federalism and Its Discontents*, 4 September 2009 at 2. Asnake Kefale, *Federalism and Ethnic Conflict in Ethiopia: A Comparative Study of the Somali and Benishangul-Gumuz Regions*, (Unpublished PhD Dissertation, Lidein University, the Netherlands, 2009.)

<sup>105</sup> In his policy of 'Reunification', 'Expansion', or 'Colonization' depending on interpretation, the *Neftegna* (Amharic for rifleman) conquered the new territories in the name of the emperor, settled the lands and levied tribute from farmers. In the mean time, they tried to impose Amharic language and the Christian Orthodox religion.

<sup>106</sup> See also ICG, *supra* note 104; Asnake *Supra* note 104 and Yonatan Tesfaye *Institutional Recognition and Accommodation of Ethnic Diversity: Federalism in South Africa and Ethiopia*, Faculty of Law, University of the Western Cape 9 (June 2008).

<sup>107</sup> *Ibid.*

identity, culture and language although the domination of the Amhara culture and language is unconcealed.<sup>108</sup>

In the name of “Ethiopian Unity”, there was an attempt to suppress all non-Amhara identities. This resulted in uneven representation of various ethnic groups in central government affairs. Such centralization drive has been continued even after the death of Menilik under his grandson, Iyasu (1913–1916) and Haile Sellassie I (1930–1974).

For many observers, the centralization process and the vigorously fragmented state formation attempt was finalized by emperor Haile sellassie I. His rule is characterized by high rate of military and repressive measures to secure all the powers together with continuing and realizing the policy of centralization and modernization, in fact with a renewed vigor and tenacity. The emperors' era has dominated much of the 20<sup>th</sup> century history of the country.<sup>109</sup> In 1931, his regime introduced the first written constitution of the country, but not aimed at realizing constitutionalism or democracy rather to consolidate his power. The constitution neither included provisions on civil liberties nor established a representative legislature.<sup>110</sup>

After a brief interruption due to the Italian invasion, the emperor introduced Decree Number 1 of 1942 that brought unprecedented levels of centralization in the history of the country.<sup>111</sup>

Amid the intensification of the emperor's resolve for centralization of power, there was an attempted federal arrangement between Ethiopia and Eritrea under the auspices of the United Nation. The federation which is lasted for a decade was more of an autonomous arrangement than a federation as Eritrea that had a liberal constitution which recognized limited rights of freedom of association and speech became part of a highly centralized state under an absolutist monarch with guarantees of self-rule. In the

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<sup>108</sup> Leulseged Tadesse Can Diversity be Accommodated”? The case of Ethiopia; *in policy issues of Federalism: International Perspectives* at 4. Clapham also enunciate that the expansion was accompanied by an assumption of Amhara supremacy and a policy of Amharaization.

<sup>109</sup> He ruled Ethiopia first as a regent for 14 years (1916-1930) and later as emperor for 44 years (1930-1974).

<sup>110</sup> Bahru, *supra* note 103 at 141.

<sup>111</sup> The Italian occupied the country from 1936 to 1941 in an attempt to colonize the polity there by to revenge their shameful defeat at the battle of Adwa.

end, as Markakis pointed out, the constitutional asymmetry between the two leads to the demise of the federal pact.

Immediately after the demise of the federal union, the regime began to face opposition particularly on its domestic policies. Political protest by university students and famine has increasingly challenged the rule of the emperor.<sup>112</sup> University students and some radicalized groups joined the opposition camp with the mottos like “Land to tiller” and the “Nationality questions”. In 1974, the regime has showed its inability to handle the increasing demands for change and eventually overthrown by a popular revolution in September 1974.<sup>113</sup>

### *3.1.2. The Military Regime of Derg*

For many observers, the decisive blow to the imperial regime was dealt not by the popular uprising, however, but by mutinous military officers, who in June 1974 established the coordinating committee of the Armed Forces, the Police and the territorial Army known as Derg (Amharic term for Committee).<sup>114</sup> Following bloody power struggles, Mengistu Hailemariam emerged as the strongman within the Derg which deposed the emperor on 12 September 1974, abruptly ending the legendary Solomonic Dynasty.

Consequently, Derg began to rule the country on the basis of brutal military dictatorship under its Marxist -Leninist lexis and vague patriotic slogan of *Ethiopia first*. It has also introduced several reforms in the country.<sup>115</sup> Though Derg lacked apparent political agenda, it was well structured in military aspects and has been able to organize one of African well regimented Military camp. The regime showed its intolerance for any political movement when it proclaimed the *Red Terror* campaign against any protest to the military socialist affiliated rule. Mengistu himself suppose that, political pluralism

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<sup>112</sup> A coup d'état by the commander of the imperial guard was an indicative of this. Note that, until the beginning of the 1950s Haileselassie was perceived as a modernist by educated Ethiopians. By the end of 1960s, they blamed him for the country's backwardness. Donald L. Donham, *Marxist Modern: An Ethnographic History of the Ethiopian Revolution* (Berkeley, 1999) at 123.

<sup>113</sup> Clapham *supra* at 32.

<sup>114</sup> John Markakis and Nega Ayele: *Class and Revolution in Ethiopia* (Addis Ababa, 2006).

<sup>115</sup> Among others, the nationalization of all private urban and rural land was the main.

with all its concomitants are not essential to the then Ethiopia. He had never thought of any sort of self rule arrangement for groups who claimed autonomy such as Eritrea.

The ruthless political violence, failed economic policy and the consequent famine created massive resentment against his rule. However, the chief challenge against the military government was the adoption of an uncompromising position towards ethno nationalists of the Eritrean Liberation Front (ELF) and the Eritrean People's Liberation Front (EPLF) who had already taken up arms against Haileselassie in their quest for regional autonomy.<sup>116</sup>

In addition to the massive counter insurgency campaigns from the north,<sup>117</sup> the withdrawal of Soviet support accelerated the abrupt collapse of the largest army in black Africa.<sup>118</sup> In the years between 1989 and 1990 the EPLF and TPLF made important military gains and on May 21, 1991 Mengistu fled to Zimbabwe. The victorious rebel forces conquered the capital on the 28<sup>th</sup> of May 1991.

### *3.1.3. The Transitional Period and the Discourse on the Federal Option*

After its protracted seventeen years armed insurgency, indeed relied on mobilizing the peasantry, the TPLF (Later EPRDF (the Ethiopian People's Revolutionary Democratic Front which is a coalition of regional/ethnic based political parties)<sup>119</sup> has begun the reconstruction of this east African polity under its own ideology and political thinking. It

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<sup>116</sup> Ruth Iyob, *The Eritrean Struggle for Independence: Domination, Resistance, Nationalism 1941-1993*(Cambridge, 1995).

<sup>117</sup> Latter, for their own sake, the EPLF and other guerrilla insurgent group TPLF (Tigray Peoples Liberation Front) form an alliance to see Derg's downfall.

<sup>118</sup> During his period, Mengistu has established a strong link and received patronage and support from the Soviet Union and Communist bloc. Derg, at the virtue of its downfall has tried to show some allegiance to the right of the ethno national groups as it recognizes some of their rights constitutionally. See the PDRE constitution, Article 2.

<sup>119</sup> The coalition included the Ethiopian People's Democratic Movement (EPDM) later renamed as the Amhara National Democratic Movement (ANDM) to represent the Amhara ethnic group within the coalition, the Oromo Peoples Democratic Organization (OPDO) as a vanguard oromo party and the Southern Ethiopia Peoples Democratic Front (SEPDF).

was after establishing the giant EPRDF that the former insurgent warriors prepared themselves for the national leadership and state architecture.<sup>120</sup>

To this end, as per an agreement reached at London, representatives of twenty-seven Ethiopian political organizations and groupings participated in the international conference which was convened at Africa Hall from the 1<sup>st</sup> to the 5<sup>th</sup> of July 1991. It was the negotiations of this conference that have resulted a Transitional Period Charter of Ethiopia.

Many criticize the conference as discriminatory and dominated by TPLF officials.<sup>121</sup> But, in the meantime agreement has been reached on Eritrean Question, the Self determination right of ethno national groups and some initiatives for federal design between the victor - the EPRDF and the only other force of military significance- the Oromo Liberation Front (OLF). As Sarah Vaughan noted, this had been cemented with the consensus of almost all the participating delegates. So, it was this Charter guided by the TPLF ideology of the Nationality Question in its primordial notion that hinted the federal option.<sup>122</sup>

### *3.1.4. Constitutionalizing the Federal Idea*

The Transitional Government that was established by the Charter and elaborated by the subsequent proclamations was not explicitly designated as federal. Neither the Charter nor the Proclamation that provided for the establishment of self governments referred to this government as federal or decentralized for that matter.<sup>123</sup> This is surprising given the fact that the system had incorporated important elements of autonomy. Fasil

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<sup>120</sup> Though the EPRDF was conceived as a coalition of all ethnic members, from the onset it was the TPLF that has taken the dominant position.

<sup>121</sup> For instance, Professor Mesfin Woldemariam, a veteran politician, declared that « [...] either you have to belong to an ethnic group or you have to belong to an armed political group to participate at the proceedings of the conference.” In the same token, Isayas Afeworki of EPLF doubted the conference by arguing that “[...] how this be an Ethiopian Conference when there are so many talented people who do not participate.”

<sup>122</sup> Specifically, the Transitional Charter incorporated the 1948 United Nations Declaration of Human Rights (UDHR), promised multiparty democracy, freedom of association and speech, legalized EPRDFs position on Eritrea’s secession and incorporated the right of ethnic self determination up to and including secession. See also Asnake Keefe, *supra* note 104 at 57.

<sup>123</sup> Yonatan Tesfaye *Institutional Recognition and Accommodation of Ethnic Diversity: Federalism in South Africa and Ethiopia*, *supra* note 106.

Nahom in his pioneer work is of the opinion that, the transitional government is federal; “What is envisaged is nothing short of federation”.<sup>124</sup>

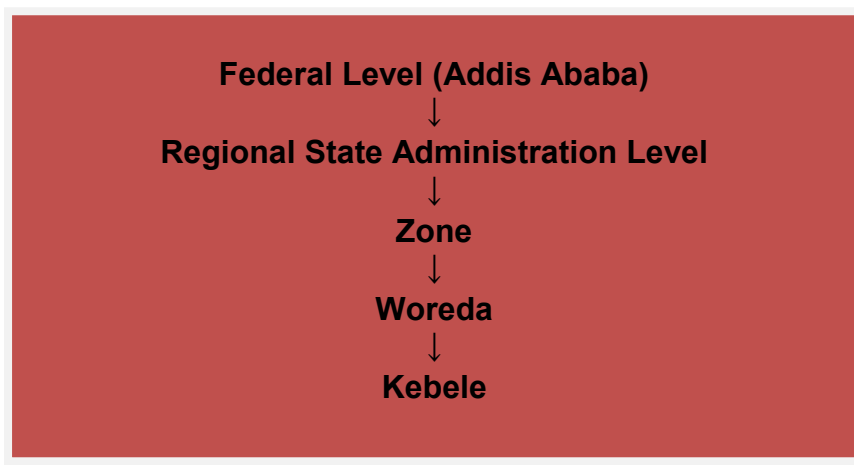
Then, on the way to illuminate the Ethiopian choice, in December 1994, a constitutional assembly ratified the new constitution, which was lauded for its commitment to a fully fledged federalism beared with liberal democracy and respect of political freedoms and human rights. It defined Ethiopia as a multicultural federation that operates on the basis of ethno national representation. A bicameral parliament was created: the House of Peoples’ Representatives, with 547 members directly elected for five years, and the House of Federation, with 108 representatives of the country’s nationalities and tasked with constitutional interpretation and deciding issues related to national self-determination but without a legislative role.<sup>125</sup> A powerful prime minister and a ceremonial president make up the federal executive.<sup>126</sup> Within the new federal structure, the different multicultural elements are reflected in the state members. Nine constituent states are organized based on settlement patterns, language, identity, and consent. Accordingly, the nine states are Tigray, Afar, Amhara, Oromia, Somalia, Benshangul Gumuz, Gambella, Harari, and the SNNPR (Southern Nations, Nationalities, and Peoples Region). Added, Addis Ababa and later Dire Dawa became federally administered city-states.

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<sup>124</sup> Fasil Nahom *Constitution for a nation of nations: The Ethiopian prospect*, New Jersey and Asmara: The Red Sea Press, Inc (1997). However, some major features of a federal government were absent in the Transitional charter. *For instance*, the powers of the constituent units was emanated from not the text of a supreme constitution *i.e.* the Charter did not outline the division of powers between the national government and the self-governments. This was rather left to the national legislator, which is purely a character of unitary devolution of power. As it is clear from the texts of the Charter, another important element of a federation, which is the provision of ‘effective separate representation of the sub national units’, usually in the form of a bi-cameral parliament, was also lacking. See generally Yonatan *Supra* note 9. Generally speaking, although the Transitional Government with its enablement charter had incorporated aspects of a federation, it could not be regarded federal as such.

<sup>125</sup> Each member of the House of Peoples’ Representatives represents approximately 100,000 persons. Twenty seats are reserved for minority groups. Each nation, nationality and people has one representative in the House of Federation, plus one additional member for every million of its people. See also ICG (*Supra* note 7) and Chapter Four and Five of the FDRE Constitution (Proclamation No. 1/1995, *Proclamation of the Constitution of Federal Democratic Republic of Ethiopia, Federal Negarit Gazeta*, 1<sup>st</sup> Year No. 1, Addis Ababa-21<sup>st</sup> August, 1995, adopted on 8<sup>th</sup> of December 1994 and came into force on 21<sup>st</sup> August 1995).

<sup>126</sup> Assefa Fiseha, *Federalism and the Accommodation of Diversity in Ethiopia: A Comparative Study supra* note 15 at 213.



**Figure 1- Organization of the federal hierarchy in the new Ethiopia**

### **3.2. The precursors and motives of the Federal option**

Ethnic inequality and economic exploitation characterized the multiethnic Ethiopian empire that emerged after the expansion of Emperor Menilik II and the following periods. This particularly refers to the imposition of the Amhara elite, Orthodox Christianity and the Amharic language as embodiments of the Ethiopian state.<sup>127</sup> Clapham noted that, the chief instrument the imperial government used to bring some form of unity among the ethnically diverse peoples of the country was assimilation to the culture, language and religion of the dominant Amhara rulers. This was successful to a certain extent as the Ethiopian state gave ‘relatively little weight to issues of ethnic origin’ and as a result, ‘individuals from peripheral areas as well as from humble social backgrounds could reach’ not only ‘positions of power’ but also ‘authority and prestige’ once they passed through the ‘assimilation’ process. However, this did not bring the desired ‘unity’ because of a number of interrelated reasons such as oppositions and rebellions.<sup>128</sup>

Even though successive regimes tried to suppress the unique cultural identities the country’s more than eighty distinct ethno-linguistic groups, none of them were able to succeed in maintaining the unity -diversity line. There was no mechanism of accommodating and tolerating the manifestations of difference. It was with this milieu that the EPRDF came up with a federal solution that is likely to respond the longstanding ethnic equality claim. On coming to power, the EPRDF decided not to

<sup>127</sup> Merera Gudina *Ethiopia: Competing ethnic nationalisms and the quest for democracy, 1960 – 2000*, Shaker Publishing, 2003.

<sup>128</sup> For The Detailed Analysis Of Such Failure, See Asnake *Supra* Note 104 At 60.

suppress the national aspirations of Ethiopia's ethnic groups, but instead to allow them the full expression of their languages and cultures. It decided, in less than two years, that the country would be administratively and politically reorganized, creating what are largely (but not exclusively) ethnically based national/regional governments or states.<sup>129</sup>

Upon coming to power, the EPRDF was immediately faced with the problem of managing an ethnically diverse polity. Many in the general population were uncertain about their future as members of nationality groups. Some viewed the decentralization implicit in ethnic federalism as the best way to demonstrate the regime's commitment to social equity and democracy while some others were panic about the disintegration and collapse of Ethiopia. Democratic principles were eventually enshrined in a well-crafted national constitution in 1994 which also officially introduced Ethiopia as a new member to the federalist camp. Nevertheless, there were different views and opinions among the diverse groups before such a decision was reached.

To put it in terms of the diverse perspectives, the framers of the Federal Constitution had five choices. The first was a blanket denial of the existence of diversity and its political expression. The second was to promote Ethiopian nationality as an overarching ideology, thereby denying the existence of ethno-linguistic communities. The third was to promote Ethiopian nationality as an overarching ideology while recognizing ethno-linguistic communities, but disallowing any political expression and space for them. The fourth was to promote the right to self-determination as overarching, regardless of the implications for Ethiopian unity. Finally, there was the option to promote Ethiopian nationalism while also recognizing and allowing political expression and territorial self rule for ethno-linguistic communities. This last option is perhaps the best of all the options for unity with peace and equality. It looks at federalism as an instrument for conflict management – a political solution to a political concern – and as a tool to contain disintegrative forces and to create a balance between

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<sup>129</sup> Edmond J. Keller and Lahra Smith: *Obstacles to implementing territorial decentralization: the first decade of Ethiopian Federalism*. The official line of the EPRDF went something like this: "The nations, nationalities and peoples of Ethiopia have historically been denied their rights to self determination. This was as true under the imperial regime, as it was under the Marxist regime. The New Ethiopia is committed to redressing these historic wrongs, and to giving all its peoples the right to self-determination up to and including independence. To insure that the multi-ethnic state remains intact, there will be guarantees of individual and collective rights enshrined in a federal constitution."

the forces of unity and of diversity. It also addresses the concerns of the forces of diversity, and averts the secession inclinations.

In sum, even though there is no consensus among the academics and political elites, the motives and precursors of the federal choice is answering the long-established nationality question and avoiding discrimination and inequality among the diverse nationalities of Ethiopia. During the bargain,<sup>130</sup> emphasis has been given to the autonomy and equality of ethno national groups. Political pluralism and every aspects of sovereignty are assigned to these groups and the constitution is appeared to be the ultimate guarantee of all these privileges. Ethnic communities were promised that they could exercise their rights to self-determination in the *New Ethiopia*-a federation comprised of ethnically based states.

By looking at such constitutional aspirations, political scientists of the time labeled Ethiopia as a country which legitimately recognized the self determination and political autonomy of its peoples. Regions were organized basically on ethno-lingual lines to serve as institutions that should tolerate the practical expressions of the constitutional promises. Perhaps such arrangement of ethnic autonomy has been treated as a panacea for the continual existence of Ethiopia as a polity.

### **3.3. Salient and Unique Features of the Ethiopian Federation**

Every federation has its corresponding ideological inspiration, organizational system and other significant features. Similarly, the federal system introduced in 1994 in Ethiopia is not an exception; rather it reveals many distinctive features with its own ideological and pragmatic orientations. This conscientious part is devised to discuss the foremost traits of the system from diverse stances. In line with this, there are federal activists who consider the Ethiopian replica as the most unique setup in the federal spectrum. The emphasis on ethnic territoriality and ethnicization of the federal design, institutional recognition of ethnic self determination, constitutional certification of the

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<sup>130</sup> The bargain that leads to the Federal option is not as such a bargain in the strict sense of the term. Unlike many developed federations, in Ethiopia, the relative strength of regional elites was less pronounced and the federation may be qualified as a putting together one following Alfred Stepan's classification. Even there was no public discourse and discussion about the new system and its concomitants.

right to secede, unicameralism etc are among the qualities that explains the arrangement and briefly discussed in this section of the thesis.

We have to note however that, EPRDF was the only visible political force that initiated the reconstruction of the Ethiopian state along federal lines. It was this multiethnic coalition that can be considered as the architect behind the federal bargain.<sup>131</sup> Hence, almost all the central features of the federal formula in Ethiopia are the innovations of the political party in power.

The main basis of dealing with the unique and salient features of the federal framework at this stage is aimed at assessing whether these features of the federation have something to do with determining the Intergovernmental Relationship in one or another way. It is predictable from the very foundation of the system itself that, prominence has been given to the self rule aspect by which subnational units and states are considered to be the major actors of the political process. Consequently, the unique features of our federal setup are, in most part related to such ideological underpinning. Thus, it is crucial to look at such features and their consequence in the overall federal practice or in determining the center-state relation. As Solomon rightly noted, the constitutional aspirations could not be without serious implications to the nature of the relationship between the two tiers of government.<sup>132</sup>

### **3.3.1. Ethnicization of the federal structure and the vigor role of Ethnicity**

The classic federations which have been historic successes, such as those in the United States, Australia, and Canada (except for Quebec) have not been organized primarily based on ethnicity<sup>133</sup>. It is rather the historical, economic, and social factor prevalent in

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<sup>131</sup> This indirectly tells us about the absence or limited participation of the public in the federal discourse. Which will possibly resulted in a *fractured beginning*.

<sup>132</sup> Solomon Negussie, Intergovernmental Relations and fiscal issues in federations: the situation in Ethiopia and its implications to the Horn, Conference on Constitutionalism & Human Security in the Horn of Africa, August 2008 Addis Ababa.

<sup>133</sup> Here ethnicity, for the purpose of this thesis, refers to a social differentiation of groups who shares the same language, habit, and way of life (all the cultural stuff) with its own objective marker. Hence ethnic groups as noted by anthropologists; are those who believe in a myth of coming from common descendent. The myth of common descent serves as a basis for excluding people who share the culture but not the common descent or in the opposite case to include people who share the common descent

these countries which have held them together. In the same fashion, no African government has seriously entertained the idea of devolving powers to ethnically based regions. Until recently, it is a taboo to talk about ethnic self determination and ethnic equality let alone secession in the continent.

Conversely however, from around two hundred countries under the United Nations system, there are nearly one thousand ethnic groups who claimed for autonomy. With the prime motive of maintaining the *status quo*, on the basis of undivided state sovereignty ideal, nations are fighting to stifle any sort of claims for autonomy by ethnically based groups. The narration between the central regime and the claims of these groups is ample. The state considers them as tribal groups that are anti-state stability while the group believes that they need to be accommodated and be part of the political system.<sup>134</sup>

As a fundamental breakthrough from other countries of the world and following the previously Soviet Union understanding, ethnicity constitutes one of the major features of the Constitution of the Federal Democratic Republic of Ethiopia and the basis for the internal organization of the federal state. The point of departure for self government as expressed in the federal arrangement is geographical areas based on ethnic criteria. This explains why the Ethiopian federalism is often referred to as ethnic or, as its detractors sometimes refer to it, tribal federalism.<sup>135</sup> So, the new constitution created a federal system largely consisting of ethnic-based territorial units. The constitution aspires to achieve ethnic autonomy and equality while maintaining the state.<sup>136</sup> Plurality of

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but not the culture. See also Chaim Gans, *The Limits of Nationalism* (Cambridge: Cambridge University Press, 2003) at 10; James Kellas, *The Politics of Nationalism and Ethnicity* (London: Macmillan, 1991) at 51.

<sup>134</sup> The clear example here is the Turkish government understanding of the Kurdish movement. Nowadays however, it has become clear to both politicians, and theoreticians and academics that ethnicity is a force to reckon with as it has become the single most important factor to destabilize the internal cohesion of states and create international tension.

<sup>135</sup> Yonatan, *supra* note 106.

<sup>136</sup> In terms of anthropological understanding of the Ethiopian state, Conti Rossini, the famous Italian scholar, described it as *un museo di popoli* 'Museum of Peoples'. To date, that remains an accurate description of the multi-ethnic, multi-linguistic and multi-faith Ethiopia. A little less than eighty ethnic groups, speaking twice as many dialects, inhabit the country. Despite its numerous ethnic groups, however, two-thirds of the 70 million populations belong to three major ethnic groups. According to the information obtained from the Central Statistics Authority based on the 1994 census report, the Oromo are the largest ethnic group accounting for 32.1% of the population, followed by the Amhara (30.1%) and the Tigre (6.2%); the next four numerically strong ethnic groups are the Somali (5.9%), Gurage (4.3%), Sidama (3.5%) and Welayta (2.4%).

languages, multiculturalism and territorial recognition of ethnic groups are the major inspirations of the federal agreement.

By whatever name the system is designated, it is important to note the extent to which the system went in incorporating the ethnic factor in the designing of the state. Ethnic balance was seriously taken into account in the geographical configuration of the state, the structuring of cabinet as well as in the organization of the legislative council. Ethnic consideration permeated the constitutional architects in its entirety.<sup>137</sup> Accordingly, the constitution established a federal republic comprising nine regional states created on the basis of predominant ethnic group, except the Southern regional state formed by 46 ethnic groups, and except two federal territories, Addis Ababa and Dire Dawa.

Unlike the titular gesture of the Derg in the form of nominal regional autonomy, the constitutional assembly demonstrated a strong commitment to the upholding of ethnic diversity by establishing an institutional framework that allows for the expression of these diversities. For instance, the House of the Federation (the Second Chamber of the Ethiopian Parliament) is the house in which “nations, nationalities, and peoples” (i.e., ethnic groups) are directly and proportionately represented. The House is composed of at least one representative from each of 67 ethnic groups in the country, and one additional representative for every one million population of each ethnic group. As a result, most ethnic groups are represented in the 112- member House of Federation. Note that, this is the body that is constitutionally empowered to be the ultimate interpreter of the federal supreme constitution.

The present dispensation has also given the different ethnic groups the opportunity to use their towns and institutions to somehow reflect their cultural and historical identity including the use of indigenous and historic symbolic codes. The Constitution starts with the words: “*we the Nations, Nationalities and Peoples of Ethiopia.*” It assigns sovereignty to the ethnic groups constituting Ethiopia. Article 8 reads; “*All sovereign power resides in the Nations, Nationalities and Peoples of Ethiopia.*”<sup>138</sup> Thus, the nations,

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<sup>137</sup> Yonatan, *supra* note 106 at 395.

