

Federalism: Application for Ethiopia

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In exploring “the challenges and opportunities to transition to constitutional democracy in Ethiopia,” it is important to establish some semantic guidelines--to give definitions to significant words and phrases used in the Ethiopian political lexicon. Throughout the reign of the EPRDF, such terms as "democracy," "federalism," “sovereignty,” "people(s)," and "the state" were bandied about without giving them meaningful explanations, or at the best, questionable interpretations. The papers presented in this Forum attempt to correct this situation.

Frequently, terminological distortions were deliberately fostered by government officials with a view to deceiving their audience. It is even possible that Ethiopian People’s Revolutionary Democratic Front (EPRDF) spokesmen have been guilty of “conceptual stretching” in their political rhetoric. In justifying or criticizing events in Ethiopia, the EPRDF has been adapt in using what Giovanni Sartori calls "confused democracy" (Giovanni Sartori, “Concept Misformation in Comparative Politics,” *American Political Science Review*, LXIV(4) 1970: 1034). Almost anything--rules, laws, policies, and decisions--can be defined as, or justified in the name of, democracy, or in the case of the Woyane, "revolutionary democracy" (Giovanni Sartori, *The Theory of Democracy Revisited*, Chatham, NJ: Chatham House, 1987: 6). Major actors in the politics of Ethiopia could be accused of exploiting and manipulating language for their own selfish ends--of "calling in ambiguity of language to promote confusion of thought" (A.E. Housman, *The Name and Nature of Poetry*, New York, Macmillan, 1939: 31).

I will use the terminology of contemporary political science to bring a sharper, if not incisive, definition to key terms and phrases needed to understand federalism. Political science is the study of power relationships, so “power” will be the key term in this effort. For instance, “**democracy**” is a political system in which *political power is widely shared* in the sense that citizens have ready access to positions of decision making. Such access has two meanings: the citizen's ability to contact decision makers to attempt to influence their decisions and the citizen's capability to stand for (compete for in an election) decision-making positions. From this basic, no frills beginning, further elaboration with nuanced ideas can and will be added (which is the gleeful work of political scientists and economists), but in power terms, the definition seems technically accurate and complete.

There are obvious relationships between democracy and federalism. Because federalism adds layers of political power to a government scheme (see below), power is more widely shared and hence, more democratic. Daniel Elazar states, “Not only do all modern federal systems claim to be democratic and seek democratic legitimacy, but there is likely to be general agreement among true democrats that the great majority of those polities held up as models of democracy (France is the great and important exception), are either federal in form or extensively utilize federal principles” (Daniel Elazar, *Federalism and Political Integration*, Ramat Gan, Israel, Turtledove Pub., 1979: 47).

While fully aware that definitions of "federalism" and other important concepts are complex and contested, an attempt at making more clear the meaning of the language used, at least in the English discourse or translations, by EPRDF apologists and critics alike will facilitate more astute analysis. Let us then investigate the terms necessary for understanding federalism.

WHAT IS SOVEREIGNTY?

Sovereignty is an indivisible concept. It refers to the final and absolute source of political authority underlying a society, which alone is capable of arbitrating and giving definitive resolution to all internal disputes. Sovereignty in modern democratic societies resides in the political community or body politic. Sovereignty is not found in governments, nor in the constitutions lying behind governments, but in the peoples lying behind constitutions. There can be no ulterior source of political authority lying behind the people (Charles Merriam, *History of the Theory of Sovereignty since Rousseau*, New York, Columbia University Press, 1900: 179-80).

German sociologist Max Weber proposed that sovereignty is a community's monopoly on the legitimate use of force. Thus any group claiming the same right must either be brought under the yoke of the sovereign, proven illegitimate, or otherwise contested and defeated for sovereignty to be genuine (Max Weber in *Weber's Rationalism and Modern Society*, translated and edited by Tony Waters and Dagmar Waters, New York, Palgrave Books 2015: 136). Or as U.S. Supreme Court Justice Robert Jackson, in his inimitable style, declared "The concept of sovereignty is an absolute right of a nation to do as it pleases" (Letter, Robert H. Jackson to Eugene Gerhart, March 17, 1949).

From another perspective, the national government can keep a state from doing what it otherwise might wish to do. This would be abetted by an independent judiciary acting as an umpire when conflicts arise between the general government and regional governments. For instance, the right of secession, the formal legal right of a state to assert independence unilaterally, is the acid test of final authority, and hence sovereignty and statehood, for any political community embedded in a wider political order. The absence of this right in the final analysis establishes the territorial integrity of the wider order, the existence of a single political community and thus the presence of sovereignty and statehood in the wider entity.

Having established some guidelines for the meaning of sovereignty, let us turn to other terms that have been significant in describing Ethiopian governance.

A republic is a form of government in which the people, or some significant portion of them, retain sovereignty over the government and where offices of state are not granted through heritage. A common modern definition of a republic is a government having a head of state who is not a monarch.

A state is a political organization with a centralized government that maintains a monopoly by use of force within a certain geographical territory.

A people is a plurality of persons considered as a whole, as is the case with an ethnic group or nation, but that is distinct from a nation which is more abstract, and more overtly political. Under successful arrangements of federalism, a legal definition of "people" is not qualified by place of birth, ethnicity, or religion. Hyphenated designations of people, such as African-American, are verboten before the law.