<sup>138</sup> Although Ethiopia is a multiethnic state, the preamble affirms that the Ethiopian peoples, “*in full and free exercise of [their] right to self-determination,*” strongly commit themselves to build “*one political community*” and “*one economic community*” based on their “*common interests, common outlook and common destiny.*”

nationalities and peoples are accorded the political center-stage to decide on their own futures as well as on that of the Ethiopian state.

The excessive insistence on ethnicity can be justified from different perspectives. But the chief reason is the historical domination of the Amhara and Tigre ethnic groups and the resultant segregation of the others from the central political process. By taking this background, the new Ethiopian approach rejects the patriotic narration about historic Ethiopian nationhood and replaces it with an idea of Ethiopia as a multination state. Ethnically based federal arrangement is found to be the panacea of ethnic conflicts and this historic mistake in Ethiopia.

There are however arguments against such orientation on ethnic factor in the process of nation and state building project. For some groups, a positive attitude towards ethnicity is a lost tradition and argues that, all the historical incidences reveal a horrible end of the venture. According to these groups of scholars, the extreme tone given for ethnicity will result the disintegration of the country and Ethiopia will probably join the Soviet and Yugoslav scenario. The other attack stems from the existence of ethnic minorities in regions which are controlled by dominant ethnic groups. The argument basis itself on the idea that; the members of the regionally dominant group may consider the region as their own property and there by threatening both the universal and group specific rights of ethnic minorities.<sup>139</sup>

In sum, by 1991, political and historical factors had created a social context within which only a constitutional recognition and accommodation of ethnicity could herald a successful nation and state building process in Ethiopia. Therefore, the constituent assembly influenced and dominated by EPRDF; institutionally recognize ethnicity as the leading aspect of the federal strategy. At the forefront of the rationales for such a venture is the need to respond to the long standing demand of the “national question” of Ethiopia’s diverse ethno-linguistic groupings. Accordingly, by settling the problem of power distribution and enhancing access to power for the hither to ethnically

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These clauses were inserted into the preamble, after a long debate, in order to underscore the need for political and economic unity among the constituent ethnic groups and regional states. The preamble also affirms “full respect of individual . . . freedoms and rights.”

<sup>139</sup> See also Christophe Van der Beken *Ethiopian Constitutions and the Accommodation of Ethnic Diversity: The Limits of the Territorial approach* (Constitutional Law Series Vol.2, Addis Ababa University, Law Faculty 2009).

marginalized groups, ethnic federalism can be considered as a major positive departure from the Ethiopian past.

The excessive insistence on the right of ethno-national groups of the country and considering ethnicity as a prime factor for nation building, in fact expectantly, should resulted in the greater autonomy of this groups which indirectly permits the states as an ultimate manifestation of the political process at subnational level, either to compete and challenge the center or at least to cooperate in a predetermined formula as equal bargainer of the federal design.

### 3.3.2. Self determination: the Ideological foundation of the Federal pact

In the early days of the struggle against the Imperial and Military regimes, the radical multiethnic student movement was inspired by the Leninist approach to the question of the nationalities. In solving what they saw as the fundamental problem of society, the class conflict, ethnic groups should be given various degrees of autonomy while a strong multiethnic communist party should stay in power. During the negotiations of the transitional period, a model akin to a federation was offered as a solution to the problems of state reconstruction in Ethiopia. The right to self determination for the nationalities was the cornerstone of the charter. Accordingly, every “nation, nationality and people” obtained the right to promote its own culture, history and language and administer its own affairs in addition to participating in the central decision making.<sup>140</sup>

The incumbent Prime minister (Meles Zenawi) in the transitional conference justified the adoption of the right to self determination by stating that,

The key cause of the war all over the country was the issue of nationalities. Any solution that did not address them did not address the issue of peace and war. [...] people were fighting for the right to use their language, to use their culture, the administer themselves. So, without guaranteeing these rights it was not possible to stop the war or prevent another one coming up.<sup>141</sup>

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<sup>140</sup> Lovise Aalen, *Ethnic Federalism in a Dominant Party State: The Ethiopian Experience 1991 2000*, supra note 19 at 40.

<sup>141</sup> Sarah Vaughan *The Addis Ababa Transitional Conference of July 1991: Its Origin, history and significance*. Edinburgh: Edinburgh University, Center for African Studies, 1994.

With the same ideological and socio-historical milieu, the constitution declares the full and free exercise of self determination. The rationale behind this constitutional recognition, as highlighted in the preamble of the constitution is to show that “our destiny can be best served by rectifying historically unjust relationships”. The argument is that if the different nationalities did not obtain any kind of autonomy, Ethiopia would soon erupt into war again. As King noted, such thinking is based on decentralist or balanced federalism.<sup>142</sup>

As a norm, the right to self determination engrosses two sides; the internal right to self determination and the external one. Following this normative view the FDRE constitution recognized both aspects of the right conceivably in a manner which is apparent. As per Article 39 of the constitution, the internal aspects of self-determination constitute five major rights. Every “Nation, Nationality and People” in Ethiopia has the right to: a) use its own language; b) to promote its own culture; c) to preserve its history; d) to exercise full measure of self-government and e) to have equitable representation at both federal and regional decision making process. Surprisingly and as an exception in the contemporary understanding of the right (in terms of practice), apart from the internal aspect, the constitution recognize the external aspect of the right to self-determination *i.e.*, secession.<sup>143</sup> In order to prove the *bona fide* commitment to the realization of the right, unlike international human rights documents, the constitution stipulates the beneficiaries of the right to self-determination- Nations, Nationalities and Peoples.

It has been argued elsewhere that the Ethiopian model is unique in the sense that it blends ethnic federalism with self-determination. The federal model is designed in a way that provides expression to ethnic identity. Besides, the federal arrangement paves way to the exercise of the right to self-determination of the various nations, nationalities and peoples of Ethiopia. The fact that the federal model is based primarily on ethnicity enables every nation, nationality and people to use its language, promote its culture,

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<sup>142</sup> In this way people can express their political aspirations along ethnic lines and that the abolition of a strong central government and empowerment of lower ethnically defined units will ensure stability. See also Aalen, *supra* note 19.

<sup>143</sup> Even if it is not questionable as regards the external facet of the right to self determination, at least in theoretical terms, there are authors who argued that it has not yet attained the international customary norm status *i.e. jus cogens*.

and preserve its history.<sup>144</sup> The Ethiopian federalism also enables a nation, nationality and people to exercise the right of to full measure of self-governance. In turn, self-determination is also perceived to be a means to achieve a lasting peace by resolving ethnic conflicts. Hence, it is maintained that the Ethiopian federalism is a means to the exercise of the right to self-determination, which is given utmost emphasis in the Ethiopian constitution.

The proponents of the right to self-determination in Ethiopia argue that it is a guarantee for lasting peace and Promotes democracy. On the other hand, its opponents argue that the right to self-determination would lead to the disintegration of the Ethiopian state as witnessed by the separation of Eritrea from Ethiopia.<sup>145</sup> However, in a rational way and from the nature of the country as a multiethnic nation, it could be argued that the incorporation of the internal aspects of self-determination in to the Ethiopian constitution is a pragmatic approach to the way of life in Ethiopia after EPRDF took power. Providing appropriate platform for the use of one's language, promotion of culture, preservation of history, full measure of self governance and equitable representation at both regional and federal level is a matter-of-fact solution to the problems of ethnic identity that will possibly arise owing to lopsided treatment or office sharing scenarios.

### 3.3.3. Secession as a constitutional rhetoric

Devolution of state powers has been on the political agenda of governments in Africa since the 1970s when the failure of centralized regimes became increasingly apparent. However, no African government has seriously entertained the idea of devolving powers to ethnically based regions, much less explicitly granting their constituent elements the legal right to secede. And in the past, Ethiopian leaders have been consistent in their efforts-usually through repressive means-to overcome regional, religious, and ethnic divisions, weaken local administrations, and establish strong central governments on the way to forbid any sort of secessionist or separatist movements. International law is also reluctant to grant the right to secession as part of

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<sup>144</sup> Yishak Kassa *Federalism and Self determination in a Multicultural Context: The Challenges of the Ethiopian Experiment*, IFF Summer University 2008 working paper.

<sup>145</sup> Ibid.

the right to self-determination. Some vehemently argued against it on the ground that such right is the exclusive right of nations under colonial domination or alien subjugation and that its recognition leads to fragmentation.

Interestingly, despite the controversy revolving around the right to secession in international law and with an obvious departure from the past, the FDRE Constitution explicitly articulated the right as the right of Nations, Nationalities and Peoples. Undoubtedly the constitution is unique in its enunciation of the right in the domestic setting. From the very drafting stage of the constitution, Article 39 becomes one of the most controversial provisions, which attracted criticisms and praises.<sup>146</sup> In most Ethiopianist discourses the secession clause is seen as a divide and rule tactic by the EPRDF or alternatively, as a justification for “the independence of Eritrea without intent of applying equally to other parts of the country”.<sup>147</sup> As argued by some other scholar’s, constitutional recognition of secession will stimulate a surge of nationalism, and it is inconsistent with competitive politics under federal arrangements.

In terms of political theory, secession and federalism are considered to be foes rather than friends. While the former is an exclusive guiding principle of self rule and persistence on a complete independence the latter is a combination of unity and diversity or self rule and shared rule according to its founding fathers. But, the FDRE constitution which is totally influenced by the political and philosophical outlook of the EPRDF cadres, tries to build a positive linkage between federalism and secession.

The EPRDF officials believed that they could not maintain Ethiopia as one sovereign state if they did not include a secession clause. They hold the opinion that the secession clause is a guarantee to democracy, human rights and inclusiveness than a threat to the unity of the country.<sup>148</sup> For the advocates, the right to secession is not only a guarantee

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<sup>146</sup> Abate *supra* note 99 at 58.

<sup>147</sup> P. Brietzke *Ethiopia’s Leap in the Dark: Federalism and Self-determination in the new Constitution*, *Supra* note 2 at 27.

<sup>148</sup> Nevertheless, a few members of the Constitutional Commission, including its chairman, objected to the secession clause, but the overwhelming majority supported it. See also Minutes of the Constitutional Assembly. November 1994, Minute Number 20 of Hidar 12 and 13 of 1987EC (unpublished document on the archives of the HPR).

for respecting the right of nations, nationalities and peoples to self determination but it is also an affirmation of the consensual basis of the federal union.<sup>149</sup>

Moreover, during the transitional conference as Alem noticed, the inclusion of secession has served the purpose of convincing some ethnically based *opposition* political organizations.<sup>150</sup> According to Alem,

A secession clause was placed in the Constitution because the major forces (the TPLF and the EPRDF) that overthrew the military government and other important organizations such as the OLF, Somali parties, and Afar parties had inscribed the right to self determination in their political programs and objectives.<sup>151</sup>

Apparently, from the motives and antecedents of the constitutional making process, as discussed in the above sections, one can clearly understand the fact that, the Ethiopian federal pact is offered by the Tigrayans and Eritrean liberation forces after they succeed to topple down the military centralist rule. Undeniably, the agenda behind the military insurgent struggle for successive seventeen years was to realize the self governing right of Eritrea and Tigray. This according to politicians of contemporary Ethiopia was only possible through realizing the secession rhetoric. The architects copied the leeway of such a tactic from the unfortunate Soviet Union constitution that gave ethnically defined republics the right to secede to their own political memo. And at the end of the day secession attained a forefront position in all the negotiations and the public discourse. For this explanation the Ethiopian federal experiment is premeditated in a manner to give utmost accent on the self rule aspect while the living together *i.e.* the shared rule value is overlooked.

Concerning the essence of the right, it has been noted that the right to secession is the unconditional right of “Nations, Nationalities and Peoples” save for the procedural requirements<sup>152</sup> that need to be met. Once the claimants of the right are clearly defined

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<sup>149</sup> P. Brietzke, Self-determination and Jurisprudential Confusion exacerbating political conflicts, *Wisconsin International Law Journal* (1995), at 65.

<sup>150</sup> In this case the Oromo Liberation Front, the Somali and Afar peoples Movements can be cited.

<sup>151</sup> Alem Habtu *Multiethnic Federalism in Ethiopia: A Study of the Secession Clause in the Constitution*, *supra* note 17, at 327.

<sup>152</sup> According to this provision, the right to self-determination, including secession, of every Nation, Nationality and People shall come into effect:

as per the elements enumerated in Article 39(5),<sup>153</sup> and a group fulfils both the objective and subjective criteria of nationhood, people hood or nationality, they can readily exercise the right of secession. When such is the case, obviously, secession poses an insurmountable challenge to the unity of Ethiopia.<sup>154</sup> But there are writers who argued that the right to secede from the federation is a last resort measure rather than being unconditional right as enunciated by the constitutional lexis.<sup>155</sup>

In my opinion, at least in theory, Article 39 imposes no substantive condition; unlike the transition charter it simply establishes procedures for the exercise of the right to secession and the right is granted in two feasible manners; an ethnic group as defined by sub article five (5) of the pre-eminent stipulation (Article 39), may require secession from the regional state it formerly belongs or it may demand an independent statehood status without the need to be the constituent of the federation.

On the other way round, if one argues from the pragmatic point of view, things will take different connotation. Following the constitutional recognition of this extraordinary entitlement, though there were a number of apparent demands, its practicability remains to be a myth. The political elites who advocates the constitutional inclusion of the right themselves regard those who claims for the same as separatist and secessionist. This has remained to be a self-contradictory perceptive of the constitution in present day

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- a) When a demand for secession has been approved by a two thirds majority of the members of the legislative council of the Nation, Nationality or People concerned;
  - b) When the Federal Government has organized a referendum which must take place within three years from the time it received the concerned council's decision for secession;
  - c) When the demand for secession is supported by a majority vote in the [regional] referendum;
  - d) When the Federal Government will have transferred its powers to the Council of the Nation, Nationality or People who has voted to secede; and
  - e) When the division of assets is effected in a manner prescribed by law.

<sup>153</sup> In a very fuzzy manner the constitution qualifies the claimant in the following way. A "Nation, Nationality or People" for the purpose of this Constitution, is a group of people who have or share a large measure of a common culture or similar customs, mutual intelligibility of language, belief in a common or related identities, a common psychological make-up, and who inhabit an identifiable, predominantly contiguous territory.

<sup>154</sup> Abate *supra* note 99 at 59.

<sup>155</sup> For example, F. Tiba -among others- basis his reasoning on the literal reading of the Amharic version of the constitution and the Transitional Charter, on whose principle the new constitution is based. According to the Transitional Charter, for nations, nationalities and peoples to exercise their right to secession their right to self-determination should be proved to be denied, abridged or abrogated. See T.Firew *Protection of Human Rights under the Ethiopian Federalism and the Challenge of Legal Pluralism*, (2001) at 10, unpublished. The Amharic version of Article 39 (1) of the FDRE Constitution reads: - *the right of every Ethiopian nation, nationality and people to self-determination up to and including secession shall be respected in every manner and without restriction.* (Translation by him)

Ethiopian political life. Preferably, it can be argued that, the secession clause has a symbolic value since it is unlikely that any regional state or ethnic group will actually be permitted to secede from Ethiopia.

Indeed, honest recognition of the right should permit the right holder to exercise the same freely as long as the procedural requirements are fulfilled. On the other hand, such a generous provision will tell the ultimate right of the subnational units or the nationalities either to live their own way or at least to remain in the federation as equal bargainers of the system. Equally, the federal bargainers can possibly claim the right whenever coercion or misuse of power occurs.

### 3.3.4. Taming Parliamentary Unicameralism with the Federal Idea

The principle of bicameralism is ‘the natural ally of federal countries’ due to the very nature of the system itself. As noted everywhere, federalism is a compromise between (at least) two levels of governments- the regional and federal. Therefore, both levels need to have a say on the overall policies and issues. Consequently, the Philadelphia accord has come up with the possibility of regional representation on central decision making via the second chamber.<sup>156</sup> As Watts enunciated, the foremost role of the second chambers in federations is legislative, reviewing federal legislation with a view to bringing to bear upon it regional and minority interests and concerns.<sup>157</sup> Adopting a bicameral legislature is therefore considered as a natural consequence of opting for federal arrangements.

Conversely, in Ethiopia this is not the case. When a federal government with parliamentary system has been put in place, formal bicameralism was envisaged. As Tsegaye noted, even if the constitution tries to create an impression that the country have a bicameral legislature, a more serious scrutiny will suggest otherwise *i.e.* the constitution take up bicameralism in form not in its *stricto sensu*. The second chamber

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<sup>156</sup> However, as the practice in some federations reveals, regional entrenchment is not necessarily done through a bicameral system but could also be arranged in a unicameral way. For instance the federal systems of Pakistan and former Yugoslavia realized this latter trend.

<sup>157</sup> Ronald Watts, *Comparing Federal Systems*, 2<sup>nd</sup> ed., *supra* note 41. However, federal second chambers also perform some other functions of federal character, such as nominations for federal appointments, consent to treaties and approval of emergencies or the use of federal overriding powers. In some other federations, second chambers are important forums for intergovernmental cooperation and collaborations.

formally known as the House of Federation (HoF) has little legislative role.<sup>158</sup> The supreme legislative power resides on the lower house (the House of Representatives).<sup>159</sup>

Minassie Haile in his extremely pessimistic critique uttered that;

The second chamber is not a legislative organ sharing general lawmaking power with the lower house. For unclear reasons, the constitution implies that the House of the Federation is a legislative body, particularly in saying that the “Federal State” consists of two “Federal Councils”, the HPR and the HoF. The Participation of the HoF in actual legislative tasks with the lower house is extremely limited; being mainly confined to performing certain functions concurrently entrusted to it and the HPR, such as electing the president of the Republic.<sup>160</sup>

In addition the Inter-Africa Group after pointing out that the HoF is not a legislative body as it has no legislative powers, observed that, “the first impression one gets is that the HoF is an upper House of Parliament. But it is not. It is not a legislative chamber”.<sup>161</sup>

The Second Chamber is the representative institution of “nations, nationalities and peoples” in the center. Pertaining to its composition, the constitution (Article 61) affirms that: ‘Each Nation, Nationality and People shall be represented in the House of the Federation by at least one member. Each Nation or Nationality shall be represented

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<sup>158</sup> Tsegaye Regassa, Issues of Federalism in Ethiopia: Towards an Inventory of Legal issues, *Ethiopian Constitutional Law Series* Vol.2, May 2009.

<sup>159</sup> Article 50 (3) of the Constitution. However, there are some powers of initiating laws by these House though they are not strictly legislative roles. A look at Article 62 suggests only two matters among a total of eleven as the ones relating to legislation. These matters are A). Determination of the division of revenues derived from joint federal and state tax sources and the subsidies that the federal government may provide to the states. B). determination of Civil matters which require the enactment of laws by the House of peoples Representatives. A strict scrutiny of these roles of the House also suggests the fact that they are not a legislative role in the normal sense of the term rather they are directions on what to legislate upon, sort of a license for the HPR to legislate on matters indicated. See also Tsegaye Regassa, Sub national Constitutions in Ethiopia: Towards Entrenching Constitutionalism at state level, *Mizan Law Review*, Vol. 3 No. 1, 2001.

<sup>160</sup> Minassie Haile, The New Ethiopian Constitution: Its Impact upon Unity, Human Rights and Development, *Suffolk Transitional Law Review* 1, (1996–1997) at 27.

<sup>161</sup> Carlson Anyangwe, *Comments on the Draft Constitution of Ethiopia by International Legal Experts*, the Inter Africa Group at 1. (November 1994).

by one additional representative for each one million of its population'.<sup>162</sup> Even if this House is devoid of legislative role, it is empowered with other considerable prerogatives.<sup>163</sup>

As pointed out above, each “nation, nationality and people” has the right to have one representative in the House of Federation. The issue is whether such representation guarantees the groups participation at the center. There is a huge academic and political<sup>164</sup> debate on the lack of real legislative power to the House of the Federation. These groups consider the very system as an exclusion of states interest at the federal level. The argument goes; such arrangement will curtail the other side of federalism *i.e.* shred rule which is already overlooked in the Ethiopian federal discourse. Notionally it is also possible to squabble that; such arrangement may have unenthusiastic consequence in preserving the interest of the states especially where there is unmitigated party competition in the two levels of government.

Evidently the Ethiopian federal set up is among the exceptions with respect to comprising constituent units with no role in the law making process at the central level. On the other hand, the American experience suggests that, the political process can provide a better alternative when both the federal and state governments are actively involved in the federal legislative process.

In the absence of the states say at the central policymaking process, undoubtedly, one may imagine the existence of institutional based cooperative forums as the states are not well informed of the laws exclusively made at the center. In order to create a smooth implementation of such policy frameworks the institutionalization of intergovernmental cooperation forums is apt. Perhaps, it will be a weird thought if the center compels the

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<sup>162</sup> Such a formula of composition is also regarded by many as a self defeating scenario since the House is dominated by the nationalities with a huge amount of population. And it is suggested to adopt the USA model of equal representation if the goals are to be achieved.

<sup>163</sup> Among the major functions of the House, making of decision on issues relating to the rights of Nations, Nationalities and Peoples to self-determination, including the right to secession; promote the equality of the Peoples of Ethiopia enshrined in the Constitution and promote and consolidate their unity based on their mutual consent; make every effort to find solutions to disputes or misunderstandings that may arise between States; determine the division of revenues derived from joint Federal and State tax sources and the subsidies that the Federal Government may provide to the States; determine Federal intervention if any State, in violation of this Constitution, endangers the constitutional order can be mentioned. See also Article 62 of the constitution.

<sup>164</sup> For instance one of the competitors in the last election (2010), *Medrek* proposes a Second Chamber with a legislative role.

constituent units to execute laws exclusively made by the central personnel's without entrenching a cooperative approach of relationships.

### 3.3.5. "Who Guards the Guardian?" Interpreting the "*Covenant*" by the Second Chamber

Among the essentials of federalism, constitutional adjudication is among the principals. The issue is judging fairly the two players in a neutral manner. The covenant is expected to be placed beyond the reach of the bargainers. More importantly, a federal constitution must provide a method for resolving possible conflicts over the legal powers of the two orders of government. It is to denote that the Constitution is serving as the basis of the federal framework and it is the guarantee for the viable existence of the two levels of governments.

George Anderson enunciates that;

Two independent orders of government in a federation create a need for Constitutional arbiter to resolve conflicts over their respective constitutional competencies this role is usually assigned to the courts.<sup>165</sup>

With regard to the necessity of having an adjudicatory body, it is also argued that, there must be an institution that enforces the supremacy clauses of the 'covenant' and there must also be an institution that takes care of the daunting task of demarcating the boundary of the powers of the federal government and the states. While federal constitutions attempt to define the scope and powers of the two levels of governments, there will have a natural imprecision in the language of the constitution. It is also in the very nature of constitutions that they are often stated vaguely, so that they will serve for generations.<sup>166</sup>

Even if there is no *one size fits all* argument, federal constitutions establish either the regular courts or special constitutional courts to this venture. Technically the two

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<sup>165</sup> George Anderson *Federalism: An Introduction, Forum of Federations*, Oxford University Press, (2008) at 56.

<sup>166</sup> Assefa Fiseha, Federalism and the adjudication of constitutional issues: the Ethiopian Experience, *Netherlands International Law Review*, LII: 1-30, (2005) at 11.

systems of adjudicating constitutional disputes are the Diffused<sup>167</sup> and Concentrated<sup>168</sup> forms. There exists a range of differences amid these models starting from the very composition, jurisdictional bounds and standing procedures to the effect of decisions.

In addition to the above two well-known systems of constitutional adjudication, there are various other strange mechanisms of doing the same. Among these categories the Ethiopian system of constitutional adjudication is incredibly inimitable from different standpoints. In Ethiopia, the House of Federation (hereafter HoF), a parliamentary political organ that represents the political interests of Ethiopia's ethnic groups, is mandated to interpret the Constitution at the exclusion of the judiciary. Note that, though its legislatives are limited, this is the second chamber of the federal parliament.

The justification forwarded in favor of such an enterprise, according to the constitutional making history, is related to the *covenant* character of the constitution between the different nationalities of the country. Since the HoF is the House of nationalities, and the constitution is considered as the manifestation of the 'free will and consent' of these groups, the framers decided that, only the contracting parties that are the nationalities should be the ones to be vested with the power of interpreting the Constitution.<sup>169</sup> In addition, there has been a debate as to the unsuitability and (de) legitimization of the regular courts as well as the idea of constitutional court from the lopsided argument of judicial adventurism.<sup>170</sup>

In dealing with this daunting task, the HoF is assisted by the Council of Constitutional Inquiry (hereafter CCI), consisting of eleven members that among others comprise, the Chief Justice and his deputy of the federal Supreme Court, who also serve respectively as chairman and vice chairman of the CCI, six other legal experts appointed by the President of the Republic with the recommendation of the lower house, as matter of practice coming from different constituent states, and three persons designated by the

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<sup>167</sup> This is a system that accords every branch of the judiciary the right to review the constitutionality of laws (such as in the USA and India). In principle, any court has the power to declare any law or decision of executive body unconstitutional, if such a law or decision violates the Constitution, final appeal being reserved to the federal Supreme Court.

<sup>168</sup> The concentrated or centralized model of constitutional review confers the power of reviewing the constitutionality of laws to constitutional courts (for instance Germany).

<sup>169</sup> See also the minutes of the Constitutional Assembly vol. 4, 21-27 November 1994, discussions on Articles 59, 61 and 62.

<sup>170</sup> Assefa *supra* note 166.

HOF from among its members.<sup>171</sup> The CCI has the power to investigate constitutional disputes. The investigation may result in a *prima facie* case calling for interpreting the Constitution, in which case the CCI is required to ‘submit its recommendations’ to the HOF or remand the case and render a ‘decision’ if it finds there is no need for constitutional interpretation.<sup>172</sup> In the latter case, the party dissatisfied with the decision of the CCI may appeal to the HOF.<sup>173</sup> Therefore, it is clear that the CCI is merely an advisory body to the HOF, lacking the competence to give a binding decision. The HOF as well has been at liberty to disregard the CCI’s opinions in some cases.<sup>174</sup>

The debate is whether there is any ground to trust the political process to safeguard federalism. Is the Second Chamber an appropriate choice to guard the guardian? Various arguments can be drawn from both extremes. Some suggests, in line with the argument forwarded during the constitutional making, that the Ethiopian model though it is inimitable can defend aptly the interests of the contracting parties to the covenant. And further insisted that, the judges in Ethiopia are not in a position to shield the interests of the nationalities as history and past practice tells us.

On the other side of the argument, obviously from the detractors of the constitutional adjudication project, there are academics as well as political scientist who forward their criticism against the system from the standards of impartiality which is the basic traits of constitutional arbitration in federations, from the principles and theory of checks and balances<sup>175</sup>, and from the sides of protecting minority interests and rights owing to the composition of the House. With regard to the first criticism it can be said that, the members of the HoF are accountable, not to the Constitution, but to the different nationalities of Ethiopia whom they represent. The HoF is also a political organ operating within the context of a federal government dominated by a ruling party, the EPRDF, which has an excess of power in all branches of government. There for the

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<sup>171</sup> Article 82 of the Constitution; Article 4 of Proclamation No. 250/2001, Council of Constitutional Inquiry Proclamation, *Federal Negarit Gazeta*, 7th Year No. 40, Addis Ababa, 6 July 2001. See also Assefa, *Supra* note 166 at 19.

<sup>172</sup> *Ibid.*

<sup>173</sup> *Ibid.*; Article 84 of the Constitution; Article 6 of Proclamation No. 250/2001.

<sup>174</sup> *Ibid.*

<sup>175</sup> The argument basis itself on the fact that, under the current arrangement of non-judicial constitutional review, the executive can do or undo what it wishes with no judicial check on its activities. They further hold the opinion that, the breakdown of separation of powers in Ethiopia is a result of a system in which a political organ with strong ties to the executive is the final arbiter of the constitutionality of the executive’s political acts.

House lacks complete independence from the EPRDF and the executive branch of government.<sup>176</sup> As a political organ under the influence of the executive, the HoF should not be called upon to decide sensitive political issues because it cannot be expected to decide such matters in a fair, unbiased manner which will ultimately defeat the very idea of constitutional adjudication in federations.<sup>177</sup>

In consonance with this latter view, one commentator sympathetically argued that,

[...] more critically, the Ethiopian federal project suffers from the absence of an independent constitutional interpretation procedure. ...the HoF is a political institution as its members are elected or appointed from elected party members, besides its members are strongly connected to and influenced by the winner party in the government. As a result, the power to interpret the constitution can certainly fall down into non-independent and partisan arm of a government.<sup>178</sup>

The House also suffers criticisms which are directed concerning its pro-minority stance. The argument goes; though the HoF is meant to protect minority ethnic groups, reflect the diversity of the Ethiopian people and promote equality and unity among Ethiopia's various ethnic groups, this cannot be fully realized due to the House's majoritarian make-up.<sup>179</sup> This is in a direct opposition to the ostensible aims of the Constitution, as an expression of the sovereignty and self-determination of all of the ethnic groups of Ethiopia.

Generally, I personally also share the view that, the HoF is suffering from inefficiency and political subjectivity in interpreting the Constitution which is the supreme law of the land and serving as the basis of the federal pact, and there are numerous avenues for abuse, that will result in the failure of constitutional review. Hence the Ethiopian experiment is not credible from each slant of the system. All in all, despite the fact that

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<sup>176</sup> Chi Mgbako et al, *Silencing the Ethiopian courts: Non-Judicial Constitutional Review and its Impact on Human Rights*, *Fordham International Law Journal*, Volume 32, No. 2. Number 1(December 2008), at 285 et seq.

<sup>177</sup>We can cite here one practical case at the level of the CCI which has been decided in favor of the government though consensus was not reached concerning the opinion. See the claim of the members of the Coalition for Unity and Democracy against the emergency declaration of the Prime Minister in the aftermath of the highly contested election 2005.

<sup>178</sup> Berhanu Gutema *Constitutionalism in the Horn of Africa: Lesson from the new constitution of Ethiopia*, DIIPER Research Series Working Paper Number 15, DIIPER & Department of History, International and Social Studies Aalborg University, 2009 at 13.

<sup>179</sup> Chi Mgbako et al. *supra* note 176 at 292.

the constitution is more than a legal document, its meaning should be ascertained by legal experts and the final say has to be reserved either in the hands of the regular judiciary or a standardized constitutional court. This is the most successful experience in developed as well as recently evolved federations. The federal spirit tell us the necessity of established an independent, impartial organ for this venture who is at the same time far from the political tone. If not, it is unreasonable to qualify as an arbiter of contesting constitutional issues in a federal system.

The issue is, if the constitution is aimed at giving the ultimate say on the meaning and spirit of the covenant to the nationalities, they are conceived as the main point of the federal bargain and in their relationship with the central government; they can equally decide or at times challenge the center whenever their preference or interest is prejudiced. In this way, the nationalities or the constituent units may become the vigor players of the political process. In the course of relationship, as the nationalities are vested with the most important power of federal adjudication, it is wise to expect their prominent role in proposing or setting agenda and also the power to veto in some extreme cases unless the practice paralyzes this constitutional motive.

### **3.3.6. No Rule of Federal Supremacy or Preemption**

The division of powers between the federal government and the states is among the basic facets of a federal system. In addition, in federal systems, not only is the federal constitution supreme, but the federal law also should be declared supreme over contrary state law.<sup>180</sup> However, the supremacy of the federal law is not without limits. The federal legislature should enact its laws and policies within the limits set by the federal constitution.<sup>181</sup> Once that condition is met, however, federal law breaks with contrary state law.

In USA for instance, the text of Article VI, Clause 2, establishes these principle as the highest form of law in the American legal system, both in the Federal courts and in all

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<sup>180</sup> The concept has got its origin from the American constitutional history. Accordingly, after an agreement has been reached on the federal option, a large measure of the States' sovereignty was ceded under the Constitution to the federal government by virtue of the Supremacy Clause in Article VI, which declared that all laws of the United States "*shall be the supreme Law of the Land*".

<sup>181</sup> Assefa supra note 166 at 7.

of the State courts, mandating that all state judges shall uphold them, even if there are state laws or state constitutions that conflict with the powers of the Federal government. In addition, the fourth amendment also upholds the same principle which totally shaped the constitutional jurisprudence of the Supreme Court.<sup>182</sup>

Such a coherent principle does not exist in the federal Constitution of Ethiopia. The Constitution is silent as far as the thorny issue of regulating the relationship between federal and state law is concerned. As Assefa has pinpointed, it is possible to draw two opposing views concerning such constitutional muteness. If one adopts the federal supremacy clause by default, then the principles stated in other federations will hold true in Ethiopia as well.<sup>183</sup>

But if one adheres to the ‘supremacy of nations, nationalities and Peoples’ literally, because of the principles stated on the Preamble, the pretentious aggregate nature of the federation (Arts. 8 and 39), then it may be difficult to state that federal law will preempt state law.<sup>184</sup> To arrive at a conclusion as to the existence or otherwise of the principle in the Ethiopian Federal array, Assefa emphatically recommend that;

[...] the best compromise is to decide case certainly refers to federal framework legislation but its long-term effect remains to be seen the issues on a case-by-case basis rather than subscribing to either principle on the abstract level.<sup>185</sup>

Yet, practice has demonstrated that, the federal law takes a supreme position over a contradictory state law.<sup>186</sup> In addition to the case mentioned here, the constitutions of the different states of the federation declared expressly that their constitution is interpreted in line not only with the Supreme federal constitution but also with the

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<sup>182</sup> The difference between the two (the Supremacy clause and the Fourth Amendment), however, is that whereas the Supremacy Clause deals with the relationship between the Federal Government and the states, the Fourteenth Amendment deals with the relationships among the Federal Government, the States, and the citizens of the United States, with emphasis being placed upon the rights of the citizens. See also cases such as *Ableman v Booth*, 62 U.S. 506 (1859) and *Edgar v. Mite Corporation*, 457 U.S. 624 (1982),

<sup>183</sup> Assefa *supra* note 166 at 8.

<sup>184</sup> *Ibid.*

<sup>185</sup> *Ibid.*

<sup>186</sup> In *Biyadlegn Meles et al. v. the Amhara National state*, the Council of Constitutional Inquiry ruled any law issued by the states regarding the administration of land shall be of no effect if it contradicts with the Federal Rural Land Administration Proclamation.

federal laws.<sup>187</sup> Tsegaye on the other hand argues that, although there is no rule of federal supremacy or paramoutcy, the federal constitution adopts the principle of *federal comity* by which the states should respect the powers of the Federal government and the vice versa.<sup>188</sup>

In sum, unlike some other federations, the Ethiopian federal bargain does not explicitly stipulate the existence of the rule of federal supremacy. As a result, there is a continued debate on this matter whenever there is a contested legislation or a contradictory interpretation thereof between the two orders of governments. So, this feature again supports the idea that the Ethiopian states enjoy a substantial autonomy in the course of their relation with the federal government unless there is a failure from the practical dimension.

In addition to the above discussed features, the Ethiopian twenty years federal experiment reveals other important qualities that make it an exception in the widely accepted federal discourse. I can mention here the nonexistence of concurrent competence (except in the field of tax), the explicit recognition of ethnic groups as building bricks of the federation, the existence of a clear *de facto* political asymmetry, absence of viable constituent units since some of them do not seem to have acquired the status of nation/nationality, which the Constitution ascribes to them, the failure to notice historic mobilization and the resultant minorities in the accommodation process which is exacerbated by the granting of mother state and etc.

The point is each and every set of federal features, whether unique or common, will have a substantial impact in determining the practice of relationships between the two tiers of government.

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<sup>187</sup> See for example the Constitution of the Benshangul Gumuz and SNNPR constitutions.

<sup>188</sup> Tsegaye Regassa *supra* note 159 at 47.

### 3.4. Conclusions

Ethiopia has become and is a federal polity *de jure* since 1995. Marking a complete break from a unitary and centralist past, Ethiopia dared to experiment with a multi-ethnic federation. The federal option has been taken lacking much public debate hence the process was largely dominated by the EPRDF actors. The driving force and the prime motive for the federal arrangement was the issue of answering the *nationality question*.

The Ethiopian federal experiment is considered by scholars on the area as an inimitable arrangement from several angles. The optimistic attitude towards the political expression of ethnicity, the constitutionalization of secession, the choice a political organ as a system of umpiring the federation, and the (un)clarity of the federal supremacy can be mentioned among the distinctive features of the federal project in Ethiopia.

From the general discussions in this chapter, one can clearly appreciate the fact that, the ethno nationalities in Ethiopia, through their representatives preserve all the sovereign powers. Hence, they are the *loci* of sovereign authority in this country. The constituent units, at least in theory, are shaped in line with such understanding and vested with powers that can be viewed by many as overwhelming. Constitutionally speaking, the states power extends from those routine businesses of local authority to self determination, secession included. Some also contends that, the Ethiopian states are in a much better position than any other federal experience. In connection with this view, the constitution adopts an incomplete federal structure that leaves enough constitutional space to the members of the federation back from its inception.

At all, this chapter has tried to raise some of the contested issues in the area of the structural setup of the federal venture in Ethiopia. The main focus of the discussions is normally to identify the basic traits of the structure as pointed out in the constitution since it will guide to evaluate the practical aspects in the subsequent chapters. This is due to the fact that, analyzing the salient features of the system will tell us more about

the expected manner and approach of intergovernmental relationship in one or another way. The basis of intergovernmental relations lies always on the major ideological, political, social and historical underpinnings by which a federal system is configured. It is the combination of this factors and features together with the operational reality that determine the nature of relationship between the two levels of governments.

More clearly, the division of competencies in the constitution that established the federal framework is another major indicator of the intergovernmental relationship aspect. As the next chapter tries to elucidate this point, the interaction between the governments more or less depends on the constitutional approach of dividing the respective powers.

## 4. Distribution of Competencies in the FDRE Constitution: A Brief Review

### Introduction

The study of a federal system of a country, from any of its context, should entail a vigilant analysis of the division of competencies between the federal and state governments.<sup>189</sup> Almost with no exception, all federations have provisions in their constitution dealing with the allocation of powers between the orders of governments. However, it has to be noted that, constitutions differ enormously in the levels of detail and approach.<sup>190</sup>

Primarily, from the very conception of the idea as in the United States, when we talk of a federal system of government, we are referring to a system in which the powers of government are distributed between a central government and parliament and governments and parliaments in the regions or provinces. An important consequence of distributing power between orders of government is to limit the power of governments or of any particular majority.<sup>191</sup> If the central government becomes either too strong or too weak, the federal balance is said to be upset and either the regions lose most of their effective powers or the federation falls apart (as has happened in a number of Federations in Africa, Asia and Europe).

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<sup>189</sup> The powers to be distributed usually refer to the assignment of legislative, executive, judicial and financial functions.

<sup>190</sup> In this regard we can mention the United States constitution which has only a limited number of enumerated powers for the federal government; all other powers (the residual powers) remain within the states. On the other side of the spectrum, the Indian constitution has there long lists: the Union list with 97 headings, the concurrent list, 47 and the state list 66. Moreover, the approach by which powers are aside takes mainly two forms- dual and integrated.

<sup>191</sup> David Black *Federation Issues*: Curtin University of Technology Series Papers for Discussing the Australian Federalism, (1999).

The Ethiopian constitution, serving as a covenant for the federal setting, also stipulates the competencies of the regional and central governments together with some shared powers. This chapter, in its first part, is designed to discuss and dig out some of the issues pertaining to the allotment of competencies as appeared in the terms of the constitution since it will have its own contribution towards analyzing the *de facto* center-state relations.

#### **4.1. Division of Competencies in the FDRE Constitution**

As pointed out in the first chapter of this thesis, the division of authority between the federal government and the states is one of the hall marks of federations- There is no reservation for this. However, there is an ongoing debate as to the manner of the sharing out of the competencies. Some federations prefer to take on the rule of duality while some others stand for executive federalism. The end is just to reflect the existence of two orders of governments with their own autonomy.

On the other way round, a common feature among federations has been the existence of powerful motives to be united for certain purposes on the one hand and well-established motives for autonomy for other purposes, on the other. Therefore, in line with this vision, in most matured federations, the federal government is often empowered with those powers that are shared in common and symbolize the people of the country as a whole. Similarly, with a different rationale, the constituent units retain those powers which are generally considered to be vital for the full exercise of regional autonomy and self-governance. By this, the unity-diversity recipe that explains the core values of federalism can be comprehended.

Equally, we have to be cognizant of the fact that, it is almost impracticable to set the layers of governments with a perfect compartment in the absence of coordination and common institutions. The units of the federation are entitled to have a say at the central decision making process- which federalists dubbed as shared rule.

The considerable variation in the distribution of powers resulted in the manner by which the federation is operating. For instance the obvious result of the style of power distribution is visible in the degree of centralization, decentralization and non-centralization revealed in the federal spectrum.

The FDRE Constitution has put in place a fully-fledged federal form of government in which the states created by the Constitution are empowered to establish their own legislative, executive and judicial powers parallel with and independent from that of the federal government. From this constitutional stipulation, we can say that, the Ethiopian federal framework has adopted the normative division of competence between the two layers of the government. In the structure, there is a federal list of power which may create an impression that the powers of the center are limited and enumerated. In addition there is an open-ended clause which exemplifies some of the regional powers and as the same time declares the place by which the residual competencies are positioned. In the other section of the constitution, the division of financial power has been settled in a manner that reflects exclusivity and concurrency. In this part of the thesis, the power division between the regional and federal governments together with some related thoughts will be analyzed in terms of the type and manner of the competence.

#### **4.1.1. Legislative Power Distribution**

In most federations, the constitutional allocation of policy-making is defined on the basis of three categories, namely exclusive federal and state powers, concurrent powers and reserve (residual) powers.<sup>192</sup> In federations which are described as coming together, most of the time, the federal government is empowered with enumerated exclusive powers. But this is not always the case. For instance, Ethiopia which is a federation evolved from a previously unitary regime also adopts such a system of “limiting” the powers of the central government by inscribing a long list of the powers of the same there by leaving the residue for the states.

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<sup>192</sup> D.P. Wessels, 'The Division of Powers in a Federation' in D.J. Kriek ed., *Federalism: The Solution?* Pretoria HSRC (1992) at 43.

#### 4.1.1.1. “Enumerated” Exclusive Federal Powers

The notion of *exclusive powers* refers to the powers for which the federal constitution has created a monopoly which either is in the hands of the federation or of the states.<sup>193</sup> Such powers are exercised entirely by the level which is specified. The need to have such a strict division is justified by averting the potential conflict of jurisdictions between the members of the federal bargain. Note that, the manner by which exclusive powers are designed may vary according to our understanding of the subject and the particularities of the federation we are referring. In most cases, the federal government is assigned with exclusively listed powers while the states remain with the unenumerated and reserved powers. In other unique cases, there may be an exclusive list of powers to both the central and regional governments.<sup>194</sup>

The issue of tagging residual powers as exclusive authorities is not yet settled. However, if the constitutional proviso of allocation evidently confers the monopoly of residual power to either level of government, it is feasible to argue safely that the government retains an exclusive authority over the reserved powers.<sup>195</sup>

The constitution of FDRE under Article 51 has a list of 21 generally designed jurisdictions exclusively given to the federal government.<sup>196</sup> The caption of this provision; “powers of the federal government” implies that, the powers of the center are only those enumerated under Article 51. But, on the other hand, the provision dealing with powers and functions of the House of Peoples Representatives (hereafter HPR) (which is Article 55) and similar other provisions further enumerates additional powers belonging to the federal government. Though the argument still goes, it is possible to conclude that, this latter provision is drafted in a specific term and this stipulation that

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<sup>193</sup> Solomon Negussie, *Fiscal Federalism in the Ethiopian Ethnic- based Federal system*, Nijmegen, *supra* note 27 at 60.

<sup>194</sup> The Indian case will exemplify this latter scenario.

<sup>195</sup> A similar conclusion has been made by Solomon Negussie and some other Federal authors. See also Solomon Negussie *supra* note 27 at 60.

<sup>196</sup> At the first glance, some doubts as to the exclusivity of those federal powers under Article 51. If one adopts the statutory interpretation of the maxim *expresso unius exclusion alterius* (I.e. mentioning of one thing implies the exclusion of the other), these powers specifically mentioned under the federal government never belongs to the residual (exclusive) authority of the states. Therefore, it may be possible to construe the Ethiopian way by employing this established rule of interpretation and of the federal idea. Still, we can argue that the Ethiopian way of adopting the exclusive powers principle is loose by which there are many shared competencies in between.

enumerate the powers of the center is not exhaustive. Hence, to grasp all the powers of the center, one has to go through the text of the constitution.

In terms of substance, the federal government is assigned with the wide-ranging powers in the areas of currency, national defense, foreign policy, the establishment and implementation of national standards on health, education, science and technology<sup>197</sup> and etc. As a rule, if we apply the federal practice and the doctrine of enumerated powers, the HPR cannot endorse any law unless it is affirmatively authorized by the constitution.

Particularly, the legislative areas in which the federal government exercises exclusive authority are enumerated in Article 55. This provision states that:

The federation shall have exclusive power to legislate with respect to 'foreign affairs and defence, including the protection of the civilian population; citizenship, freedom of movement, passports, immigration, emigration, and extradition; currency, money and coinage, weight and measures and the determination of standards of time; the unity of the customs and trading area foreign trade; air transport; federal rail ways; postal and telecommunications services; industrial property rights, copy rights and publishing; statistics; regulation of federal employees.'<sup>198</sup>

At the end, before winding up this section, one thing must be clear. As I have pointed out above, the legislative competencies of the center should not be understood in an exhaustive mode as *illustrated* or *enumerated* under Article 51. It might appear that by virtue of the reserve clause, any power not mentioned under Article 51 belongs to the states. But a close reading of the constitution reveals that, there are other significant powers of the federation<sup>199</sup> all the way through the text of the constitution which nullify

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<sup>197</sup> There is a clear controversy concerning such power of the center since the states also retains similar powers unless the argument is boiled down to give a positive interpretation of the constitutional stipulation in the way it indicates a framework of concurrent legislative power to both levels though there is no institutional mechanism to implement this.

<sup>198</sup> Surprisingly this list did not include the Electric power plant establishment and distribution which is in fact the power exercised by the federal government.

<sup>199</sup> Among others the power to enact a labour code, commercial code, penal code, approval of federal appointments submitted by the executive, and the establishment of federal institutions are not included in the federal exclusive list of powers under Article 51.

the above assertion of empowering the states with the unenumerated fields.<sup>200</sup> The elusive concept of the theory of subsidiarity<sup>201</sup> as in some European federations seems disregarded in the Ethiopian federal milieu because the federal government maintains many of the powers even without the need to rationalize the existence of a prime objective. But it is possible to argue that, some of the major powers of the federation take into account the subsidiarity rule as they can be best achieved by the center than the regional governments such as Defense and Foreign policy.

#### 4.1.1.2. A “*Necessary and Proper Clause*” to confer the Center an Implied Authority?

Article I, clause 18 of the United States constitution technically known as the *necessary and proper clause*, is the origin of the theory of implied powers. According to this clause; the Congress is empowered to make all laws which shall be deemed necessary and proper for carrying out (executing) those enumerated powers and all other powers vested by the constitution or any department or officer thereof. In the famous case of *McCulloch v. Maryland*<sup>202</sup> chief justice Marshall incorporated the doctrine of implied powers to settle an issue whether the Congress could incorporate a federal National Bank or not. The chief justice constructed the necessary and proper clause and the gist of implied power of Congress as follows:

‘[...] Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the constitution are constitutional.’<sup>203</sup>

Conversely, the constitution of FDRE has not expressly used an expression comparable with the “necessary and proper clause” as in the United States. Some tends to argue that, such constitutional muteness should not in any way leads us to the conclusion that

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<sup>200</sup> But as per the discussions on the provisions that deals with division of legislative powers during the constitutional making process, it appears that Article 51 is intended to cover a whole list of powers conferred on the federal government and then other provisions were to specify the respective powers of each federal body, for instance that of the HPR and the executive, as if there existed a separation of powers among the federal bodies. See also Assefa *supra* note 15 at 179.

<sup>201</sup> The concept of subsidiarity is a principle which dictates that the central government should take on powers only when it is necessary to achieve an object and when it adds value in comparison to what the governments of the constituent units could achieve on their own.

<sup>202</sup> *McCulloch v. Maryland* 17 US (4 Wheat) 316 (1819).

<sup>203</sup> *Ibid*; And also quoted by Assefa Fiseha, *Federalism and Accommodation of Diversity in Ethiopia, supra* note 15 at 176.

the federal government is not empowered to exercise implied powers. Rather, with the view of saving the center from the adventurous task of interpreting the general constitutional provisions dealing with its mandate, the HPR may issue subsidiary comprehensive laws that will make life easier and secures its functional existence. Thus, there is the possibility of arguing that, even if the constitution is silent about the federal implied powers, it is logical to confer the center with such authorities from the pragmatic point of view. In addition, as I have tried to point out in the previous chapter, though the center has no supreme authority to derogate incongruous state legislations, there are few decisions that argue to the affirmative *i.e.* to empower the center with the power of preemption.

Without losing site of the constitutional distribution of authorities between the two levels, there are some provisions which give the center, in fact confusingly, to *establish* and *implement* national standards and basic policy criteria for various essential matters such as health and education. From this it may be argued that, the constitution also have a tendency of giving a *necessary and proper clause* defense to the center, at least to take the enterprise of channeling the constituent units with some policy directions.<sup>204</sup>

In my opinion, keeping intact the authority of the center to enact such legislations in exercising implied powers, for the purpose of preserving the interest of the constituent units and the federal practice, it has to justify the rational connection between the implied and enumerated powers. And also, the application of the doctrine should not extend the authority of the center against the reserved or enumerated powers of the constituent units.<sup>205</sup>

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<sup>204</sup> See Article 51(2) of the FDRE Constitution.

<sup>205</sup> Obviously, there are opponents to such affirmation of empowering the center with implied powers from diverse viewpoints. Some bases their critics on the unique nature of the Ethiopian federal project and its concomitant emphasis on the autonomy of the Nationality groups which according to them, must result in limiting the powers of the center. In addition the other argument supporting this view comes from the idea that, the powers of the federation in Ethiopia is already listed out and thankfully the constitution empowers the states with the rest of the powers. Nonetheless, the nature of implied powers is not in a way to evade the powers of the states or the nationalities rather it is to secure the functional existence of the center as one important limb of the polity.

#### 4.1.1.3. Residual Authority to the States of the Federation

Constitutional division of powers in federations should take into account change of circumstances as they may have a direct influence on the federal distribution of powers and consequently on its operation. The idea of residual or reserve powers is directly linked with such a rational backdrop as invented by the founding fathers.

Conceptually, residual powers are those powers which are not included in the list of exclusive or shared powers. The reason for their neglect at some point in the federal making process is their very nature of specificity and unforeseenness. As a human person, the constitutional drafters may not comprehend each and every detail of the powers in a given polity. More importantly in the dynamic and sophisticated world, it is impracticable to make an exhaustive list of potential powers of the government whatsoever its level is. So, reserve powers are important tools that can serve as filling this *lacuna* of the federal formula.

In the same way as the 10<sup>th</sup> Amendment of the United States constitution, Article 52(1) of the FDRE constitution states that '*All powers not given expressly to the federal government alone or concurrently to the federal government and the states are reserved to the states.*' This is a clear affirmation of the states authority regarding the residual powers. Curiously, in addition to declaring the place of residual powers, the same provision enumerates, in fact in an open ended manner, six classes of jurisdictions to the constituent units. The issue is the reason of having such list after the constitution opted for the states enjoyment of all the unenumerated powers. In my opinion, the list is merely serving the purpose of illustrating and defining in certain respect their power to legislate in such fields. So, the provision is intended to exemplify the vast residual legislative, executive, and judicial power of the constituent units of the Ethiopian federation.

Another important concern is how much these powers can be exercised by the states in the existence of enumerated list of authorities given to the center. Their importance is very much dependent on the the scope of exclusive powers conferred upon the other unit of government. In terms of formula, as Assefa and some other federal authors

noted, the greater the list of enumerated powers, the less significant the residual powers will be and the vice versa. The Ethiopian case of residual powers has to be seen from this standpoint.

The very reason that leaves the states with these powers, as in some matured federations, is to limit the influence of the centre against the autonomy and sovereignty of the states. *For example*, in the United States with the ‘police powers’ as they prefer to identify the reserve powers, the states will enjoy enough constitutional space to be laboratories of democracy and to implement their specific policies in the absence of any pressure from the centre. This may for the most part related with the foundation and background of their federal system and Americans exceptionalism but generally intended to save the units from the adventures and ever-growing powers of the new comer *i.e.* the federation.

The Ethiopian case is not yet clear. From the very outset the constitution puts a twofold division of legislative, executive and judicial powers. And, the states are entitled with some specifically mentioned authorities and the residual powers. However, in my opinion, the states powers are exactly those which are explicitly mentioned under Article 52(2).<sup>206</sup> Meaning, it is very much tricky to envision any power which is not mentioned under the “enumerated” federal powers and other provisions that are designed to deal with authorities of the centre in a particular fashion. Hence, the notion of residual power in the Ethiopian federal setting plays only an artificial role of designating the states as the power centres. But we have to note that, there are other key powers which are generally given to the states but not in a residual manner. Such powers includes the right to self determination and secession, the power to frame and ratify their own constitution, and etc.

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<sup>206</sup> According to this provision, states shall have the powers and functions: a) to establish a state administration that best advances self-government, a democratic order based on the rule of law, to protect and defend the Federal Constitution; b) to enact and execute the state constitution and other laws; c) to formulate and execute economic, social, and development policies, strategies and plans of the state; d) to administer land and other natural resources in accordance with federal laws; e) to levy and collect taxes and duties on revenue sources reserved to the states and to draw up and administer the state budget; f) to enact and enforce laws on the state civil service and their conditions of work; in the implementation of this responsibility it shall ensure that educational, training and experience requirements for any job, title or position approximate national standards; g) to establish and administer a state police force, and to maintain public order and peace within the state.

#### 4.1.1.4. Shared Legislative Competencies<sup>207</sup>

In a federal system the allocation of competencies is one of the most risky venture and according to federal writers, it is quite difficult to clearly divide all the powers into a perfect cubicle. As a result, almost all federations provide another set of powers other than the exclusive and residual authorities, which are commonly described as shared powers. With the view of securing uniformity across the nation, the centre will take some powers of legislations in line with the states power on the same areas. Principally, in these categories of competencies both orders of government can claim ownership but practically the centre will take the frontage and the initiative. Among the policy reasons for these parallel jurisdictions, avoiding spillovers on other states or on the federation itself and the inevitability of overlapping of jurisdictions are the most important. Therefore in theory, shared powers indicate the powers of each order of governments to legislate in broad areas of jurisdictions and to make decisions independently but in a cooperative manner which incidentally nullifies the impracticability of the duality or coordinate division.

In terms of the field of coverage it can be stated broadly that for the most part the social and economic spheres fall into this category.<sup>208</sup> Shared powers may take either of two forms- Concurrent or Frame work. This taxonomy is clearly indicated in the Basic Law of Germany.<sup>209</sup> Accordingly,

**Framework powers** are generally powers which are shared between the centre and the regional governments but calls for some sort of cooperation between the two. The

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<sup>207</sup> There are some notable federal writers that have tried to treat the taxonomy in different manner. For instance R. Watts considers shared powers as authorities that are different in some respects from concurrent and framework powers while other writers opted to use shared powers as a collection of the wide-ranging concurrent and framework powers. For the purpose of my study, I prefer to use shared powers as a *principal power* that can also embrace concurrent and framework powers. The reason is just related with the very nature of these powers; in one way or another concurrent and framework powers are shared by both orders of the governments. Indeed, it is in this area of shared competencies that the need for intergovernmental collaboration becomes visible. It calls for institutionalized, politically committed, and disciplined system of intergovernmental relation forum by considering the possibility of overlap of jurisdiction and at times conflict.

<sup>208</sup> Assefa *supra* note 15 at 188. The areas may include regulation of trade and commerce, industries and labour and economic planning and from the social agendas- education, health protection and welfare of citizens, insurance, and assistance for old age, unemployment, accident, and workers' compensation can be mentioned.

<sup>209</sup> See the Basic Law of Germany Article 75 which says the federation has the power to enact framework legislation for the Lander with regard to those subjects listed in this provision such as higher education, legal relations of the press, land distribution, management of water resources, nature conservation, and the registration of persons residence and domicile.

centre is entitled to design the skeleton or to take the initiatives of issuing general provisions but expected to leave substantial room for the states to enact their own legislation within the standards set by the federation.<sup>210</sup> The centre should leave to the states a power which is something of substance. It is aimed at securing nearly equal standard of living conditions and thereby avoiding imbalances which may be resulted from political asymmetry and also to secure a basic national uniformity.

The states under this category of powers are allowed to fill-in the gaps with more detailed laws.<sup>211</sup> As Watts noted,

Unlike the concurrent powers in which the federal government has the potential competence to absorb, federal framework legislation indicates an interesting compromise that requires significant decentralization of policy-making authority without sacrificing uniformity where it is needed.<sup>212</sup>

At first glance, the Ethiopian constitution may be regarded as a federal constitution short of shared competencies except in the field of tax. But, a closer look at the details suggests that the constitution provides for many areas of shared powers of legislation. First, Article 55(6) which empowers the HPR to enact civil laws<sup>213</sup> that may deem necessary to sustain one economic community by the initiation of the second Chamber (HoF) is indicative of the existence of framework competencies. Second, the cumulative reading of Article 51(2-3) and 52 (2 (C) that gives the central government to establish and implement national standards that directs the states towards adopting their own specific policies in the same areas can be mentioned. The area covered under this latter scenario includes public health, education, science and technology as well as the protection and preservation of cultural and historical legacies. There are a lot of overlaps between the two provisions unless the argument is boiled down to the recognition of framework powers. The issue which is not settled yet is the extent of power left to the states and the position that will be taken whenever conflict arises in exercising such powers.<sup>214</sup> But as regards to the first concern, the constitution stipulates

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<sup>210</sup> Solomon *supra* note 27 at 66.

<sup>211</sup> Assefa *supra* note 11.

<sup>212</sup> Ronald Watts, *Comparing Federal Systems*, 2<sup>nd</sup> ed., *supra* note 41 at 90.

<sup>213</sup> Note that, enacting civil laws is in principle a state jurisdiction as per the provision of Article 52.

<sup>214</sup> Here, it is important to look at the decision of the CCI (in chapter three) regarding the allegation filed by Biyadlegn Melese et al against a law issued by the Amhara National regional state concerning land redistribution.

that, the states of the federation are endowed *not merely with administrative power but with the power to formulate and execute economic, social and development policies.*<sup>215</sup>

Thirdly, the provision that deals with the utilization and conservation of land is another area of interest concerning the parallel exercise of legislative powers in the same field but in different ways.<sup>216</sup> Though the practice suggests otherwise, as the constitution stands now, legislation on these issues of land is the prerogative of the federation while the states has retained the power to administer the same.

Generally, even if the constitution is not clear with the taxonomy and the issue in general, these are some of the areas that can be regarded as framework legislative competencies by which the centre at Addis Ababa will enact some policy guidance by which the states are expected to take into consideration.

**Concurrent powers** on the other hand are powers that are in principle shared between both levels of government but in practice left to be exercised usually by the states until the central government step in at the moment when it becomes a matter of federal importance.<sup>217</sup> According to Watts, concurrency has a number of advantages in federations. It will provide an element of flexibility in the distribution of power enabling the federal government to postpone the exercise of potential authority in a particular field until it becomes a federal main concern.<sup>218</sup> It is also the leeway for the federation to correct backward states or to deal with difficulties arising from state legislation which has spill-over effects on other states.<sup>219</sup>

Coming to the Ethiopian case, the constitution provides for concurrency only in the areas of taxation. Lovise Aalen for example argued that, the Ethiopian federal framework has not adopted the concept of concurrent powers other than some indications regarding the power to tax.<sup>220</sup> Conversely however, there are some

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<sup>215</sup> Article 52 (2) of the FDRE constitution and see also Assefa *supra* note 15.

<sup>216</sup> See Articles 52(2) d, 55(2) a, and 51(5) of the Constitution.

<sup>217</sup> Assefa Fiseha, *Theory versus Practice in the Implementation of Ethiopia's Ethnic Federalism*, *supra* note 11 at 131-164.

<sup>218</sup> Watts *supra* note 41 at 89.

<sup>219</sup> *Ibid.*

<sup>220</sup> Lovise Aalen, *Ethnic Federalism in a Dominant Party State: The Ethiopian Experience 1991–2000*, *supra* note 19 at 56.

Ethiopian authors who have tried to explore the possibility of coming with concurrent powers as the constitution stands now.<sup>221</sup> The first base for their argument is Article 55(5) which enunciates as regards the possibility for the states to enact penal legislations in the areas which are not exhausted by the centre. The other area of concurrency according to Solomon is the declaration of state of emergency.<sup>222</sup> Accordingly, both the federation and the states can declare emergency in their own spheres.

#### 4.1.2. Executive Power Division

The other area of interest in the study of division of competencies, and in fact have a substantial impact on the federal-state relation is the authority of the governments in a federation to execute legislations issued under their respective domain and related issues of cooperation. In relation to this, we have to note that, in some federations the regional states may tend to implement not only their own exclusive policies but also assigned by the federation to apply laws issued at the centre. That means the regional governments are responsible for applying most federal laws and delivering most federal services. This latter scheme of arrangement is common in Germany and Switzerland by which the Ländres and the Cantonal authorities are somewhat restricted from the policy making stages but consequently empowered to execute these laws in their respective areas. As indicated in the second chapter, this arrangement is technically known as executive federalism.

But, on the other hand in the United States, Canada and Australia, the distribution of administrative responsibilities in most matters corresponds with the distribution of legislative authority. That means executive power is co-extensive with the legislative power.

In Ethiopia, the constitution explicitly says that the federal government and the states shall have legislative, executive and judicial powers which suggests that the organization of the federal executive with the division of legislative power- that there will be a federal executive in charge of enforcing federal laws and a parallel state

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<sup>221</sup> Among others Assefa *supra* note 15 and Solomon *supra* note 27 can be mentioned.

<sup>222</sup> See also Article 93 of the FDRE constitution and similar provisions in the states constitutions.

executive that takes care of state laws.<sup>223</sup> In doing so, unlike the German experience, the Ethiopian system adopts the duality rule. For that reason in Ethiopia, federal laws are to be implemented through the federal executive not by the regional governments unless we tempted to look at the possibilities of delegation which is a different devise. The constitution reserves the executive responsibility to each level of government on matters in which they exercise the legislative power. The role of cooperation in implementing federally designed legislations as another avenue for the states to exercise some kind of shared rule has been ignored during the constitutional making. Consequently, the state's role of administration of federal laws is not yet clear.

There are some loopholes to confer the states a power to administer and follow-up the implementation of federally designed policies. This is when the constitution expressly reserves legislation power to the centre and leaves the states with the administration of the same<sup>224</sup> and as indicated above, there may be delegation of some federal powers to the states concerning its execution.<sup>225</sup> The other area is the provision dealing with framework powers by which the centre is entitled with providing policy direction concerning basic socioeconomic matters.<sup>226</sup> Taking into account the policy directions from the centre, states are entitled to endorse implementation legislations. From the reading of the wordings of the constitution, one may consider some of the legislative powers of the federation as incomplete and leave some spaces for the regions to administer them.<sup>227</sup> There are also some federal powers which cannot be properly enforced unless the states are willing or legally bound to cooperate with the centre.

If we look at the practice, there are some federally established and administered offices at the regions that are enforcing federally designed legislations.<sup>228</sup> But, this trend seems not all-inclusive and appealing as these offices are limited when we balance them with the broad policymaking powers of the centre as enshrined in the supreme law.

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<sup>223</sup> Article 50 (2) of the Constitution and Assefa *supra* note 11 at 151.

<sup>224</sup> The state's role in the administration of the land utilization and conservation law to be issued by the federal parliament as pointed out under Article 51 (5) and article 52(2,d) of the FDRE constitution can be mentioned here.

<sup>225</sup> See Article 50(9) of the Constitution.

<sup>226</sup> Article 51(3) of the FDRE constitution. It may be argued however that, this is also a power left to the states not only to implement federal frameworks but also to legislate on the same.

<sup>227</sup> Powers with regard to issuing legislations on unlawful possession and bearing of arms and laws governing political parties can be mentioned here.

<sup>228</sup> Among others, the Customs and Revenue Authority, Telecommunications, Postal Services, Insurance and Banking and Federal Public Prosecution are operational to date.

Indirectly this implies that the other areas are covered by the executive institutions of the states. Undoubtedly, in the absence of formal intergovernmental relation tools and a comprehensive list of concurrent powers, confusions may arise on the implementation of federally deliberated policies in the regions.

In sum, in Ethiopia, though the constitution has tried to set a dual system of division of executive prerogatives, in practice there is no proper adherence. There is a gap to put in practice such constitutional aspiration due to some constraints and lack of political commitment.

#### **4.1.3. Looking at the Constitutional Distribution of Powers seriously: Does it Matter to keep the federal balance of power in Ethiopia?**

This section is built-in at this stage only with the intention of evaluating whether the formal division of authority in the federal constitution can be regarded as the principal guideline in the federal practice of Ethiopia. And, it is just to look at the constitutions approach of the venture in a close manner. The public or political discourse during the federal bargain and even these days is that, the states are empowered with the most significant powers in the principal motive of ensuring the absolute sovereignty of the nationalities. This thinking is also dominant among the academics and contemporary Ethiopian elites. However, as far as me is concerned this must be carefully analyzed first from the text and substance of the constitution itself and finally from the practice. Otherwise it will be a hasty generalization without having the objective parameters of measuring such “overriding” role of the constituent units in Ethiopia.

Definitely the nationalities thereby the regional states of Ethiopia are considered to be the forming bricks of the federation and also, at least literally entitled with the triumph rights of self determination and secession. In addition, they are the holders of equal rights with the federation which is substantiated by the principle of *federal comity*. There are also some financial sources allocated to the states. More than everything, the states are entitled with the residual authorities.

My concern is to evaluate how much the constitution itself leaves a space for the states to put into practice these powers. In other words, how much these rights weight in light

of the overall constitutional set up. First let's see the exclusive federal powers. The center is entitled with the major policymaking roles and in the most substantial affairs of the country. It is practically difficult for the states to come up with a law in the major areas of socioeconomic sphere unless they allege the residual nature of the said jurisdiction which is almost impossible. The center exhausts most of the areas of legislation and by virtue of the theory of "reserve powers"; the states are left with some administration like powers than policymaking prerogatives.

With regard to the framework powers as discussed above and invented through interpretation of the constitution, they are derivative powers by their very nature which may or may not give enough space for the regions. For instance, in most of the cases, the center produced a detailed laws and policy "frameworks" to be implemented and observed by the states which validate my argument. That means there is no substantial guarantee as to the manner by which the center is going to manipulate these areas of competencies. The worst scenario is the absence of comprehensive concurrent jurisdictions in the area of policy formulations.

And again let's have a look at the residual powers. As argued elsewhere, the center is constitutionally certified to pass legislations in the main fields of "life" in the country. Establishing a state administration, which is the first of the residual authorities that is expressly stated by the constitution for example, is more of an executive and bureaucratic power rather than being an area of lawmaking. The same argument may be produced for the subsequent powers in this provision. I don't think a constitutional authorization to endorse a state constitution which is subsidiary to its federal counterpart and as some argued to federal legislations can be also comparable with the power of participating on the major policy directions and principles that in one way or another influence the day to day deed of the public at large.

On the other way round, neither the states nor the so called nationalities are empowered to participate in the lawmaking process of the centre. From the very foundation, Federal law is a law which is applicable throughout the country and it governs the polity as a whole. So all interested parties, let alone the forming bricks of the state, should have a say on these generally applicable legislation or policy guideline. I was wondering whether the states lacking of legislative power in the center can be compensated by their

role as adjudicator of constitutional disputes. But federal practice shows that, this is another concern which is not equivalent with participating at the deliberations and reflecting the views and opinions of the states at the very inception of national policies.

In the constitution, there is also a provision that empowers the center to intervene at the regions whenever there is a failure to bring suspected human right violations to a court of law even without the request of the state. Even if it is a special approach, it is an additional avenue inside the constitution that bestows the federation to manipulate and abuse the states existence. One may argue that, the states may claim their self-determination or in worst cases secession right whenever there exist coercion from the center. But, a cursory look at the faces of the constitution, as I have tried to point out earlier gives the impression that the federation basis itself not at the center rather on the states. So, the states may not assert such rights merely on the grounds of lacking policy making powers. In addition, apparently we have no viable federal entities that are in a position to construe and then challenge the constitutional division of authorities.<sup>229</sup> Last but not the least, there are non-formal devices of coercing the constituent units as discussed in the next chapter. Consequently, one can also question the possibilities of exercising these sensitive rights *citreous-paribus i.e.* as the constitution stands now.

A related matter is the financial authorities of the members of the federation. Constitutionally, both levels of governments share the right to levy taxes and collect duties on revenue sources. But, the central government has monopolized most of the lucrative revenue generation powers under the guise of *redistribution role*. This can easily be ascertained from the close reading of the sections that are dedicated to deal with financial matters. Unlike expenditure responsibilities where we find residual power (at least in theory); there is no such thing in revenue source allocation. The residual principle does not hold true for assigning taxation prerogatives.

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<sup>229</sup> Some scholars hold that the Constitution itself has denied the states of important powers. Hence, the argument is that the Constitution has from the outset established weaker states and the political practice simply '*reinforces*' the dominance of the center. For instance, according to Treisman and Andreas Eshete, the Ethiopian constitution gave weak powers to sub-national governments. See Daniel Treisman, *Defining and Measuring Decentralization: a Global Perspective*, Department of political science, University of California, Los Angeles (2002); Andreas Eshete *Ethnic Federalism: New Frontiers in Ethiopian politics*; in *First National conference on Federalism, Conflict and Peace Building* (Addis Ababa, United Printer, Plc. 2003)

In sum, if one looks the constitutional division of autonomy critically, the powers allocated to the regions by any of the scheme of arrangements seems colorful but with little significance. In line with this view, several writers, including Abbink claims that the actual division of powers between member states and federal government is “not federal enough” because the states do not have any role in debating the policies and in proposing legislation formulated at federal level. He justifies this claim by pointing at the fact that other federal systems, such as the German, Canadian, Nigerian and Mexican, have given more power of this kind to the member states.<sup>230</sup>

I am not denying the states (or the ethno-national groups) recognition as the major actors in the federal system of Ethiopia; rather my argument is based on their role as a policy makers and the authority to reflect their autonomous existence through the obvious apparatus of policy deliberations at the centre. If everything is legislated at the center short of reflecting the states view, though there are some way-outs, the story will be totally changed and the very existence of the system will be questioned. Thus the formal division of power in Ethiopia does not matter to maintain the federal balance power and the impression that the states are the superior actors in the Ethiopian federal makeup seems an argument based on the motives and aspirations of the front pages of the constitution. But the issue that remains unsettled is whether the states are in a position to use some of their powers even in implementing freely without any pressure from the center those major policies set by the latter. I will come up with this issue latter in chapter five.

## 4.2. Conclusions

The division of competencies in Ethiopia is one of the highly debated and contested subjects as regards its form and substance. Taking lessons from the previous centralized states structure, the constitutional framers has tried to empower the diverse nationalities of the country unrestricted rights of self determination up to and including secession. Towards the effective realization of such privileges, the constituent units are also vividly becomes the central players in the division of state power. Consequently, the constitution, following the matured federations such as the United States adopts the

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<sup>230</sup> See Abbink, Jon Ethnicity and constitutionalism in contemporary Ethiopia, *Journal of African Law* 41: (1997), at 159-174

duality system of dividing legislative, executive and judicial powers between the federal parties. More importantly, the federal powers are enumerated while the states take the residue which may create an impression that the federation is an aggregate of these constituent units. But the constitution, almost throughout the text incorporates further federal powers not mentioned in the enumerated list.

The framework of division of authorities also reveals other important features such as the nonexistence of an express federal supremacy or preemption. Added, the constitution overlooks the relevance of a catalog of competencies that can be taken as shared autonomies either concurrently between the two orders or by letting the center to lay down the framework and accede to the states to adopt them by considering their priorities. However, as discussed in this chapter, there are areas of framework and concurrent legislative competencies that need serious considerations because they might have an impact on the overall performance of the federation as well as the daily deed of the public at large.

The other important topic in this chapter is the close analysis of the constitutional division of competencies between the governments and its real implications as to the balance of power. The aim was to look critically the substance of the jurisdictions given to the federal bargainers. Consequently this particular section concludes that, though the constitution superbly empowers the constituent units with the triumph rights of self determination and secession, their influence with regard to legislative as well as executive autonomy is already weakened by the constitution itself. Such weakness is also exacerbated by some other additional factors such as their exclusion from the central law making process.

To substantiate the constitutional and other theoretical dilemmas that have an actual impact on the federal process in general and on the center-state relations in particular, the next chapter has tried to look the issue from the operational side of the federal setup. The chapter will try to investigate the basis of the relationship between the two tiers of government, factors that have a substantial impact on the maintenance of the balance of power, and other post-constitutional or extra-constitutional features that have a real influence in determining the trend of the relationships.

## 5. Center-State Relations in the Ethiopian Federal Discourse: A Look from the Practice

### Introduction

It is argued elsewhere that the motives and the initial mind set in setting up a federal arrangement in Ethiopia is to give sufficient politico-economic autonomy for the diverse nationalities through decentralized governance. As the constitution precisely pronounces, '[...] adequate power shall be granted to the lowest units of government to enable the people to participate directly in the administration of such units'<sup>231</sup> so as to point to the incomplete nature of the Ethiopian federalism in the way to let the states or the so called nationalities in filling the political space. In theory, the states power extends from those routine businesses of local influence to self determination, secession included. Some also contends that, the Ethiopian states are in a much better position than any other federal experience. Member states can as well have their own constitution which can be treated as an expression of their sovereignty.

The establishment of the House of Nationalities, with all its critics (on its composition and power), is another concrete measure in the position of states under the pretext of defending ethno-national groups from *assimilationist* policy. This House, which is the second chamber in the Ethiopian parliamentary edifice, is equipped with important powers that make it the vanguard of the constitutional rights and interests of the *contracting parties* to the union. It interpret the *covenant*, decides on the right to self determination of groups; it also exclusively determines the allotment of revenue derived from the joint federal and state tax basis and the subsidies that the federal government may grant the states.

These all underscore the central position, at least in the language of the constitution, the Ethiopian states have. Legal pluralism, in the course of the constitutional recognition of

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<sup>231</sup> Article 50 (4) of the FDRE constitution, *supra* note 3.

customary and religious laws and courts has been effected and sensibly went into action in the areas of family and personal stuff on the way to reflect the self identity of various groups residing in the constituent units.

However, when it fully materialized, Ethiopia's new state building attempt through the federalism ideal becomes a *near to unitary* federation than being a *devolutionary one*. Many doubt the commitment of the government to realize such constitutional aspirations. To many critics, Ethiopia's federal array is a *de facto* one party state in which ethnic organizations are mere satellites of one vanguard political party; the Ethiopian People's Revolutionary Democratic Front (here in after EPRDF) which is a multiethnic ruling coalition.<sup>232</sup> Particularly, there are a number of signals that Ethiopia's government has failed to devolve real power to the Regions and bring about decentralization as opposed to the constitutional framework.

At the end, the Federal-State relation takes a top-down approach and the states are now serving as an administrative agent of the center rather than being independent entities created by the supreme law. In this very chapter the bases and realities of the Federal-State relationships in the federal practice will be analyzed and the responses and perceptions of the constituent units towards such a dominant role of the federation will be considered. To substantiate the issues and concerns, interviews are conducted with some concerned regional and federal officials, members of the opposition camp and the ruling party as well as with the staffs of Ministry of Federal Affairs. In accomplishing this, I have first tried to look at the theoretical frameworks of Intergovernmental relations and the cooperation tenet between the two levels of the governments as hinted by the constitution itself then proceed with the centralizing trends of the federal experiment to come up with the coercive features of the Center-State relations.

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<sup>232</sup> See Alem Habtu, *Multiethnic Federalism in Ethiopia: A study of the secession clause in the constitution*, *Supra* note 17 pp 313-335, Kidane Mengisteab, *Ethiopia's Ethnic Based Federalism: 10 years after*, *supra* note 17, at 20\_25; Kalkidan Kassaye *Nonfederal Features of the Ethiopian Ethnic Based Federal Experiment*, IFF working papers 2010.

## 5.1. The System of Intergovernmental Relations in Ethiopia: Theoretical Appraisal

Intergovernmental relations (hereafter IGR) are a ubiquitous – if sometimes underestimated – dimension of any federation.<sup>233</sup> This is the case, whether the federal regime is the result of a process of unification or of devolution, whether it is “dualist” or “integrated”, whether it has a “federal chamber” or not, whether it is coupled with a parliamentary or a presidential system or a directorate along Swiss lines, and regardless of the legal tradition in which it is grounded.<sup>234</sup> The concept is very important in understanding the operational part of a federal system since it has the tendency to alter or entirely change the constitutional division of power. The term connotes both formal and informal relations between the governments at different levels and capacities.<sup>235</sup> Substantially, the relation may be treaty based agreement or at the level of memorandum of understanding. Constitutional ambiguity, fiscal relations, public policy interdependence, investment and trade, infrastructure management, environmental protection, policing and security, and the sharing of resources are some of the issues that necessitate the forum of cooperation.

The other issue is whether the cooperation should be strictly legalized or takes into account the informal devices. Practices so far shows that, some constitutions include relatively detailed provisions concerning the interactions between orders of government, while informal and partisan factors (including the conduct of intergovernmental relations through internal party machinery) frequently play a critical role.<sup>236</sup> The common accord is however, rather than leaving the issue totally to the informal tools, it is better to take the middle *i.e.* there should exist some room for evolution from informal practice and some general guidelines in the constitution.

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<sup>233</sup> Johanne Poirier and Cheryl Saunders, *Intergovernmental Relations in Federal Countries*, global dialogue theme 8, (November 1st, 2008) at 1.

<sup>234</sup> *Ibid.*

<sup>235</sup> The relationship may be envisioned as between the federal government and constituent units, among the units, federal-local or it may take the form state-local even local-local. The specific participants include Ministers, Cabinets, Legislators, officials and Agencies. But it is usually dominated by the executives. And for the purpose of this study, the focus is on the vertical aspect of the system.

<sup>236</sup> Poirier et al. *supra* note 225. Exceptionally however, in South Africa, an Intergovernmental Relations Framework Act was enacted in 2005.

In this section, the aim is to appraise the formal or legal mechanisms (if any) of the intergovernmental cooperation aspect of the Ethiopian federal discourse. The prime spotlight here is the Federal-State contacts.

The common understanding in Ethiopia is that, the constitution or other subsidiary legislations are ignorant concerning the issue of intergovernmental relations. It is the less treated subject in the federal setup of the country. But the institution of cooperation between the states and the center is especially significant in Ethiopia because the formal distribution of powers neither follows the dual arrangement nor empowers the states to implement federally deliberated policies. The constitution has tried to highlight under Article 50 (8) about the co-existence of the two levels of governments by placing the federal comity principle. But this should not be taken as a guiding rule for the existence of cooperative forums in achieving the national goals and programs. There has to be at least some formal systems that shape the cooperation phases. Otherwise, it will be unfairly manipulated by one of the parties (usually by the center) in setting an agenda or coercing the partakers.

Some Ethiopian publications have tried to suggest the inclusion of formal ways of collaboration even from the lexis of the constitution. The provision dealing with delegation of some administrative like authority to the states with all its shortcomings is the first way of cooperation as indicated by these groups.<sup>237</sup> However, delegation may not always create the opportunity to discuss the manners and possibilities of enforcing the power in question. And, delegation is not an appropriate tool of cooperation since it is a blessing from one of the parties (the central government in our case). Note that, through intergovernmental cooperation forums, federal partners pursue a wide variety of objectives from information sharing to policy coordination, from the elaboration of joint projects to coordinated law (or treaty) making, from the setting up of joint bodies to the establishment of mechanisms for dispute resolution. Even if we argue in favor of such a practice of delegation, the only area which is explicitly delegated to the states is judicial authority which means the center-states relations through delegation is not as such impressive and serves no or little purpose for the coordination between the two.

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<sup>237</sup> See Article 50(9) of the FDRE constitution that adopts the possibility of downward delegation- by which the center may expressly delegate some of its powers to the states.

Following the constitutional adoption however, the federal government has come up with the Ministry of Federal Affairs to deal with the intergovernmental cooperation side and with some other related aspirations. But as the track record of this institution suggests, its rationale of establishment was to provide the less developed regional states with technical assistance. The office is now considered as a key instrument of intergovernmental co-operation (at a department level) for the most part in terms of managing conflicts of jurisdictions and misunderstandings while the emphasis on the capacity building of less developed regions remains the same. Therefore, at least in theory, the Ministry is one of the formal institutional mechanisms of Intergovernmental cooperation in Ethiopia.<sup>238</sup>

In the absence of flexible delegation regime in either of the legislative or executive areas together with the constitutional omission of the notion of *opting out* or *opting-in*<sup>239</sup> to the exercise by a government of certain legislative powers, in Ethiopia the formal intergovernmental collaboration is at its inception stage through the informal channels. It is only on the second chamber of the parliament (HoF) which is serving as an instrument of intergovernmental consensus on some misunderstandings between states and the Ministry of Federal Affairs that the whole issue of collaboration formally placed.

The argument in Ethiopia so far is the issue of whether the formal institutions are the major channels for negotiating cooperative arrangements.<sup>240</sup> Since a dominant political

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<sup>238</sup> Nevertheless, many including the staffs of the Ministry thinks that, the office lacks the competence and influence to create a neutral forum that facilitate the cooperation aspect of the federal practice and its operation is limited in giving training to its staffs and some regional political actors. (Interview with some Anonymous staff members of the Ministry, October 18, 2010)

<sup>239</sup> These concepts of *opting in* and *opting out* are common in the Canadian federalism which provides absolute flexibility in applying a de jure asymmetry and empowering the provinces to override federal legislations relating to certain issues of regional interest. See also Watts *supra* note 41 at 121.

<sup>240</sup> Even if there is no plain formal guideline for Intergovernmental Cooperation, every branch of the government, both in the state and the center is doing IGR which reveals the existence of picket-fence federalism in Ethiopia. Picket fence federalism underscores the importance of the coordination of functions by functional bureaucrats in relation to their respective functions without the need for having a focal institution. For examples in Ethiopia, the various federal executive institutions such as the ministries and agencies engage themselves in a cooperative discussions and meetings with their regional counterparts such as bureaus and offices. See also, David Nice, Patricia Frederickson, *politics of Intergovernmental Relations*, 2nd ed. Chicago: Nelson Hall Publishers, (1995) at 122. Also cited in Assefa Fiseha, The System of Intergovernmental Relations (IGR) in Ethiopia: In search of Institutions and Guidelines, *Journal of Ethiopian Law*, Vol.23 No.1 at 109.

party is in power from the very inception of the federation to date, critics indicate that, many of the intergovernmental issues are virtually dictated by the federal government and disagreements are resolved through this informal technique of party congruence. Thus, added to the dearth of constitutional guidelines for intergovernmental cooperation, the focal-point remains to be the non-formal means which perhaps opens the door for the center to take all the initiatives and in that way install centrally “crafted” agendas.

In the existing federal structure, having those areas of framework authorities by which the center is at the top in providing certain directions to the states, the relevance of formal or semi-formal intergovernmental cooperation forums becomes visible. The broad areas of socioeconomic interactions fall in these categories and the states may necessitate such institutionally based collaborations in applying those policy directions exclusively made by the federation. Concerning the informal tools of *cooperation*, and the resultant states response, the subsequent sections will have a say by looking at the operational sides of the federation.

## 5.2. Cooperative Federalism: the *de jure* principle of Center-State Relations?

Federal system not only stands for the distribution of powers between national and regional governments, it also desires sincere co-operation between the two sets of political organizations in order to ensure that the ideal of coordination and complete administration of the divided spheres is attained as effectively as possible.<sup>241</sup> Though the classical federalists like Wheare argued that in a federation the general and regional governments shall be independent each of the other within its sphere, the concept of cooperative federalism which implies a strong central government is the reality in most federations. This does not however mean that the regional governments are weak rather

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<sup>241</sup> It is after the recognition of the fact that, dual federal setup is only a myth by which federalists come up with a cooperative scheme of arrangement as an ideal form of relationship between the tiers of government. The author who popularized the concept of cooperative or the Marble cake federalism, was Morton Grodzins and he defines it as an inseparable mingling of differently colored ingredients, the colors appearing in vertical and diagonal strands and unexpected whirls. It is just to signify the complex intermixing of powers and responsibilities between the federal government and the states with shared rather than layered powers. See Morton Grodzins, *The Federal System*, in Laurence O’Toole, Jr. ed. *American Intergovernmental Relations*, Washington, D.C, CQ press, 1985) at 43. Cited in Assefa, *supra*, at 97.

they are largely administrative agencies for central policies. Cooperative federalism is taken as an instrument by which the center will take the front hands in designing policies and initiatives and the states to follow the federal guidelines.

Federations which are considered to be dual in terms of the mechanism of power distributions are not as such interested in providing for constitutionally entrenched cooperative framework between the two orders of the governments despite the existence of *de facto* cooperation forums. These informal co-operations within the federal framework may take the form of conferences held to discuss common problems, the sharing of information between the levels of government, or the initiation of policy at one level of government which encourages or promotes similar policies to be adopted at other levels of government. Ultimately, the central government will become the major player of the political scene by letting the states to be mere implementers of the centrally deliberated ideas.

The Ethiopian federal framework has to be examined from the perspectives of whether the *de facto* intergovernmental cooperation has been hinted by the constitution or it is a purely post-federal development. The bottom line is there is a wide-ranging intergovernmental cooperation forum in Ethiopia by which the federation proposes some projects and the states retains the authority to implement or to follow up the implementation of these projects. The vast areas of socio-economic policies such as education, health, trade and investment are issues that are dealt with the cooperation regime. The very purpose of this section is limited only to deal with the areas by which cooperation is found or expected to ensue not to examine the institutions put in place for this venture since I have another section to deal with the institutional aspect.

The constitution, generally speaking, has nothing to say explicitly about intergovernmental cooperation or competition on the other extreme.<sup>242</sup> There is an emphasized theory of duality which vividly shows the constitutions commitment to ensure self rule of the nationalities there by the states of the federation. Keeping this line of argument, there is a provision that states about the respective duty of the bargainers

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<sup>242</sup> However, from the reading of the four corners of the constitution, as dual federalism is put in place, one can conclude that, competition has been taken as a norm at least with regard to powers assigned exclusively to one of the levels.

towards respecting the areal jurisdictions of each.<sup>243</sup> This is what federal writers labeled as the rule of *federal comity* or *obuntu* as in South Africa. From this provision one may argue that, the autonomous existence of the two levels is by itself an analytic of their mutuality and undeniably results in cooperative arrangements. None of them can be self-sufficient and lives in a vacuum.

More importantly, the preamble of the constitution gives some sort of implication concerning the importance of cooperation though the intent is between the diverse nationalities of the country. Accordingly, the preamble reads as:

Fully cognizant that our common destiny can best be served by further promoting our shared interests; convinced that to live as one economic community is necessary in order to create sustainable and mutually supportive conditions for ensuring respect for our rights and freedoms and for the collective promotion of our interests.<sup>244</sup>

As Solomon noted, this assertion is more of an assignment of responsibility to the center as a facilitator of common destiny and unity with the view of realizing the creation of one economic community which doesn't necessarily promote cooperation between the various nationalities. In this regard one can also mention the federal government's responsibility of strengthening equality, unity and fraternity<sup>245</sup> among the people which requires an entrenchment of a cooperative arrangement.

Apparently, the constitutional provisions that deal with the distribution of finances explicitly recognize the inexorableness of co-operations. For instance, the allotment of federal grants to states emergency, rehabilitation and development assistances and loans as hinted by Article 94 is an apparent stipulation of the issue under consideration. More significantly, the federal subsidies (the equalization grants) as indicated in chorus with the powers and duties of the House of the Federation are also another avenue of cooperative federalism in Ethiopia.<sup>246</sup>

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<sup>243</sup> Article 50 (8) of the FDRE constitution, *supra* note 3.

<sup>244</sup> See also Solomon Negussie, *supra* note 132 at 57.

<sup>245</sup> Article 88 (2) of the constitution.

<sup>246</sup> Here it is important to note that, the House of Federation is another formally established forum of cooperation in the Ethiopian federal framework though its mandate is limited only to the financial matters and in settling misunderstandings and conflicts among the states. Its role in promoting the

Since the constitution leaves no space for formal<sup>247</sup> intergovernmental cooperation towards implementing the socioeconomic policies and strategies, it is possible to conceive the argument that, unless there is an intergovernmental cooperation regime, the execution of the national policies and standards will not be doable. Therefore, according to this view, by empowering the central legislature to come up with the federation-wide standards and policies, the constitution impliedly introduces cooperative federal framework.<sup>248</sup> Last but not least, Article 89 of the constitution can be another clue of the constitutional recognition of intergovernmental cooperation in the Ethiopian federal edifice.<sup>249</sup>

However the huge academic debate cannot be boiled down simply in this way. The clear constitutional recognition of cooperative federal system is not yet clear. The practice however is patent; everything is going on through the cooperative forums either arranged in consultation with the respective states or by the exclusive initiatives of the center. So, despite the existence of some constitutional clues of cooperation, the system of cooperative federalism seems not the de jure principle of intergovernmental relations in the Ethiopian federal experience rather it is invented and developed through the pragmatic oriented arguments.

Incidentally however, such cooperation, usually dominated by the center owing to several factors that will be discussed latter, resulted in the concentration of powers in the hands of the central government. The following section is intended to create a

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intergovernmental cooperation aspect of the federation is severely limited due to the absence of legislative function and the un-clarity of some of its powers and mandates.

<sup>247</sup> For the purpose of this study, formal intergovernmental relationship and institutions refers to those interactions and institutions as between the tiers of the government based on predetermined laws including the constitution as opposed to the incidental mechanisms or party based relationships without viable legislative guidelines.

<sup>248</sup> Article 51(5), and 52 (2, d) of the constitution can be mentioned.

<sup>249</sup> Article 89 talks about the responsibility of the government in ensuring equitable development among the people and the regions. On the other hand, in fact arguably, the possibility for delegation of authority may create another avenue of cooperation. The regulation of interstate commerce, the process of constitutional amendment, conducting population censuses, administration of areas under emergency situations are considered to be the obvious cases of cooperation though the constitution has failed to expressly state about it. See also Solomon Negussie, *supra* note 132. Solomon also enunciates the need for cooperation between the federal government and Oromia region as regards the administration of Addis Ababa is concerned. See also Article 49(5) of the constitution.

possible link between the de facto cooperation between the two layers of governments and the resultant centralized federalism in Ethiopia.

### 5.3. The Challenge of Centralization

#### 5.3.1. General

“The greatest threat to the successful construction of federal structures is subnational institutions *without* the basic capacity to govern; such institutional weakness prompts the central government to unilaterally intervene, institutionalizing a set of centralizing pathologies that can eventually undermine the sustainability of federal structures.”<sup>250</sup>

Some federal arrangements moved in a certain direction back from their inception. In most cases, the standard explanation credits the constitution as the reason for this pattern.<sup>251</sup> In this view, the constituent units are constitutionally in a weak position vis-à-vis the federal government. In such a case, the general government can take advantage of its initial powers and may be in a position to swell the same into policy areas under the jurisdiction of states using different techniques. In extreme cases, the federal units may be relegated to the position of mere administrative subunits in a decentralized state rather than retaining their position as the constituent members of a federal union. Federalists tend to use the term *centralistic federation* to explicate this prototype.<sup>252</sup>

Some other federations may come up with a centralized federalism structure through political practice as an expected (intended) goal of the constitutional designers.<sup>253</sup> On the other line, there are federations which are influenced by the previous political arrangements; hence, former unitary states are inclined to exhibit a more centralized feature of federal set up while a federation established through integration tends to empower the constituent units as an acknowledgement to their role as a forming bricks

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<sup>250</sup> D.Ziblatt, *Structuring the state: the formation of Italy and Germany and the puzzle of Federalism*, Princeton: Princeton University press (2006) at 147.

<sup>251</sup> The Indian (1950) and Austrian (1920) Constitutions are among the explaining examples of this situation.

<sup>252</sup> For example, see Ludwig K. Adamovich, Bernd Christain Funk and Gerhart Holzinger (all being authors from Austria criticizing the centralizing features of the country's federal set up).

<sup>253</sup> The United State is a classic example here because the power at Washington DC becomes overwhelming through the Supreme Courts' interpretation of the constitutional division of powers between the two tiers and as some includes other post constitutional political developments not totally due to the constitutional design. As I have tried to illustrate elsewhere, the architects of the US constitution emphasized on Duality.

of the political bargain. Still other federal governments may tend to remain centralized due to external factors; in most cases, through institutional means laid down by the general government with the view to influence decision-making there by to exercise its superior position by introducing the rule of preemption, not constitutionally but through other channels. Among others, party structure, fiscal sharing, court system, policy making and etc can be mentioned. In these latter categories, the centralization is not anticipated by the framers of the federal *covenant* rather it is a de facto imposition of the center using the less dominant position of the units.

Through the canon of cooperation as pinpointed above, the center can influence the states and will take the whole federation under its control by adopting uniform party structure and policy making stratagem. Even though the articles of the *covenant* proclaims residual and exclusive competencies reserved to the member states of the federation, the center can effectively encroach upon such competencies in the course of various channels as I tried to cite above. As per the residual clause (shortly means anything that is not specified as federal competence is state competence by default (almost in all federations except Indian)), the union members should be able to protect their prerogatives and add many more as new policy areas emerged over the years. In such federations which are characterized by politically invented centralization (which is not part of the federal bargaining agenda); this is not the case nonetheless. Members of the federation have weakened position from the angle of the political process though this is not manifested by the constitution. The constitutional generous grant of power to the states may either be systematically reduced or the center through its strong muscles will make them non-existence or invisible as prefer to describe.

The Ethiopian Federal structure should be seen from this latter trend but with some remarkable cautions. In the following, I have argued that, the centralization tendency in the Ethiopian curious case is not totally linked with the constitutional makeup; rather it is supplemented (most significantly) by implementation realities by which the federal bargain is working. Thus, the following part of my discussion is devoted in examining both the de jure factors of centralization and those contributing features from the practice. To be specific, this study seek to demonstrate that the answers to the working of the Ethiopian federation together with the manner of controlled system of State-

Federal relation lie not so much in its formal constitution as in its operational reality even if there are some constitutionally inherited underpinnings.

It is argued that, in the existing party based intergovernmental relation and a superior–subordinate link (top–down approach) which is also exacerbated by fiscal and policymaking centralization in the midst of less federal outlook and principled commitment to the division of constitutional competencies, Ethiopia’s federal system is moved in a centralist direction even after two decades of experiment.

### 5.3.2. Informal<sup>254</sup> Intergovernmental Cooperation vis-à-vis the States autonomy

The intergovernmental cooperation formula in Ethiopia as argued elsewhere takes a unidirectional type in which the center takes all the frontlines of setting the agenda and even compelling the states to submit their specific concern towards the priorities set by the center. In this regard Merera Gudina, a veteran opposition politician argued that, the principal reason of centralized federalism in Ethiopia is the absence of formal forum of cooperation between the states and the federal government and the concomitant dominance of the party device in governing the operation and *way of life* in the regional states. Accordingly, the ruling coalition at anytime may pass an order for the constituent unit governments not by inviting them to discuss on a certain course of action rather to seek its implementation in accordance with the priorities set by the *Politburo*.<sup>255</sup>

The Ministry of Federal Affairs (MoFA) as pointed out in the previous chapter is considered to be the obvious formal institution of intergovernmental relationships in Ethiopia. Besides, even if there is a debate as to the overlap of power between MoFA and the House of the Federation (HoF), the latter is in fact considered as another

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<sup>254</sup> As pointed out, informal intergovernmental cooperation, for the purpose of this study includes the meetings, discussions, and other dialogues between the governments and their specific departments without any prearranged institutional or legal frameworks including in fact the party channels.

<sup>255</sup> The hierarchy of power that one can observe in all systems that are distinguished as authoritarian, by which ordinary party members submit their power to a congress, the congress to a central committee, the central committee to a *politburo* and the *politburo* in turn to the chairman of the party has been also operational in the EPRDF system including absence of the chairman’s term of power. According to Article 17 of the EPRDF Statute, the three top level positions in the organizational structure of the party are General Congress of EPRDF, Council of EPRDF and Executive Committee of EPRDF.

prescribed institution of cooperation between the two tiers of governments. This is particularly true in relation to the House's role in the determination the federal equalization grant and subsidies and as an organ in charge of adjudication of federal disputes.

Nevertheless, as Assefa noticed, the activity of the Ministry of Federal Affairs in the states is one of the semi-formalized practices that have an impact on the overall federal-state relations. It is an executive institution of the federal government by which the Prime minister exercises a leading role. The attachment of the constituent units in this organ is highly unlikely and also unfeasible if we argue from the constitutional point of view.<sup>256</sup> Therefore, from the concept of Intergovernmental collaboration itself, MoFA should not be the appropriate candidate. If we insisted on this organ as an institution of collaboration, ultimately we are giving the federation a dominant role in determining how the cooperation aspect should look like. From the very foundation, some also tend to condemn this trend as a mechanism of controlling the states by the centre.

The evolving practice of intergovernmental cooperation indicates that it is a top-bottom approach in which the states have not yet commenced establishing forums for airing their common agenda in their relations with the center and ultimately creates another door to the latter in the enjoyment of wide-ranging unrestricted political powers.

### **5.3.3. Political Legitimacy of the Power Holders at the Center**

Lovise Aalen and some other authors on the Ethiopian federalism argued that, the Ethiopian federal project lacks original legitimacy.<sup>257</sup> The main basis of the argument is the way through which the incumbent leaders came into power and the following “bargaining” process on the federal option. Concerning this latter issue, Aalen argued

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<sup>256</sup> It should be clear that, IGR is a forum for bargaining between the federal and state governments on matters of common interest and as Assefa noted, if conducted based on some sense of partnership between the two governments then in the long run it is meant to be a forum for attainment of common goals through cooperation. See also Assefa Fiseha, *The System of Intergovernmental Relations (IGR) in Ethiopia: In search of Institutions and Guidelines*, *supra* note 240 at 96.

<sup>257</sup> Lovise Aalen, *Ethnic Federalism in a Dominant Party State: The Ethiopian Experience 1991-2000*, *supra* note 19 at 48; Sarah Vaughan *The Addis Ababa Transitional Conference of July 1991: Its Origin, history and significance*. *Supra* note 141. Original legitimacy is different from derivative legitimacy in the sense that, the former implies legitimacy acquired during the constitutional making while the latter comes through redemptive political practice. For detailed analysis of this issue see Tsegaye Regassa *Issues of Federalism in Ethiopia: towards an Inventory*, Ethiopian constitutional Law Series, Vol 2. No. 2, AAU 2009 at 20.

that, there was lack of transparency and participation in the process of the federal bargain and most of the political elites consider the idea as a way of ensuring the Tigray's People Liberation Front (TPLF) hegemony.

For many, such as Lidetu Ayalew, the chairman of the Ethiopian Democratic Party (EDP), “the process of introducing federalism in Ethiopia is more of a federal imposition (though it has gained acceptance at least moderately) than a federal bargain and there was no or little consultation of the public”.<sup>258</sup> When a federal option is offered in Ethiopia, the EPRDF never really asked the opposition whether they wanted federalism or not.<sup>259</sup> The military superiority of the TPLF and the control that they imposed during the negotiations made the oppositions unable to reject the offer or to reflect their own view.<sup>260</sup> Consequently the constitution is considered to be produced single handed by one organization and its partners and has failed to acquire legitimacy from the very inception.

The above arguments on the lack of legitimacy during the early days of the federal bargain can also be substantiated by recent political events that show its continuity. In the highly contested election of 2005 by which EPRDF lost many of its seats in both the federal and regional parliaments, the public discourse during the pre-election periods was an indication of the absence of trust on the central institutions and the federal idea itself by the public at large.<sup>261</sup>

Knowing this the EPRDFs' influence in each and every aspect of life, both in the regional states and the center increases overwhelmingly. There are federal legislations issued immediately after the election that have the potential of restricting any sort of political movements in the four corners of the country. Hence, the central power holders are always busy of widening their sphere of influence there by covering the questions concerning their legitimacy. One may argued that the result of the recent election (May 2010) shows otherwise of the argument produced above. However, it is

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<sup>258</sup> Interview with Ato Lidetu Ayalew, The chairman of the Ethiopian Democratic Party (EDP) September 2010 Addis Ababa. On the other side however, Ato Seiko Toure Getachew, The EPRDF chief public relation officer told me that, the federal system in Ethiopia has been introduced with the basis of democratic process and it was supported by the representatives of each nationality groups.

<sup>259</sup> Aalen *supra* note 19.

<sup>260</sup> Ibid.

<sup>261</sup> Abyi Teklemariam, Addis Neger, September 01, 2008, at 4.

wise to consider the number of votes casted especially in urban areas that EPRDF has got in comparison with its contestants such as Medrek. If Ethiopia has adopted the proportional electoral model, the number of seats that the EPRDF should have will be almost comparable with its oppositions at least as far as the major cities are concerned.<sup>262</sup> In addition, as the chairman of the European Union Election observer team noted, the playing ground is far from being leveled.<sup>263</sup>

At this stage it is also important to point out the new instruments of the slogan of 'developmentalism' as coverage to the question of political legitimacy. For many Ethiopian scholars and economists, the main reason behind the sudden promotion of developmentalism appears to be the need to provide a new legitimacy for a regime that failed to translate its promises of democracy, peace and development into practice not as a justification for the market failure with neo-liberalism.<sup>264</sup> This becomes evident when one looks at the manner in which the ERPFD overplayed the recent economic growth in the country to justify its tight grip over political power.<sup>265</sup> It even coined an illusory developmental objective of bringing Ethiopia into the group of middle-income countries of the world in a matter of two or three decades.<sup>266</sup>

As Asnake noted, the mantra of developmentalism that is played day and night in Ethiopia resonates what has been preached by authoritarian regimes from Latin America to East Asia. Almost all of these regimes like Ethiopia today appealed:

[to the]...masses of the poor by presenting themselves as forces for progress, as agents of development, as shortcuts to modernity. Their claim to legitimacy, their appeals to loyalty, were that they were uniquely capable of mobilizing resources, and energies to break the chains of poverty, to build a better future, to lead their respective countries to affluence, power and prestige. Whatever their particular ideological stripes, such regimes plastered their walls and minds with images that

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<sup>262</sup> See the official election results by The Ethiopian Electoral Board at [www.electionethiopia.org/en/](http://www.electionethiopia.org/en/). As accessed on July 11, 2010.

<sup>263</sup> See the preliminary statement made by EU election observers, at [www.ethiosun.com/eu-preliminary-statement-ethiopias-election](http://www.ethiosun.com/eu-preliminary-statement-ethiopias-election). As accessed on July 11, 2010. See also the final report on [www.afriquejet.com](http://www.afriquejet.com).

<sup>264</sup> In this regard the notorious outstanding economist in Ethiopia Berhanu Abegaz calls for deep economic reforms through liberal thinking not by reinventing ideologies or philosophies. See also Asnake *supra* note 104.

<sup>265</sup> Ibid.

<sup>266</sup> Annual Report by the Ministry of Foreign Affairs October 2007.

pictured how everything, homes- schools- hospitals-would grow in the radiant future.<sup>267</sup>

In sum, EPRDF is challenged with the question of political legitimacy that resulted in the concentration of all political powers at the central official's levels through a range of tactics rather than creating a decentralized system and open deliberation among the public at large or to the lowest level of governments. Hence, under the prevailing conditions in Ethiopia, one cannot talk about federalist decentralization of power. The centralization trend which resulted from the absence of proper legitimacy of the power holders exacerbates the rather coercive trend of the center-state relation. Since the central power holders have not trust on their regional counterparts, they always employ various ways of controlling the activities of the latter even in contradiction with the constitutionally entrenched autonomy.

#### 5.3.4. Party Congruence

Do political parties exert any significant influence on the ability of subnational governments in federal systems to shape their own destinies? Fueled by persistent tensions between regions and the center in a vast majority of political systems, the study of the institutional conditions such as political party arrangements, for the maintenance of centralization or peripheralization of federalism has come to the forefront of scholarly and public debate. Whether the party organization is centralized or decentralized have crucial effects on the relationship between central and regional level. Riker argued that;

The federal relationship is centralized according to the degree to which the parties organized to operate the central government control the parties organized to operate the constituent governments. This amounts to the assertion that the proximate cause of variations in the degree of centralization (or peripheralization) in the constitutional structure of a federalism is the variation in degree of party centralization<sup>268</sup>

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<sup>267</sup> Przeworski et al. *Democracy and Development: Political Institutions and Well-being in the World, 1950-1990*, Cambridge: Cambridge University Press, 2000.

<sup>268</sup> Riker, William H. *Federalism: origin, operation, significance*. Boston, Little Brown (1964) at 167.

In Ethiopia too, the existence of a single party dominance in all the regions as well as the federation is condemned by many as the main cause for the centralization of power. Since the EPRDF exercises hegemonic control<sup>269</sup> in all the regional states through its member and affiliated parties, absorption of power in the hands of the *Politburo* or the *central committee* is evident. Needless to say, the concept of intraparty democracy is unthinkable in the existence of party-discipline doctrine. In an interview with one central committee member of the Amhara National Democratic Movement (ANDM) and a Woreda Administrator, I understand the fact that, everything which is proposed by the central committee of the EPRDF at Addis Ababa should be endorsed by the respective regional party which shows the commitment of every member to his parent political organization (EPRDF), otherwise he/she may be condemned as hesitant of respecting the party's rule of obedience.

As argued above, one of the chief markers of continued centralization is the EPRDF conception of ethnic based satellite Parties, which run the regional governments under the supervision of the *Central Committee* of the ruling coalition.<sup>270</sup> Through this channel, the central government enjoys the absolute right to do or undo anything in the federation. Whatever is proposed by the central government, whether it is in line with the states priority or not, must be respected and should be taken as a parameter. According to some of my informants from the opposition camp, the EPRDF regime forced out its opponent ethnic parties that wanted to assert the right of their regional states to "self-determination up to and including secession," and it manipulated political and administrative institutions to preserve its dominance in the political arena.

Note also that, it is not always the case that such party congruence is perpetual. There are instants by which interparty or intraparty conflicts or disintegrations have been occurred. The 2001 TPLF disintegration may exemplify this scenario which ultimately

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<sup>269</sup> It is important to note that, there are some short run benefits which are attributed to a complete, harmonious and smooth party congruity though it is rare to happen in a free society and at times resulted in the collapse of the system. However, there is ample evidence pointing to the fact that a centralized party system and federalism are more an oxymoron. Such a centralized party structure appears to have impact on the autonomy of the regional states that is expected to exist in a federation. See also Assefa, *supra* note 240 at 128.

<sup>270</sup> The ruling coalition is led by the central committee *aka* council, composed of one hundred eighty members from the four member parties (45 members from each) and executive committee that comprised of thirty six members (nine members from each). (Interview with Ato Seiko Toure Getachew EPRDF's Public Relations Chief November 2010 Addis Ababa).

endangers the very continuity of the system as well as its contribution towards the concentration of powers at the national government especially in the hands of the office of the Prime minister.<sup>271</sup> As a result, the party politics plays a twofold role in shaping and reshaping the federal balance of power- Extreme party congruity absorbs all the vital powers to the central committee while the internal conflict among the sister parties has a domino effect in the lack of trust among themselves which ultimately opens the door for the *Politburo* to severely oversees each and every movements of the regionally based member and affiliated political parties.

In connection with the role of the party dynamics in shaping the federal practice in Ethiopia, I have other sections that will be discussed in a moment. The rationale is plain; in Ethiopia the center-state relationship is the direct derivation of the party politics.

#### **5.3.5. Centralization as a Necessary Evil: Is the argument convincing in the Ethiopian case?**

One should not say *a priori* that centralization is “good” or “bad” as such, because it automatically diminishes the autonomy of member states. Such an assertion is political or polemical, but not scientific.<sup>272</sup> From a scientific point of view, once the necessity of the balance corresponding to the definition of federalism has been stated, it is possible to consider-even if the distinction sounds too simplistic that centralization is “good” as long as it corresponds to the search for efficiency that all members of the federal community are going to benefit from, and on the contrary that is “bad” only if it risks to destroy the dialectical process the system has launched, because it weakens or even erases its decentralized elements.<sup>273</sup>

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<sup>271</sup> During the split in the central committee of the TPLF in 2001 those who opposed the prime minister, including Gebru Asrat, President of the State of Tigray, Kuma Demeqsa, President of the State of Oromia, and Abate Kisho, President of the State of Southern Peoples, Nations, Nationalities — the latter two had apparently allied with the TPLF dissidents — were simply thrown out of office. Although they were supposedly elected by the people, they found themselves replaced by those who are completely loyal to the leadership. For a detailed analysis of the background and contexts of the disintegration see Assefa Fiseha *Theory versus Practice in the Implementation of Ethiopia's Ethnic Federalism*, *supra* note 11.

<sup>272</sup> Nicolas Schmitt *the Diminishing Autonomy of Sub-National Entities in Federal countries*, *New Trends on Federalism*, working Papers No 1, Institute of Federalism 2004 at 6.

<sup>273</sup> *Ibid.*

In some federations, centralization is part of their efficiency project and in some others it is a respect for the constituent units because the process may allow the principle of subsidiarity. In Switzerland for example, the centralization agenda is justified by these couple of arguments and also accompanied by democratic guarantees whose aim is to limit centralization to what is necessary to the changes that are imposed by the adaptation to political, economical or social circumstances.<sup>274</sup>

Since the concept of federalism is characterized by the search for balance between elements of shared rule and elements of self rule, centralization is not illegitimate as such. As Schmitt<sup>275</sup> argued certain centralization is sometimes justified. Such argument is prevalent in European federations due to the overwhelming and ever increasing policy of Europeanization. Likewise, the hidden force behind the American federalism was the necessity to centralize powers that were previously too scattered to be efficient. In these federations therefore, centralization is taken as a necessary evil to preserve the countries unity under a federal formula. Centralization can be justified from the angle of efficiency and also in resisting the global influence.<sup>276</sup>

In Ethiopia as pointed out in the previous sections, there is continuous power centralization due to factors that are out of the constitutional arena and its aspirations. Still the Ethiopian federal experiment is grouped under those federations by which R. Watts called centralized federations. Therefore, the issue is whether this centralization is justified by the global influence on the politico-economy of the country given that Ethiopia is now member to various regional and global organizations or it is just the result of a mere political practice. In addition we have to be serious as to the goals and reasons for this centralization policy. A related matter is, Can we argue from the efficiency perspective?

In this regard Merera argued that,

“Although the Ethiopian Constitution declares that the states may prepare their own constitutions, decide their own official languages, develop their own

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<sup>274</sup> Ibid.

<sup>275</sup> Ibid.

<sup>276</sup> Note that, in the early days of some federations, the argument for confederations and latter for federations was based on security justifications.

administrative systems, establish separate police forces, and collect certain taxes, the initiative for such arrangements in fact has come more from the center than from the regional states. At a very fundamental level the implementation of decentralization has been a political process intended to keep the EPRDF in the position of being the dominant player in Ethiopia's reconstruction and the centralization trend can only be justified from this angle of protecting the interest of this vanguard party and nothing else."<sup>277</sup>

On the other hand Ato Seiko Toure emphasized on the need to have a consensus on some nation-wide policies by which due to the states inefficiency in terms of finance and manpower, the central government takes the initiative and cooperate with the regional states towards their implementation. This, according to him should not be taken as a centralization of power rather it is a cooperation reflecting common national goals.<sup>278</sup>

Ato Lidetu has tried to look the issue from the point of view of the regionally based parties influence on the general decision making process and their ability to bargain in the overall federal practice. In this connection he concludes that, these political organizations are mere satellites of the EPRDF and they can even be restructured by the latter by its own will. Accordingly, up to these days he says, we haven't witness a regionally member or affiliated party that has tried to challenge the center. Consequently, the political architects at the centre can do or undo whatever they please. The centralization process therefore is resulted from the will of EPRDF not from the need to cooperate with the regions or to pursue national policies and objectives.

In my opinion, the centralization practice in Ethiopia, though justified from the efficiency perspective as we have a relatively young federal experience and inefficient constituent units, it is a little bit severe *i.e.* the influence of the national government throughout the federation exceeds its limits and for that matter centralization is not taken as a necessary evil rather an important tool to keep the political interest of the ruling class. According to federalists, centralization is detrimental when it risks destroying the decentralized side of the federal dialectic as what is happening in

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<sup>277</sup> Interview with Dr Merera Gudina member and vice chairman of Medrek.

<sup>278</sup> Interview with Ato Seiko Toure Getachew, *supra* note 270.

Ethiopia now. Most matured federations have come up with the policy of centralization due to the increasing influence of their constituent units in the overall political practice. However in Ethiopia, from the very beginning the regional states are not as such viable and one can consider them as the creations of the new state building attempt.

To be specific, the country's overall policy is designed at the central level through different formats. Among others, the five years development plan, the Business process reengineering package, the newly invented Development and Transformation Plan, the Millennium Development Goals, the federal grant equalization scheme, International Funds and Assurances usually comes from the center with conditions etc exacerbated by the party dynamics opens a loophole for the center to stretch its hands in regulating the daily affairs of the regional units and even the local governments. There are a number of policy documents prepared at the central EPRDF level and required to be uniformly applicable down to the Woreda and Kebele.<sup>279</sup> Needless to say, the apparatus of implementing all this plans is the party channel rather than organizing formal negotiation forums.

Not only the policy making power that is subject to the central party process but also the state's political, economic as well as other important privileges entirely assigned to them are now in practice taken by the central governments and its special units. Merera emphatically argued that, the states are not in a position even to elect their administrators and other officials since the central government already fix on who are the presidents or vice of a particular regional state which according to him is an attribute of severe form of unitary not federal governance.<sup>280</sup> Consequently, the accountability of those "elected" officials remains solidly to the central government, not to the people whom they are supposedly representing. Accordingly, in what appears to be a neo-patrimonial system, the prime minister maintains power through personal patronage and clientelism.

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<sup>279</sup> Woreda and Kebele are the lower and lowest administrative units in the Ethiopian political configuration respectively. It is not surprising to hear a simple manner of expression of the Premier at the Woreda or Kebele level. In worst cases, a person who is appointed as a regional or Woreda governor believes that his power is conditional upon the decision of the central committee of his mother party at the regional or central levels as the case may be (personal discussion with one member of the ANDM central committee)

<sup>280</sup> According to Merera, in the recent establishment of government in Ethiopia, the majority people in Oromia region has been opposed through petition the removal of their former president Ato Abba Dula Gemeda though it was not successful.

All these factors have led the federal project in Ethiopia to demonstrate the features of what federal writers called coercive federalism<sup>281</sup> or an aspect of intergovernmental relationship by which the center always takes the frontline in initiating policies and guidelines at the expense of the autonomy of subnational units and usually short of consultation.<sup>282</sup> The following sections are designed to deal with features, in fact that has also contributed in one way or another to the anomaly of the balance of power in the federal practice, which vividly signify the coercive nature of this young federal experiment.

#### **5.4. Coercive Federalism: the Functional trend of the Center-State Relations in Ethiopia**

In Ethiopia, although there is a constitutional commitment with regard to devolution of power to the constituent units of the federation, the functional trend reveals otherwise; there is a clear lop-sided relationship between the two tiers of governments. As Salih and Markakis<sup>283</sup> noted, decentralization in Ethiopia is a way to democratization inasmuch as it enables more people to influence the political process. However, due to several factors that undermine such constitutional promise, the devolution project becomes an instrument for the power holders at the center to preside over the whole aspects of life all over the realm. As the following discussion suggests the Center-State relation in Ethiopia takes a top-down approach and everything said at the federal level is considered to be “Words of God” and at the end states remain to be the implementers of centrally deliberated and calculated projects.

The concern of this part of my thesis is to evaluate the major features of the center-state relations in the federal practice of Ethiopia. It is a look to appraise whether this vertical

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<sup>281</sup> From a personal discussion that I have made with John Kincaid, who is in fact the author who has introduced the concept of coercive federalism in the American viewpoint, it is possible to consider the Ethiopian Federal practice as the one which desperately satisfies all the coercive elements of a federal framework.

<sup>282</sup> For further analysis of this federal jargon, see John Kincaid, *contemporary U.S. federalism: coercive change with cooperative continuity*, *supra* note 2 John Kincaid, *From Cooperative to Coercive Federalism*, *Annals of the American Academy of Political and Social Science*, Vol. 509, American Federalism: The Third Century (May, 1990), pp. 139-152: Sage Publications, Inc.. On the other hand however, there are some EPRDF personnel's who argued that, the regional states are in a much better position to challenge the central initiatives as the constitutional framework is designed in such a way to allow them to do this. Interview with Ato Sekotoure Getachew (*supra* note 270).

<sup>283</sup> M. A. M. Salih and John Markakis *Ethnicity and the State in Eastern Africa*, *supra* note 16 at 8.

relationship reveals what federal writers called coercive federalism or not. The key difference with the centralizing tenets of the federal framework, which discussed above, is only an approach of looking at the way in which the relationship is based and at this juncture the spotlight is entirely on the reciprocal relations of both governments established *de jure*.

Now it is almost two decades that the Ethiopian federal project is constitutionally put in place and in parallel grouped under federal systems that are tabularized in the category of centralized federalism. In the mean time, the political response for such a dominant role of the center is an area of interest in the political as well as academic discourse. As noted by several authors on the subject, intervening social, economic and political variables are essential in determining the functioning of a federation. In line with this view, before reaching at a conclusive answer, an attempt has been made to look at the center-state relation trend in the country from these perspectives.

#### **5.4.1. Coercive Federalism Defined**

Some federations can be described as “coercive” because major political, fiscal, statutory, regulatory, and judicial practices entail impositions of many federal (*i.e.* national government) dictates on state and local governments. The concept has emerged from the American experience of cooperative and collaborative federalism. As Kincaid noted, the era of coercive federalism has been marked by a shift of federal policymaking from the interests of places (*i.e.*, state and local governments) to the interests of persons (*i.e.*, voters and interest groups). That is, elected federal officials, as well as the federal courts, have been highly responsive to electoral coalitions, interest groups, and campaign contributors and much less responsive to elected state and local government officials.<sup>284</sup> Through such a shift, states began to lose some of their autonomies and subjected to federally set priorities and guidelines. As the trend reveals, quite frequently, the states are unable to prevail against powerful interest groups that can bring crucial financial, ideological, and voter rewards and punishments to bear on the electoral fortunes of federal officials.

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<sup>284</sup> Kincaid *supra* note 5 at 1.

The major instruments of coercion by the federation include Grants-in-Aid- especially conditional grants that embrace federal backings for social welfare of states citizens and grants for infrastructure, economic development, and education; Mandates which is a direct federal order requiring state or local governments to provide certain services or perform certain duties; preemption rule that declares the overriding role of the federal government with a uniform federal law and federal constraints on state taxation and borrowing.

Coercive federalism is therefore a concept invented by federal writers to designate a relationship between the states and the federation which is dominated more often than not by the latter. Even if autonomous existence is conceived as an ideal theory during the era of K.C Wheare, in practice cooperative arrangement takes the overriding position. Nonetheless, coercive relationship is not appealing and even contradicts the very principle of federalism and federal theory. Due to the dominant position of the central government and institutions, by virtue of several methods, the states autonomy will be eroded and ultimately may fall under the auspices of the federation.

Closer to home, though our case reflects some of the above mentioned coercive elements of federalization, in the opinion of this writer, there are other important features that enunciate the coercive trends of Center-State relationship in the context of Ethiopia which are not the case in America or somewhere else. Therefore the Ethiopian federalism remains to be a near to unitary system due to these factors which unswervingly challenges the constitutional aspirations of devolution and autonomy of states or nationalities and also the federal idea itself. As Lidetu Ayalew points in his recent book "*Medlot*"; the Ethiopian federation is a federation of constitutional principles which is already failed to be realized as the country is still operating as a unitary state with less or no federal attitude.<sup>285</sup> His major emphasis is the role of EPRDF as a vanguard political force behind the federal practice that eventually resulted in the meager position of the states in the socio-economic as well as political practice of this country. The purpose of this particular section is to dig out this and other contributory factors that may influence the intergovernmental relationship between the two orders of the federal bargainers.

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<sup>285</sup> Lidetu Ayalew *Medlot* (an Amharic term which connotes a local measurement devise) 2<sup>nd</sup> edition, 2010 at 336.

### 5.4.2. The Vanguardist Party Argument

After its official adoption of a multiparty system in 1991, the EPRDF reinvented itself as a dominant party.<sup>286</sup> There is a relatively long narrative behind such domination starting as of the early days of the constitutional making. Samuel Huntington, who came in 1993 to Addis Ababa to advise the leaders of the EPRDF on the writing of the 1994 federal constitution, contributed to the development of the theoretical basis for a dominant party system in the Ethiopian context.<sup>287</sup> According to him, under a dominant party system, there will be ‘one broad based party that has a wide appeal to a number of groups, regularly wins elections and more or less continuously controls government.’<sup>288</sup> In the opinion of this advisor such a system also allows ‘smaller parties which may reflect particular ethnic, regional, or ideological interests’. Therefore from the very inception, EPRDF is established to be a semi-permanent ruling party with some opposition parties who will not be tolerable to control either the legislative or the executive<sup>289</sup> Huntington underscored that building a dominant party system under the EPRDF serve two key purposes. First, it would provide political stability needed for economic development and attracting foreign investment. Second, the presence of smaller opposition political parties that compete in elections but can never form a government either individually or collectively provide ‘democratic legitimacy’ for EPRDF’s rule and facilitate the flow of foreign aid.<sup>290</sup> According to some Ethiopian authors, the reasons behind Huntington’s promotion of these ideas could be because of his belief that poor countries like Ethiopia cannot maintain multiparty democracy.

However, the emergence and continuity of EPRDF as a vanguard political force is accompanied with authoritarian tactics. The first of such tactics is the election fraud and the absence of leveled playing field for all the political parties. Political parties with different shades of ideology could not compete in an equal footing and elections remain

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<sup>286</sup> As a matter of clarification, Ethiopia under the EPRDF ruling is a de jure multiparty country while it remains a de facto one party state.

<sup>287</sup> Huntington, Samuel P. *Political Development in Ethiopia: A Peasant- Based Dominant-Party Democracy: Report to USAID/Ethiopia on consultations with the Constitutional Commission, March-April 1993*, in W.H. Tecola (ed.), *Democratization in Ethiopia (1991-1994): A Personal View?* Cambridge, MA: Khepera Publishers. See also Asnake, *supra* note 104 at 70, 1993.

<sup>288</sup> Ibid.

<sup>289</sup> Ibid.

<sup>290</sup> Ibid.

neither free nor fair.<sup>291</sup> According to International Crisis Group and some other unofficial data's such as the Ibrahim Moy's report, Ethiopia is among the world's leading country in its huge number of asylum seekers in Europe and America by which all the claims are based on political persecution and intimidation by the ruling party.

By any count, such a vanguardist party argument<sup>292</sup> should not be justified in a federal country since it cannot endure political pluralism and divergence of opinion. The nation, nationalities and peoples of Ethiopia are dissimilar not only in terms of culture, language or way of life but the political outlook of these diverse peoples should also be added to the parameter. The hegemonic control of EPRDF restricts the right of the people to search for alternative ideologies and politico-economic recipes.

In terms of theory, the Ethiopian party politics in general and the organization of EPRDF in particular seem democratic and offer adequate space for regional interests. This is because both the members and affiliated parties to the coalition are prearranged along their ethnic (regional) lines. However, in reality power is strenuous at the central level especially under the monopoly of the EPRDF central committee. The concept of Intraparty democracy is not known due to the strict adherence towards the notion of party discipline-No member of the EPRDF is allowed to vote against the proposal offered by the party.<sup>293</sup>

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<sup>291</sup> According to the final election observer's report of the European Union, the ruling party is condemned for its tight control of such institutions as the electoral board, the courts and the electronic media whose independence is crucially important for holding free and fair elections.

<sup>292</sup> There are instances by which the argument is based on the free choice of the people as in the case of South Africa (ANC is in power for the last several years controlling most of the provinces and the federal seats through a clear support of the electorate). Conversely, In Ethiopia, according to some opposition political groups and reports, the vanguardist party argument has developed through the misuse of the political space by the EPRDF and through its tactic of ousting the viable oppositions from the public stages. Moreover, the dominance of EPRDF is inextricably linked with persecution, intimidation and arrest of opposition political groups. See also The African Report by International Crisis Group (*supra* note 104 at 26).

<sup>293</sup> Such a vanguardist or dominant party design with all its concomitants such as party discipline has been practiced in South Africa for the last two decades and still considered as friendly with their federal like structure. The difference with the Ethiopian model is that, the African National Congress (ANC) has already won the hearts and minds of the people of the country and also according to some opposition political party leaders, is working for the development and accommodation of diversities of opinions in the entire nation. ANC according to Patricia De Lille a leader of the Independent democrats is a legitimate political party and the young ones should have a lot to learn from it. More importantly the vanguardist thinking is not as such exaggerated in the case of ANC; in the recent election for instance, it has received nearly 64 percent of the votes and there is the Western Cape Province which fall under the control of opposition (The Democratic Alliance). (Note that EPRDF in now be able to control 99.7% of the seats in parliament and no regional state has been controlled by oppositions). See also Roger

Ultimately, though the party system resembles at least on paper, Lijiphart's consociational democracy notion (when we look the party organization formula in light of Article 39(3)) in practical terms, the states are forced via their mother party to consent for the center even in matters they hold reservations which in due course defeat their autonomous constitutional existence. So in Ethiopia, the courageously stated right of self rule is a myth than being a reality if we look critically the operational system of the federation. The EPRDF hegemony is now an instrument for the center to install whatever discussed and approved at the central party level. It will not be that much problematic if there is a possibility for the regionally based parties to decide on their own exclusive affairs. One anonymous interviewee told me that in worst cases there are federal personnel's who are named as loyalists that be present at the central committee meeting of the member parties and report the same to the central politburo. According to my informant from the Oromia region, there was one incident that some central personnel's who wish to attend the central committee conference of the Oromo Peoples Democratic Organization (OPDO) one of the member parties to the coalition, are forced to evacuate from the hall. At the end, the prime minister office intervened on the matter and some of these party officials are expelled from their positions as suspicious of being adherent of the Oromo Liberation Front (OLF) which is an opposition and ardent supporter of the Oromia's secession from the federation.<sup>294</sup> The worst scenario of such philosophy and its incompatible element with the very idea of federalism is its decision-making manner which is the next agenda.

### 5.4.3. Marrying Democratic Centralism with the Federal Idea

Before dealing with the elusive concept of democratic centralism<sup>295</sup> and its appliance in the existing Ethiopian federal political discourse, it is wise to point out that even if the constitution officially recognized multiparty politics in the country thereby declared that political power should only be seized through a democratic election, to date, as many

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Southall *the dominant party debate in South Africa*, afrika spectrum, 39 Institute fur Afrika Kunde Hamburg at 2.

<sup>294</sup> Personal discussion with OPDO member, October 2010 Sebeta.

<sup>295</sup> As Assefa noted, Democratic centralism is a vague concepts which generally implies that decisions are often reached at top executive party officials level and flow directly to the grass root party members. The consensus is only as between the top party officials. Assefa , *supra* note 240 at 129.

politicians pointed it out, twenty years after the EPRDF came to power, there is no viable political movement and democratic election held in this country.<sup>296</sup> The dominant political party argument is now fashioned in the EPRDF's new program especially after the party's unprecedented victory in the recently held national election.<sup>297</sup>

The issue is however the EPRDF's unenthusiastic stance and the ensuing political stratagem towards the encroachment of multiparty democracy in the new federal Ethiopia. The argument is based on the fact that, genuine federalism is not only the accommodation of cultural and linguistic multiplicity but also embraces the realization of political pluralism and the capacity to have room for the same. Obviously in a country of more than eighty ethnic groups categorized under nine different regional states and two additional federally controlled units, it is predictable to encompass several political views and ideologies unless there is something wrong. It is curious to tame similar political attitude in the entire nation. But in contemporary Ethiopia this is the reality, EPRDF and its grouping enjoys a hegemonic control in this federally arranged country for the last two decades.<sup>298</sup> For various reasons (such as protesting persecution and intimidation), independent opposition Parties boycotted all elections held in the history of the country, leaving EPRDF and its satellite Parties to monopolize political power. The May 2010 election shows the fact that the country is now ruled by a single party without any viable opposition. Without any significant opposition, the EPRDF has/ is maintained control over the Regional Governments, and the protectorate Parties have become vehicles by which the EPRDF drills an indirect rule over the entire realm. In my opinion this biased tendency strictly goes against the underlined tenets of political pluralism; let alone Democracy and Constitutionalism.

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<sup>296</sup> In this regard, Leencho Leta, Merera Gudina, Professor Mesfin Woldemariam and Negede Gobeze can be mentioned. For some Ethiopians the 2005 national election can be considered as the Ethiopia's great success and *once in life time* opportunity though at the end it also reveals its ugly results.

<sup>297</sup> In an interview with some staffs in the House of the Federation one anonymous respondent told me that China is seen by the Ethiopian leadership as a *political* model with its one central dominant party that co-opts politics, its single ideology, and tactics such as strategically suppressing opposition groups. But Ato Sekotoure succinctly argued that the relationship between China and Ethiopia is only on Economic terms not of political.

<sup>298</sup> In the words of Asnake, one of the key factors that explain the discrepancy between the officially professed multi-partyism and the prevailing de facto single party rule under the EPRDF is the vanguardist tradition of political parties in Ethiopia as I have tried to briefly point out above.

In this connection we have to mention also the TPLF's (Tigray's People Liberation Front, one of the foremost forming bricks of EPRDF) continued dominance in the ruling coalition which is considered by many as an auxiliary reason for the prevailing political centralization in the hands of not only the center but also in specific groups. Without losing sight of the federal compact, at all times it calls for genuine decentralization and ethnic neutrality of state at the center, both in essence and in appearance.<sup>299</sup>

The point is the federation has now basis itself in this system of single party rule in all affairs whether economic, social or political. In other words, it is *via* this party channel (in fact, surprisingly for many federal advocates after the collapse of the Soviet Union) that the Federation is working. Intergovernmental relation and state(s) allegiance to the center is measured not by their willingness to be part of the political process rather through the underpinning of *Party discipline* which eventually driven the country's political leaning to demonstrate the features of *Democratic Centralism*.

The idea of Democratic Centralism, having its derivation from the Soviet communism<sup>300</sup> experience reveals the aspect of a political trend that is characterized by centralized decision making without or little involvement of the electorate. All the deliberations and decisions of state affairs are concluded in *camera* or *behind the walls* without the active participation of the populace; usually at the top party level. Decisions always follow a top-down approach. Palmiro Togliatti explained democratic centralism in the context of the former socialist bloc as:

a simple and new type relationship of the Citizens, the Party and the State. Both the Party and the state maintain basic units in the work places. They constitute the foundation of both the Soviet organs and organizations of the Communist Party. It is the task of the Party, the organizations of the Communist Party. It is

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<sup>299</sup> Conversely however, there are arguments which show an indication of losing grip of power by the TPLF. Such argument is mainly advocated by former TPLF leaders and members as the new EPRDF cabinet is more or less over controlled by the SPDM.

<sup>300</sup> For many Ethiopian authors the Ethiopian federal formula is clearly a resemblance of the Soviet federal experience in many respects. Among other things, as Asnake succinctly states, there is a strong similarity between the federalism of the former Soviet Union and Ethiopia in terms of the centralisation of power by a vanguardist political party. Like the Communist Party of the ex-Soviet Union, the EPRDF provides political leadership to all of the ethnic regions either through its member organisations or affiliates. This may warrant characterizing Ethiopian federalism as 'national in form' and 'revolutionary democracy in content' by borrowing one of the well known adages of Soviet federalism - 'national in form' but 'socialist in content'.

the task of the Party, the vanguard of the working class, to direct the economic, administrative, etc. activities of the state. The leading function of the Party originates in the fact that it plays a leading role in the Soviet organizations and mass organizations, and that it is the Party, which elaborates the main course of the development of the society and struggles for the realization of its plans. The resultant system of democratic centralism is the system of proletarian dictatorship. In it leadership and consensus are inseparably one.<sup>301</sup>

In Ethiopia too such thinking has got an overriding support among the EPRDF members and supporters. There is insufficient space for independent initiative, dissent and debate. The party is the originator of the whole thing that is going to be implemented and practiced in the entire territory. Democratic centralism provides the top leadership of the EPRDF uncontested authority to decide both the ideological and organizational affairs of the organization and the country itself. Like the practice of the Soviet Union, the decision to give a certain level of administrative status to ethnic groups, to define the competence of regional and local officials, to design the education, health and economic policies of the nation as well as the regional states is solely rests upon the ‘vanguard’ party- the EPRDF.

The major question regarding the devolution process in Ethiopia should be whether real authority is shared between the central government of the EPRDF and the constituent political units or ethnic groups. In the view of opposition political camp and some commentators,<sup>302</sup> the democratic centralism ideal is dominant in this country and the making or unmaking of the Ethiopian state is dependent on the decision of the EPRDF. The ruling party appears to have a ‘religious’ conception of politics, seeing it as ontological and in a class by itself, a way that cannot be entertained in any other form than its own, and one rooted in an ideology called ‘revolutionary democracy’. In this undefined notion of revolutionary democracy,<sup>303</sup> the basics of liberal thinking and

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<sup>301</sup> Cited in Asnake *supra* note 104 at 74.

<sup>302</sup> Among others, Forum for unity and Democracy, Unity for Democracy and Justice and Ethiopian Democratic Party can be mentioned.

<sup>303</sup> When I was a summer fellow at the Fribourg Institute of Federalism (Switzerland), I have asked one of my professors whether revolutionary democracy can be included in the taxonomy of democracy like that of evolutionary democracy, liberal democracy or deliberative democracy. Surprisingly however she is not clear with my question and told me that such sort of democratic ideology is not yet acknowledged among academics or the political discourse.

deliberative democracy are totally disregarded from the political panorama. According to a recent report, this innovative but obfuscating formula left the federal government in control of a largely non-negotiated political order throughout the country.<sup>304</sup> The EPRDF also sees itself as a vanguard party that is invincible and incapable of being wrong so that whatsoever designed or initiated by the central party must be endorsed as the right policy for the country as a whole.

Policy initiatives that have a direct impact on the regional states are designed at the central party level and there is no apposite legal or institutional apparatus for the latter to be part of the process. The democratic centralism dogma in general and the revolutionary democracy rhetoric in particular relies often on non-constitutional techniques, such as administrative appointments on the basis of political loyalty instead of qualification and other tools that are far from being the practice of true federal democracy. In order to freed themselves from forced self-evaluation sessions (*gimgema*) on the basis of the party ideology and policy, regional as well as local officials reserves from challenging any sort of federal proposal despite the fact that it is incompatible with the states predilection.

This party chain of command has effectively replaced state control. Almost all decisions of the party are made and implemented using party structures, instead of the state structure. Procedurally, this system violates no laws; substantively, this party control does not encourage discourse and deliberative democracy.<sup>305</sup> While the Federal Constitution provides a relatively formal institutional ground for federal practice in Ethiopia, and ownership of decision-making powers – including politico-economic ones by local people – EPRDF party culture and structure inhibits the implementation of the constitution and its federal spirit successfully. In short, democratic centralism is an antithesis of federalism and resulted in a coercive trend of relationship between the states and the center in Ethiopia. For example, regional state presidents are more accountable to the party than to their election constituents or parliaments which finally defeat the rationale of defining the state structure along federal design. On top of this, centralizing attitudes are also widely shared among technocrats and civil servants in

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<sup>304</sup> *Political culture in Ethiopia: A balance sheet of post-1991 ethnically based federalism*, Info sheet, African Studies Center Leiden, The Netherlands, June 2010.

<sup>305</sup> Mehari Taddele *Federalism and Conflicts in Ethiopia*, African Union the African Rally for Peace and Development: available at [www.aar.ufre//meh.rally](http://www.aar.ufre//meh.rally) (as accessed on July 2010).

Ethiopia who prioritize party projects and orders before administration of justice and protection of human rights.<sup>306</sup>

#### 5.4.4. A federal Practice operating under Democratic Deficit and Insufficient Constitutionalism<sup>307</sup>

Galligan has raised an important question in relation to the interdependence of democratic practice<sup>308</sup> and federalism. Can there be genuine federalism without democracy? According to him the answer is negative if we are referring to modern or republican form of federalism.<sup>309</sup> Note that, there is a huge academic debate concerning the affiliation between federalism and democracy.<sup>310</sup> Some argues that the two concepts are friends while others consider them as foes. However, the current understanding is that, in the words of Chrysochoou:

It is possible to consider federalism as a particular type of democracy: a pluralist democracy based on a constitutional system of delegated, reserved or shared powers between relatively autonomous, yet interrelated, structures of government, whose multiple interactions aim to serve the sovereign will of the federal demos.<sup>311</sup>

As I have tried to illustrate in the second chapter, for those who advocates for liberal democracy, federalism is presented as a way of preventing tyranny by creating a more sophisticated type of representation, both nationwide and regionally based. Even more

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<sup>306</sup> Ibid.

<sup>307</sup> The issue of democracy and constitutionalism is among the widely debated area in the Ethiopian political as well as academic discourse. However, the aim of this section is limited to shed light on the fact that, the absence of well-developed culture of democracy and a hesitant commitment towards constitutionalism and rule of law, which in one way or another is resulted from the governments understanding of its political ideology or less commitment towards the realizations of the same, has contributed to the coercive trend of the federal practice. As a matter of fact, these concerns, if seriously considered can also be independent factors of political centralization and biased tendency of federal-state relationships.

<sup>308</sup> For the purpose of this paper, democracy connotes the presence and proper protection of basic human rights principles, free and fair election, the possibility for accommodating diversity of opinions and political pluralism, citizen's participation in the states affairs etc and not intended to raise the debate as to its content and definition.

<sup>309</sup> Brian Galligan, *Australian Federalism: Has it a Future?*, Australian Adam Smith Club (Melbourne), [www.economic-justice.org/LF81.pdf](http://www.economic-justice.org/LF81.pdf) accessed on (August 2010).

<sup>310</sup> See for instance the works of D.J Elazar (1987, 1995 and 2007), Riker (1975 and 2007), Dahl (1983), Chrysochoou (1998) and others.

<sup>311</sup> Dimitris Chrysochoou, *Theorizing European Integration*, sage publications inc, 2001

emphatically, Elazar says that, federalism must be considered a mother form of democracy like parliamentary or direct democracy. And he added that it is liberal democracy with its emphasis on pluralism that is highly conducive to federal arrangement.<sup>312</sup>

If this is the case, successful federalism requires robust democracy in which citizens share membership of two political communities and participate politically in both. If there is the deficiency of such political milieu for liberal or deliberative democracy, the assertion that is produced above will be futile. The Ethiopian experience of federalism and the manner in which Federal-States relation is based should have to be seen from this standpoint. If federalism requires democracy and its manifestations, it may be possible to raise first a question as to whether Ethiopia is a democratic country in real political practice or not. For the purpose of this paper, the question is raised whether the devolution process promised in the constitution is undergoing in a way that reflects the interests of the federal bargainers and the public at large. And, to analyze whether the center-state relationship in the federal process is based on the democratic view of diversity of opinions and freedom?<sup>313</sup>

As argued elsewhere, true federalism has to be based on the principles of freedom of opinions and political pluralism including the equality of the states and the center in the process of decision-making. In the Ethiopian present situation, this is not easy however, since the authors of decentralization are also wedded to the modus operandi of democratic centralism, inhibiting decentralization and democratization. From the very foundation, democratic centralism is against the cardinal values of diversity and consequently democracy itself. Given such practice, democratization would be extremely difficult to realize, despite the principles of political pluralism enshrined in the constitution.<sup>314</sup> As indicated above, in Ethiopia a dual dynamic is at work: a more

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<sup>312</sup> D. Elazar, *Federalism and Consociational Regimes*, *Publius, the Journal of Federalism*, (Fall 2010).

<sup>313</sup> However, these questions by themselves require a detailed study based on some concrete empirical case study which is not in fact possible in this thesis. The overall aim is only to enunciate that, the Ethiopian democratic development is a vital instrument to answer how much the center-state relationship is influenced by the political process and the realization or otherwise of some of the democratic rights. The study will not engage itself in proving or disproving the Ethiopian status on the road to democracy.

<sup>314</sup> For an excellent study of this challenge at the Woreda level, see Mehret Ayenew, "Decentralization in Ethiopia: Two Case Studies on Devolution of Power and Responsibilities to Local Authorities," *Ethiopia: The*

visible, formally decentralized state structure and a more discreet but effective capture of the state by the EPRDF and its affiliated regional parties.<sup>315</sup>

According to the highly debated report of the International Crisis Group

Relations between party officials are characterized by upward accountability and patron-client dynamics. Higher officials promote lower ones to government posts that offer regular income and privileges, e.g., access to food aid, fertilizer and scholarships. Appointees owe allegiance to patrons. Employment in the public sector or selection for state-sponsored education requires being a member or close to the party.<sup>316</sup>

This shows the ugly faces of decentralization practice in Ethiopia which ultimately resulted in using the federalization process as a means for personal benefits and challenge the democratic process that has been hinted by the constitution. Note that, good governance and accountability of officials together with transparent political practice are the key indicators of democratic regimes.

Revolutionary democracy<sup>317</sup> which is the EPRDF fiction is another challenge to the effective realization of the federalism project. The ideology advocated a class approach on such key democratic rights as freedom of association and speech. According to the ruling party's manifesto and several documents issued subsequently, such rights be allowed for the progressive forces of revolutionary democracy, and the 'enemies' of the

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*Challenge of Democracy from Below*, eds. Bahru Zewde and Siegfried Pausewang (Addis Ababa: Forum for Social Studies, 2002), 130-146.)

<sup>315</sup> See also Lovise Aalen, Ethnic Federalism and Self-Determination for Nationalities in a Semi-Authoritarian State: the Case of Ethiopia, *International Journal on Minority and Group Rights*, vol. 13, no. 2-3 (2006), at 243-261; Jon Abbink, *Breaking and making the state: The dynamics of ethnic democracy in Ethiopia*, *supra* note 224 at. 149-163; Alem Habtu, Ethnic Pluralism as an Organizing Principle of the Ethiopian Federation, *Dialectical Anthropology*, vol. 28, no. 2 (2004), at 91-123; Edmond J. Keller, Ethnic Federalism, Fiscal Reform, Development and Democracy in Ethiopia, *African Journal of Political Science*, vol. 7, no. 1 (2002), at. 21-50; Paulos Chanie, Clientelism and Ethiopia's post-1991 decentralization, *Journal of Modern African Studies*, vol. 45, no. 3 (2007) at 355-384; Kjetil Tronvoll, *The Process of Democratization in Ethiopia – An Expression of Popular Participation or Political Resistance?* Norwegian Institute of Human Rights, 1995 at 134-139.

<sup>316</sup> *Ethiopia: Ethnic Federalism and Its Discontents*, International Crisis Group Africa Report, *supra* note 104 at 15.

<sup>317</sup> For an important manual on this ideology of rule, see the revealing position paper *Our Revolutionary Democratic Goals and the Next Steps* (1993), and the *Guideline for EPRDF's Organizational Structure and Operation* (1997), produced by the party's *Dirigitawi Ma'ekel* (Organizational Centre). Extracts were published in the magazine *Ethiopian Register*, issues of June 1996 and September 1997.

people should be restricted from them.<sup>318</sup> The “enemies” of the people, according to politicians of the country connote those who advocates for liberal democracy and other ideological camps.

According to reports, in Ethiopia little space exists for non-partisan involvement and debate.<sup>319</sup> Freedom of expression and association has been severely undercut by the EPRDF, which categorically rejects criticism. Few journalists, academics, human rights advocates and intellectuals dare to publicly criticize the government.<sup>320</sup> This is the political paradox in the country that vividly contradicts the contemporary federal principles of liberalization and democratic governance. Whenever the central government tries to widen its sphere of influence, the states right to propose alternative projects and ideas will be hampered and the devolutionary process promised in the supreme law will become *a lion without a teeth*.

There is a firm authoritarian hand trying to intimidate critical voices and dissidents<sup>321</sup> and to reinforce power from above. Democratic consultation with the population, with civil society organisations or with opposition groups is thereby not needed. A recently issued legislation also restricts the civil societies to stay aloof from politics, human rights work or policy advocacy.

With regard to the issue of constitutionalism, the concentration of power in the hands of the prime minister which emanates from the constitution itself and the resultant absence of checks on the central executive due to the strict adherence of parliamentarianism contributes a lot towards the authoritarian control of the government at all levels. Furthermore, the House of the Federation does not have any role in checking the ordinary legislating process in the lower house, which contradicts with the practice of other federal, bicameral parliamentarian systems. Consequently, as pointed out earlier, in practice the constitutional interpretation is controlled by the party in power.

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<sup>318</sup> See for instance EPRDF 2005 and EPRDF 1991 documents printed and distributed to the political actors in the country.

<sup>319</sup> Lahra Smith, “*Political Violence and Democratic Uncertainty in Ethiopia*”, U.S. Institute of Peace, August 2007 ICG Report (*supra* note 104) Human Rights Watch, World Report (New York: Human Rights Watch, 1999)

<sup>320</sup> *Ibid.*

<sup>321</sup> This is particularly true after the contested election of May 2005.

The democratic deficit that we are now encountered with therefore becomes another coercive factor which restrains the regional states from developing a policy of open-mindedness and public dialogue on the best possibilities and from realizing the constitutionally recognized self-determination privileges. Whenever the central ruling elite is condemned by the public at large and the international community as unsuitable to democracy, the state's on their own way may consider the political process as an instrument of coercion. At the end of the day, the bond between the two orders of the government will take a superior-subordinate type. In this regard, a Woreda official from the Amhara region remarked:

...here at the Woreda level, everything that comes from the central government is a done-deal. Public meetings to decide on a matter exclusive to us...must be communicated to our superior party officials at the zone and regional level after that to the center. [...] the public gathering on every Sunday is to talk about the centrally designed projects and plans. The regional or zonal officials always send us letters which are prepared and determined at the central level only for the purpose of adherence to it.<sup>322</sup>

This contention also corroborates what Abbink dubbed as the democracy of EPRDF. According to him

Democracy in the EPRDF model is understood as “participation of the Ethiopian people at the grass roots level”, via the party and the government organs which “mobilize the people”, not for debating and voting, but for executing policies and measures decided elsewhere.<sup>323</sup>

#### **5.4.5. The Centers' Visible Presence in the Regional State Machineries**

In addition to the asymmetrical relationship that prevails between the centre and the regions in terms of policy-making and finance, the federal government especially the executive twig, routinely intervenes in the day-to-day activities of the regions. The central government has maintained an indirect rule on some of the peripheral regional states that according to the ruling party are weak to administer their own affairs.

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<sup>322</sup> Interview with anonymous Woreda Cabinet member in the Amhara Regional State on October 2010,

<sup>323</sup> Abbink, Jon *The Ethiopian Second Republic and the Fragile “Social Contract”*, in: *Africa Spectrum*, 44, 2, 3-28 at 12.

Gambella, Benshangul-Gumuz, Afar and Somali, are labelled as ‘emerging states,’ or ‘less developed states’ that calls for the centres’ assistance in terms of developing infrastructural stuffs and in general to be viable members of the federation.<sup>324</sup>

At least until 2001 the federation has maintained a direct rule while afterwards; the Ministry of Federal Affairs (MoFA) replaces the centrally appointed officials in these regional states. Through the Ministry, which is a federal executive institution responsible for the prime minister office in its establishment legislation<sup>325</sup> is mandated to First, regarding in all the regional states, the operation of the federal police, setting of national standards for urban planning; finding solutions to inter-regional conflicts; coordinating federal intervention in the regions and others. Second, it is specifically responsible to coordinate the assistance that the federal government provides to the four peripheral regions (Gambella, Afar, Benishangul-Gumuz and Somali) of the federation.<sup>326</sup>

Even though initially it was considered as an institutional framework for intergovernmental cooperation, in practical terms,<sup>327</sup> as studies and observations suggest, the federal government used the Ministry as an intrusive ministry of interior with wide powers of intervention in local and regional councils than a ministry in charge of ordinary coordination.<sup>328</sup>

On the contrary, the Director of the Intergovernmental Relations, Ato Ewnetu Blata remarked:

... [the] rationale of the establishment and the legal mandate of the Ministry in general and this directorate in particular is to facilitate the communication

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<sup>324</sup> For many observers, their backwardness can be explained in terms of little or no manpower to run the regional public offices, dearth of basic infrastructures etc which in turn makes self rule awkward.

<sup>325</sup> Proclamation 256/2001 as amended by Proclamation No. 471/2005, Definition of Powers and Duties of the Executive organs of the FDRE, Federal Negarit Gazeta, 12<sup>th</sup> year, No.1, November 2005.

<sup>326</sup> See Article 21 of Proc. No. 471/2005 and Asnake *supra* note 104 at 240.

<sup>327</sup> Structurally there is an Intergovernmental Relations Directorate within the Ministry which is directly responsible for such issues of State-Center Relationships. The Ministry has also other Directorates that deal with economic and political developments in the regions which are categorized as emerging states and in all the federation. The Directorate on conflict Resolution is also responsible for the management and transformation of conflicts between the federal government and the states or between the states themselves while the religious affairs core process is working on developing religious tolerance. From the information that I have gathered from the Ministry, there is a new proposal to launch regional branches of Intergovernmental Relations Department with the view of making the states part of the process.

<sup>328</sup> Assefa *supra* note 11; Asnake *supra* note 104.

between federal and regional government and to give the appropriate assistance to the regions which are listed under the group of developing states. The federal government would not become a patron or a boss to the regions since it will go against the overall federal practice and constitutional setting.<sup>329</sup>

So far, critics on the other hand suggests that, even if the center ceases to send the so-called advisors in this regional states thereby completely be in charge of the states apparatus, even today a new approach is put in place to uphold the centers control. Several officials of MoFA are now regularly shuttle between their headquarters in Addis Ababa and the capital of the respective regions to deal with not entirely on the cooperative forums but principally to secure the regions responsiveness towards central initiatives. In spite of all the promises of the new approach, the power and influence of MoFA over the regions has not declined.<sup>330</sup> It is undeniable fact that many of the programs in these regions are designed either by the central officers or under the auspices thereto. For instance, the task of revision of some of the constitutions in these regions has been exclusively supervised by a committee established by MoFA though the final authority to ratify the same rests upon the respective councils.<sup>331</sup>

In paving the way as regards the presence of the central officials in these regions via the ministry, the puppet EPRDF affiliated party's plays the foremost part. Since they are the same adherent of revolutionary democracy ideology and overseen by the strictest form of party discipline, it is expected that, the central officials can easily sway their regional counterparts. Ato Gezehagh Tilahun of MoFA told me that, the Intergovernmental Relations Directorate of the Ministry is working with the view of replacing this informal and constantly biased party channel of communiqué with official forums of cooperation based on mutual understanding.<sup>332</sup> Therefore by means of MoFA and the support of the affiliated parties in some of the regions, the central government takes the leading role in determining the states preferences and way of thinking.

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<sup>329</sup> Interview with Ato Ewnetu Blata, Director of the Intergovernmental Relations Directorate, MoFA, November 2010.

<sup>330</sup> Asnake *supra* note 104 at 241.

<sup>331</sup> Interview with Dr. Merera Gudina; According to Merera, who have done an extensive research on the political structure of some of these regions (especially Gambella and Benshangul Gumuz), the states machineries are operating under the central personnel's. He told me that, the color of their skin or ethnic background of the government office holders is self-evident as to the physical appearance of the center in these regional states which is not the case in the rest of the federation members.

<sup>332</sup> Extensive discussion with Ato Gezehagh Tilahun, MoFA Intergovernmental Relations Directorate, Expert on the Intergovernmental Relationship, November 2010,

The other most important area by which one can notice the central governments evident presence is the MoFA and the HoF role as federal institutions equipped to the task of conflict resolution and transformation in the regional states. The Ministry for instance is be able to launch a forum of understanding in solving the border dispute between Oromia and Somali regions which shares an extensive (around 1000 Km) common border. According to one informant from the participants however, there was an air of political belongingness to the central government personnel's thereby accepting the details which are already set-in at the central party level.<sup>333</sup> In most cases, the regional government officials are not capable to challenge the central officers that are in charge of dealing with the said conflict due to the political atmosphere. With regard to this, there is at all times frictions and political instability in the regional state of Afar resulted from the attempt to defy against the central government officers and overall policy frameworks.<sup>334</sup> Though the center is victorious in the tenacity of such conflicts, the contribution of all concerned local personnel's is still at its ebb. It is the central government through the HoF or the MoFA that is now playing the foremost role.

In general, because of such highhanded approaches, officials of some of the regional states, especially those of the emerging states do not as such see much difference in the administration of centre-regional relations after the establishment of the MoFA.<sup>335</sup> One official of the Benishangul Gumuz region, for instance, underscored:

... [the] relationship between our region and the Ministry of Federal Affairs is not a relationship of partnership. The ministry's main function is to control our activities. Its officials do not come here to provide assistance but to monitor and supervise our activities. If there are differences between the ideas of the regional officials and MoFA, the ideas of the latter would prevail.

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<sup>333</sup> However it is important to appreciate the Ministry's effort in reaching at such a compromised solution and as Ato Gezehagh reveals, they are now be able to create a common forum seated in Harari that comprised of the five neighboring regional states (these are Afar, Somali, Oromia, Harari and Dire Dawa ). Through this forum, according to Ato Gezehagh, which is supported by a memorandum of understanding, the regions are now in a position to set up agendas and discuss common concerns such as cross border crime of contraband.

<sup>334</sup> Personal discussion with MoFA's staff working on the conflict Resolution core process September, 2010,

<sup>335</sup> See also Asnake *supra* note 104 at 243.

While the intervention of the central government can be justifiable from the angle of ensuring symmetry between constituent units, excessive manipulation of the regional politics under the semblance of assistance cannot be tamed with the idea of federalism. In the Ethiopian context, some of the sub national units are historically marginalized and not integrated in the long-lived unitary political discourse. As a result, they are not yet in a position to manage their own affairs. So, the assistance and capacity building project of the central government may be necessitated but should only focus on the socioeconomic aspect rather than putting the states under its full political dominion. According to observers, these regional administrations have a dual structure, remaining under the tutelage of the federal government and the ruling party. Behind the visible office holders who come from the states themselves (i.e., being of the “right ethnic background”) stand advisors and policy makers linked directly to the federal EPRDF offices that in due course militate against the federal setup.

#### **5.4.6. Using the National Policymaking power as a device of Coercion**

Repeatedly I have argued that, the constitution and also the general development of federalism empowers the national government to design the major policy frameworks of the country that are uniformly pertinent throughout the federation. In the same fashion, in Ethiopia the national government in general and the central legislator in particular as per Article 51(2) is empowered to '...formulate and implement the country's policies, strategies and plan'. However, in practice the central government is now abusing its constitutional authorization by using such a power to embrace the vista of restraining the state's autonomy to design their own parallel policies and strategies according to the federally designed framework. Several studies made by the Ministry of Federal Affairs reveals that, the central sector offices frequently propose an overall policy and plan that is directly applicable in the regional states and contradict with the division of powers stipulated in the constitution.<sup>336</sup>

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<sup>336</sup> The Ministry of Education, the Ministry of Health and the Ethiopian Revenue and Customs Authority are among the sector offices of the federation which has been frequently breaching such fundamentally basic federal principle. According to the study reports by MoFA, there are a very comprehensive standards and priorities set by the Ministry of Education that are projected to be mandatorily followed by the respective regional Education Bureau's.

While the Americans notion of Federal Mandate<sup>337</sup> does not squarely fits the Ethiopian case, the federal sectoral office's less federal outlook may lean on us to consider such a coercive factor in our context. One friend of me from the Amhara Technical and Vocational Institution told me that, the curriculum for the regionally administered Vocational training is designed at the central level to all the regions even if we have changed the cover page of the same by inserting our regional office as a designer. I have also got the opportunity to partake in a curriculum development conference for the regional vocational schools by which the coordinator orders us to directly copy the federally designed courses and details for each and every module.<sup>338</sup> The same argument can possibly produced for the rest of sectoral offices in the central government. Ato Gezehagh of MoFA remarked that, there is a clear federal dominance with respect to policy formulation and implementation. Accordingly, the federal executive institutions believe that, the regions are subordinate to them and for all the time remains to be dependable to the center's initiatives and orders without taking notice of their independent constitutional existence.

In general the states accept the economic, social and development plans issued by the federal government. In theory they can adapt the policies to fit their own circumstances but the federal government does play a key role in influencing through national policies mainly due to the party congruence and decision-making structure and secondly, because the states lack the required expertise to bring alternative policies.<sup>339</sup> As some of my interviewees point outs, there are states who exactly copy the centrally designed policies without any attempt to modify them in line with their particular conditions.

The worst scenario in the Ethiopian case is the lack of states participation in the central policy deliberations by which they will not challenge the appropriateness of any sort of legislations exclusively enacted by the central regime. They are forced to design their

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<sup>337</sup> In the American federal experience, a mandate is a direct federal order requiring state or local governments to provide certain services or perform certain duties by which failure to comply can trigger civil and/or criminal penalties.

<sup>338</sup> Earlier the curriculum for vocational education was administered by the Ministry of Education and latter transferred to the respective regional bureaus. However when the 10+1, 2... mode is changed to level 1, 2... in the central vocational institutions, without even knowing the policy reasons, the regions are ordered to follow the former which substantiates our case.

<sup>339</sup> Assefa *Supra* note 15 at 248.

implementation legislations even if incongruity is there with their regional priorities and interest.

## 5.5. Conclusions

The first section of this chapter is designed to look into the theoretical framework of intergovernmental cooperation in the Ethiopian federal project. Since it is almost common in every federation to leave some flexibility for center-state and inter-state contacts they usually tend to lay down some guidelines of such collaborations with the view of giving all the partakers equal opportunity of discussing and deliberating issues on the table.

In Ethiopia, let alone in the constitution, it is not possible to discern sufficient guidelines as to the relationship between the two in subordinate legislations or there is nothing concrete which is developed from practice. There is the Ministry of Federal Affairs established with the prime motives of assisting the less developed regional states and resolving some conflicts of interest in the same regions which is taken by the government as an institution that can serve the purpose of facilitating intergovernmental collaborations. Needless to say, the Ministry is still under its formation stage and limited in providing training and finding solutions for inter-ethnic or some other federalism-born quarrels. According to a report release of the Ministry itself,<sup>340</sup> there are, in practice, some intergovernmental relations between sectoral institutions but always manifest federal dominance, lack of consistency and irregularity of meetings, lack of equal participation, deficiency in the implementation of shared programs and failure to incorporate the needs and preferences of states which all stand against the very principles of federalism in general and the equal partnership, inclusive decision making and consultative process tents of IGR in particular.

As pointed out, Ethiopia is constitutionally a federal polity, but as the practice implies its federal entities are controlled by the strongly centralized EPRDF that predetermines decisions from the prime minister's palace in the capital to remote rural kebeles. As the

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<sup>340</sup> Ministry of Federal Affairs, Department of Intergovernmental Relations Coordination, 2008: A preliminary study on the practice of Intergovernmental relations between the federal and regional Governmental institutions (unpublished Amharic version).

above discussion points out, the father of the constitution – EPRDF itself – has, through its organizational culture of democratic centralism and centralized party structure, weakened the federal system and regional state structures. The political constitution of EPRDF effectively antagonizes the federal system it has built. The federal government uses various mechanisms to influence or manipulate policy in the regional states. Policymaking descends from the EPRDF executive committees via the EPRDF's member and affiliated parties to local government. Executives and members of the regional councils are expected to conform to decisions taken at the federal level. The center is now fully in control of all the activities of the states either by way of party channel or its central executive offices such as the Ministry of Federal Affairs. The federalization of the country without genuine democracy and constitutionalism which is evident from the restricted public debate and freedom of association, press and etc is also an additional causal factor for the coercive trend of this young federal experiment.

As hinted above, through various tactics, such as the five years development plan or the recently introduced Development and Transformation Package, the central government has continued to show its hesitant position towards legitimate federalism and in the mean time challenges the very autonomous existence of the states. Even if it is not discussed in the main part of this thesis it should be noted that, state spending decisions most often are heavily influenced by priorities set nationally in the EPRDF Five Year Program. In other words, officials at the state and zone levels, who are generally party loyalists, structure the choices at the *Woreda* and sub-*Woreda* levels so that they conform to centrally determined priorities.

The role of the Intergovernmental relations directorate in the MoFA and the HoF as an institutions of managing conflicts and ensuring symmetry between the center and the states as well as between the states can also be considered as an additional apparatus of intervention though it have something of value in some respects.

There is a mismatch between the liberal-democratic political-pluralist elements of the constitution and the political praxis of the dominant party. The Ethiopian federal practice is exception in terms of the essential attribute of the system *i.e.* political pluralism is at its ebb. Consequently, the center-state relationship in Ethiopia reveals a top-bottom approach and the constituent units are always under the incessant influence

of the center. This trend, among the academics and federal writers is called coercive federalism which is also described by many other groups as putting together federalism.

The restructuring of the Ethiopian state in an ethnic federalism under the EPRDF therefore could be nothing but the image of its thinking, perhaps with some modifications in order to avoid the looming pressure from outsiders. This stance, as Turton observed, was “the blurring or elision of party and state, according to the Leninist party-state model, a process which began under the Derg and was continued by the EPRDF”.

## 6. Conclusion and Recommendations

### 6.1. General Conclusions

Now it is almost two decades that the Ethiopian federal system has been put into practical reality. The 1995 constitution, which is the turning point from the traditionally dominant centralization trend of nation building, has officially endorsed the ethnic federal re-structuring in the country by declaring the establishment of a federal and democratic republic and establishment of nine regional states thereby affirming that, sovereign power should reside with the ‘nations, nationalities and peoples’ of Ethiopia. Nevertheless, as this study tries to underscore, the federalization process is not as such a well debated and all-embracing since the options provided by political actors has not been well considered. The federal formula is the reflection of the motives and thinking of the then victorious group in the military camp.

Foundationally, as chapter three and four has tried to briefly point out, the Ethiopian federation is a federation based on the ideological fundamentals of solving the long-lived nationality question there by granting each and every nationality groups the right to self determination and autonomy. In line with this view the victorious groups has introduced a federal structure which, at least on paper seems to achieve the aforementioned aspirations. The council of the constitutional assembly was guided by the rule of giving as much as possible autonomy and self governance right to nation, nationality and peoples of Ethiopia. It is because of such sympathetic that many, including the officials of the ruling party argued that the Ethiopian federation is more of a federation based on the consent and free will of the nationality groups; hence it is more of a confederation.

The constitutional federal formula introduces many unique and as the same time weird variables that are on occasions not prudent for the proper practice of the very idea of federalism itself. Among others, as pointed out in chapter three, the political tone

towards ethnicity and ethnicization of the federal arrangement and the concomitant recognition of nationality groups as a building bricks of the federation, the constitutional recognition of the right to secede, the practice of federal umpiring through a political organ, the absence of clear rule of federal supremacy, the constituent units absence of legislative competence at the center etc can be mentioned.

The other fascinating issue in the Ethiopian federal constitutional framework is the unicameral parliamentary structure by which the states are totally devoid of legislative capacity in all central initiatives. Added to this is the division of competencies (legislative, executive judicial and financial). The constitution has tried to exhaustively list the exclusive and as the same time enumerated powers of the federation by which the states are entrusted with the reserve (residual) competencies. However, the constitution is not as such consistence in following the normal trend of distribution of powers as we can find purely federal competencies throughout the text. Hence, the concept of enumerated authorities remains to be rhetoric. Unlike the case in other federations, there is no exhaustive list of concurrent jurisdictions in Ethiopia. However, it is possible to observe the implied recognition of such a concept of concurrency by reading the constitutional lexis between the lines (see chapter four).

The constitutional muteness regarding the guideline, framework or system of interrelationship between the two orders of government is another area of interest and in fact partly the subject of this thesis. In the existence of inevitable contact between the two tiers of government, the FDRE constitution has neither provided for a common forum of cooperation nor gives a clue concerning the basics of coexistence between the federal bargainers. This is on the other hand a clear ignorance of the manner in which federal laws are going to be enforced throughout the federation. To some extent, it is possible to argue that, the constitution has already established a dual executive structure by which the respective governments are empowered to legislate and execute their own laws and policies. However, such independent existence is far from being real and interdependence is also another version of the federal idea – shared rule.

In the absence of comprehensive regime of concurrent powers, and a law making second chamber, we have to be concerned about the existence of formal intergovernmental relationship mechanisms. In this connection, post constitutional

developments demonstrate some attempts of filling the constitutional lacuna. The Ministry of Federal Affairs with all its shortcomings is now the only formal (semi-formal as some prefer to describe) institution for intergovernmental collaborations.

As the main area of concern, the center-state relationship in Ethiopia therefore has to be considered from the perspective of both the formal and informal relationship mechanisms that are now in practice. In other words, as the main research question of this thesis suggests, we have to be concerned about whether the intergovernmental relationship now in practice is the replica of what the Americans called coercive federalism or not since the IGR process is almost fully dependent on either of the semiformal or informal tools of cooperation without any convenient, transparent and predetermined arrangements.

As my investigation suggests, the answer to this question is to the affirmative. The basis of the relationship between the central and state governments reveals the reality of such a coercive trend in this young federal experiment. As one can infer from the definition, coercive federalism is a federal jargon by which one order of the governments, most often the center, has dominated the overall politico economic as well as social affairs in a polity which is *de jure* federal. The tactics and systems by which the domination of the center can be envisaged are different among federations. In Ethiopia, the coercive trend of the actual federal-state relationship is linked for the most part with the democratic centralism ideology and the resultant vanguardist political party argument which is advocated by the ruling party, EPRDF.

The EPRDF is now in power dated from the very inception of the federal design and control almost all the parliamentary seats both at the federal and regional level. Even if the multi party ideology is constitutionally acknowledged, till these days, there is no proper adherence to it, for that reason opposition parties boycotted elections or otherwise jailed due to their political concern. This trend inexorably contradicts one of the cardinal principles of federalism-political pluralism. The ethnic satellite parties which are established as member or affiliate to the vanguard EPRDF are always under a strict party discipline oversight and intraparty democracy is at its ebb in the decision making process.

Consequently, as the last chapter (chapter five) reveals, the states are not in a position to formally implement their own priorities and policies. All the countries main policies and strategies are designed at the central committee's level of the EPRDF without proper consultation of the public at large. Obviously, the central committee is composed of the representative of the state governments, but usually it is over-toned by the revolutionary democratic thinking and the agenda is only to see everything from this perspective. It is unthinkable for the state governments to design a project which is not part of the five years development plan or which does not reflect the revolutionary democratic idea. Opposing the central initiatives and proposals is considered to be disrespecting the rule of obedience of the party. Thus another key binding factor for the coercive trend of state-center relationship in Ethiopia is the ruling party's excessive control of regional party leaders and the central government resource backed centralizing drifts and attitudes. The gradual effect, however, can be devastating for the unity of the country when such strong party control weakens or vanishes, for the regional states may fall into the hands of extreme nationalist officials. The lower echelon of EPRDF's leadership and the rank-and-file members are to implement the decisions made by the higher officials. As a result, there is only one-way channel of accountability within the organization that comes from the higher leadership to the lower. And, the constitutional right of the states to formulate and implement plans and policies are severely diminished by the fact that the state governments are in one way or another forced to follow the centrally designed policies and plans.

In addition to the democratic centralism decision making scheme and vanguardist political party argument, there are other factors that exacerbate the coercive trend of center-state relationship in Ethiopia. This includes democratic deficit and the insufficient constitutionalism which resulted in little or no space for public debate and divergence of opinion in the political process, the visible presence of the federal government in regional states machineries, the challenge of centralization of power through various mechanisms such as designing detailed policies under the cover of framework competencies and et cetera. To be specific, as the argument in chapter five suggests, one of the fundamental problems of the Ethiopian state is the lack of a genuine federal system of governance based on democratic principles and the institutions that help such a system keep functioning – a system and institutions by which the people can express their will and needs, and mediate for reasonably acceptable outcomes.

As federal practices recommend, if federalism is a system of government where power and functions are distributed with the aim of maintaining an acceptable balance between central and regional authorities and where free and democratic participation of citizens in the decision making process and key issues of concern are secured, then the federal structure devised by the EPRDF is not even remotely close to popularly understood federalism.

## 6.2. Recommendations

After examining the unadvisable trend of intergovernmental relationship in Ethiopia, which is basically based on coercive techniques of collaborations, and with the view of realizing genuine federal structure that gives enough political space for the federal bargainers and hasten the country's transition towards democracy, the following recommendations are submitted:

1. The absence of formal, institutionalized, politically committed intergovernmental relation institution which results in the total dependence on the informal devices such as party channel should be considered seriously in the first place. As argued elsewhere, an institutionalized, accountable, impartial and transparent IGR system is the preeminent instrument of ensuring the continuation of the federal framework enunciated by the constitution beyond the life span of the regime that authored it (in our case EPRDF). It is undeniably considered as a device which can contribute towards the efforts of making the federal setup as well as the constitution a permanent institution and feature of Ethiopian political life. In turn, as some suggests, institutional mechanisms for intergovernmental relations should be permitted to evolve in the form of autonomous government bodies which will survive regardless of party bickering.

In this regard, the MoFA, under its current conditions, lacks all this attributes to be a robust institution of IGR-not only in terms of its competence and unmanned character, but also its very nature of being a federal executive wing established to deal with issues of federalism and other administrative duties from the perspective of the federal government. And, unlike some other matured

federations, the task of practicing nationwide IGR is assigned to a department (directorate) within the Ministry which vividly shows lack of political commitment to have a meaningful process of intergovernmental coordination and collaboration from the side of the government.

Apart from this, the initial consideration behind its establishment (as *yekilil Guday Zerf* (Regional Affairs office) in the Prime minister office) is associated with securing the willingness of the regional governments to be part of the political process at the center and to assist some of the regions in terms of capacity building and good governance which also continued to date as its primary concern. Meaning, the issue of dealing with IGR proper is a latter development in the history of this organ of government and yet is limited to a directorate level. On the same vein, the states are not in a position to take part in the process as part of it rather they consider the Ministry's role as another avenue of the center's dominance. IGR even conceptually is linked with a common forum of cooperation and coordination. Whenever a political party with a different program and ideological orientation takes control of one/more of the state/s or the center for that matter, the necessity for common forum of cooperation becomes visible. For obvious reasons mentioned earlier, such a political party will not accept any invitation from the MoFA and may not be willing to be part of the shared rule or the political process of the center. In addition to this, as Assefa remarked, MoFA assures its lack of effective political leadership to coordinate nationwide IGR activities.

The worst scenario in Ethiopia, as pointed out, is also linked with the states lack of any place in the central lawmaking process. In this regard too, a commonly established accountable, transparent and neutral institution of IGR is badly needed. By any count, it is not fair and reasonable to punish the states two wise. How the states are going to implement the centrally designed policies and projects? Can we expect the states to be angels? Or are the meetings, central directions and party consensus sufficient? We have to consider such concerns before we are nominating or naming an institution as IGR institution.

Therefore the establishment of an intergovernmental institution (forum) that comprised of officials from both the federal and state governments and accountable for their respective councils is needed to shun this biased tendency of relationship. As Assefa rightly noted, the more we rely on *institutions and laws* than party channels the more *mature and stable* the federation will be. As the experience of some other developed federations reveals, there has to be either intra-jurisdictional (like second chambers as in Germany which composed of the representatives of both tiers of government accompanied with an influential say on policymaking) or federal-state IGR institutions (such as a prearranged regular meetings of political figures of both levels) at various levels if IGR is to have meaningful effect in our federal experiment. The institutions (the forums) has to be established with the objective of circumventing unjustified central interferences there by to encourage equal partnership between the members of the federal process. The intergovernmental relation institution should have to carry out its responsibilities on the basis of equality, compromise, mutual understanding and consensus.

2. For the short run, the regional governments must build up their regional affairs departments that are now almost nonoperational with the intent to challenge undue federal interventions and to have the opportunity of setting agenda's with the federation and with their fellow regional states.
3. The other issue that has to be considered seriously and resulted in a more coercive trend of federalism is the EPRDF's effort in merging the party with the state bureaucracy and the federal system as a whole. This has been resulted in a federation operating under a single political thinking and for its success or failure the party remains to be both the author and auspice. One can think of the internal split of TPLF as discussed before-the crisis shows how much the federal as well as the constitutional framework is dependent on the party. So, as this argument on vanguardist political party and democratic centralism elsewhere in the world is a history of ever increasing dominance by the center and at times resulted in failure, it is better to create an independent room (party free zone) for free initiatives, civil service, regional politics and etc or generally it is

recommended to adopt a policy of strict separation of party and bureaucracy. This is not without explanation; it is this trend of merging party politics with *every aspect of life* that has resulted in a coercive trend of federal-state relationship as indicated in the last chapter. Coercive federalism conceptually connotes coercion by the central government through various instrument by which the party channel is the main in our context to influence both the states and their electorate to be part of the political process.

4. One condition under which the federal practice can survive, even acquire vibrancy, is if currently dominant ethnic parties within the EPRDF membership (i.e., TPLF, ANDM, OPDO, and SEPDF) openly tolerate competing political parties in their respective regional areas. This in turn realizes the required opportunity for public participation and open debate on the options available rather than adhering to a single political ideology which may or may not be the right choice for this mythical but underdeveloped polity. The theory of multicultural federalism tells us not only about the accommodation of cultural, linguistic or ethnic diversity, but also the possibility of creating an accommodative system for political diversity. The concern here is the possibility for the states and their people to come up with their own politico-economic options without affecting or endangering the shared rule and the leeway for having one economic community. Apparently, revolutionary democracy may not be suitable for some of the constituent units (but theoretically speaking Ethiopia is de jure multiparty and some of the affiliated parties are considered as unsuited for revolutionary democracy). Therefore, an appropriate ground for political diversity and a clear stature for dynamic politics should be considered as vital to the survival of our federal system. This is suggested at this juncture due to the fact that, among the coercive features of the federal-state relations, the intolerant attitude of EPRDF towards opposing politics is found to be the one and most influential.
  
5. The success of the federal experiment is contingent on the ruling party's willingness and capacity to disengage itself from democratic centralism, extend and deepen the democratization process, and tolerating divergence of opinion.

Therefore, the political stature which is dominated with secrecy and non-inclusiveness should have to be avoided. Enough space for public debate and initiatives has to be put in place. Added, membership to the political process has to be open for every citizen of the country without the need to acknowledge the revolutionary democratic thinking. Yet, the effective realization of shared-rule or the resultant creation of common politico-economic unit is dependent on the culture of negotiations and mutual respect not on installing a coercive tactic of control.

6. The centralized party structure of the EPRDF is clearly contradictory to the provisions of the federal and regional constitutions, which give these levels the right to self-administration. It promotes upward accountability to the party organs above rather than downward accountability to the people of the region, Woreda and Kebele. Therefore, the party has to develop the culture of intraparty democracy and transparency of decision-making by which the representatives of the people must be loyal to their electorate than to the dictates of the party ideology.

In sum, rather than seriously engaging themselves on securing the states and the people's willingness to be part of the EPRDF agenda thereby framing the system on the dictates of revolutionary democracy and democratic centralism standard, the central officials, who are suffering from less federal outlook, should have to build the ground for the continuation of this young federal setup even beyond the life span of the architect (EPRDF). It is mainly this centralized and unitary outlook of the central officials which resulted in the coercive federal-state relationship.

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## **Appendix 1: List of interviewees**

Ato Ewnetu Blata, Ministry of Federal Affairs, Intergovernmental Relations strengthening Directorate Director, November 2010, Addis Ababa.

Ato Gezehagh Tilahun, Ministry of Federal Affairs, IGR Expert, November 2010, Addis Ababa.

Ato Lidetu Ayalew, Chairman of the Ethiopian Democratic Party, September 2010, Addis Ababa.

Dr. Merera Gudina, Vice Chairman of Medrek, October 2010, Addis Ababa.

Anonymous Central Committee member of the Amhara National Democratic Movement, November 2010, Debre Birhan

Anonymous Woreda Chief Administrator, Amhara Regional State

Anonymous OPDO central committee members, October 2010, Adama and Sebeta

Ato Seiko Toure Getachew, EPRDF Public Relations Chief, Addis Ababa

Ato Wondossen Yosef, Ministry of Federal Affairs, Expert at Conflict Resolution and Transformation Directorate

## **Appendix 2: Interview guide**

1. What do you consider as the major motivations behind introducing as federal system in Ethiopia?
2. How do you see the Bargaining process during the constitutional making?
3. What do you perceive as the major strengths and weaknesses with the constitutional framework for the federal arrangements?
4. Do you think that the Ethiopia states are powerful enough to challenge the central government from undo intervention?
5. If not, what are the major reasons for the states inability?
6. What is the status of federally initiated policies and projects in the local government levels, such as Woreda and Kebele? How such programs are going to be implemented?
7. What do you think the role of the EPRDF in the overall State-Center Relationship?
8. Are the Member and Affiliate parties to the EPRDF autonomous to decide on behalf of their regional concern?
9. In general do you think that the current Intergovernmental relationship is based on cooperation and mutual understanding between the states and the federation?
10. What is the major role of the Ministry of Federal Affairs in general and the IGR Directorate in particular? Do you think that this federal institution can properly handle its mandate as IGR forum?