Citizenship is the status of a person recognized under the custom or law as being a legal member of a sovereign state or belonging to a nation. It usually signifies membership in a political body. When there are many different groups within a nation, citizenship may be the only real bond which unites everybody as equals without discrimination—it is a "broad bond" linking "a person with the state" and gives people a universal identity as a legal member of a specific nation. An individual's place of birth (national origin), ethnicity, religion, or any personal attributes, have no role in charactering the legal definition of citizenship or the geographic delineations of the state or region.

Constitutionalism is a hallmark of liberal democracies in the post-Cold War world. For such regimes, a constitution is "a fundamental law or a fundamental set of principles, and a correlative institutional arrangement, which would restrict arbitrary power and ensure a limited government." Such an institutional arrangement would provide a frame for political society, organized through and by the law, for the purpose of restraining arbitrary power (Giovanni Sartori, "Constitutionalism: A Preliminary Discussion," *American Political Science Review* 56, 1962: 853-864; Max Frenkel, *Federal Theory*, Centre for Research on Federal Financial Relations. The Australian National University, Canberra, Distributed by ANUTECH 1986: 108). Constitutionalism, then is a basic policy orientation favoring limited power and calculable procedures. (Harry Eckstein, *Division and Cohesion in Democracy*, Princeton, N.J., Princeton University Press 1966: 235).

Using the constitutionalism of a liberal democracy as a normative standard, it is obvious that not every nation with a constitution is committed to constitutionalism. History abounds with examples of sham, fictive, or façade constitutions whose provisions do not correspond to actual governmental practice. Classic examples of shams were the 1987 "Ethiopia Tikdem" Constitution of the People's Democratic Republic of Ethiopia and the Soviet constitutions of 1937 and 1977 that set forth operative principles of government that had little relationship to the actual business of governing and which certainly did not limit or restrain governmental power.

Under such circumstances, a government publicly professes its commitment to constitutionalism in a written document in order to deflect attention from arbitrary exercises of power that characterize the nation's "unwritten constitution" (Sartori, *Ibid.*) A facade of this type allows unscrupulous officials to make a discretionary use of power under the camouflage of a good work.

WHAT IS FEDERALISM?

Federalism is a form of government in which there is *a division of powers* between two levels of government of equal status (John Law, "How Can We Define Federalism?" *Perspectives on Federalism*, Vol. 5, issue 3, 2013: E100). Modern federation had its origin in the United States Constitution of 1787 which will be my focus in discussing a model for Ethiopia.

In the United States, during debates on the drafting of the 1787 Constitution, modern federalism was for the first time conceived as a form of government uniting both member states and their populations. The National Government had its own population which it could deal with directly and by which it could itself be influenced without state government involvement. The preamble of the new Constitution beginning with "We the People of the United States,..." took on a special meaning with the founding fathers' invention of modern, democratic federalism. The history of the United States was thereafter strongly influenced by the interplay of the national and state governments.

Carl Friedrich and William Livingston gave brief definitions of federalism in the 1950s: "In short, we can properly speak of federalism only if a set of political groupings coexist and interact as autonomous entities, united in a common order with an autonomy of its own" (Carl Friedrich, *Limited Government*, Prentice-Hall, Englewood Cliffs, N.J., 1974:54), and "Federal government is a form of political and constitutional organization that unites into a single polity a number of diversified groups or component polities so that the personality and individuality of the component parts is largely preserved while creating in the new totality a separate and distinct political and constitutional unit" (William S. Livingston, *Federalism and Constitutional Change*, Clarendon Press, Oxford, 1956: 9).

"The autonomy of territorially circumscribed units" is vital to federalism. A system for decision making is federalist if it is "an entity composed of territorially defined groups each of which enjoys relatively high

autonomy and which, together, participate in an ordered and permanent way in the formation of the central entity's will" (Frenkel, 38, 53).

Daniel Elazar in his book *Exploring Federalism* postulates that "Federalism involves the linking of individuals, groups and polities in lasting but limited union in such a way as to provide for the energetic pursuit of common ends while maintaining the respective integrities of all the parties" (Daniel Elazar, *Exploring Federalism*, University of Alabama Press, Tuscaloosa, 1987: 5). Elazar was augmenting Kenneth Wheare's definition published fifty-five years earlier: "By the federal principle I mean the method of **dividing powers** so that the general and regional governments are each, within a sphere, coordinate and independent" (Kenneth Wheare, *Federal Government*, Oxford University Press, London, 1946: 11). Anthony Birch then restated Wheare's definition (in Ramesh Dutta Dikshit, *The Political Geography of Federalism*, Macmillan, New York, 1975: 7): "a federal system of government is one in which there is a division of powers between one general and several regional authorities, each of which, in its own sphere, is coordinate with the others, and each of which acts directly on the people through its own administrative agencies. Similarly, Ivo Duchacek stated: "By a federal system we mean a constitutional division of power between one general government (that is to have authority over the entire national territory) and a series of subnational governments (that individually have their own independent authority over their own territories, whose sum total represent almost the whole national territory)" (Ivo D. Duchacek, *Comparative Federalism*, Holt, New York, 1970: 194). Each level of government would have a direct relationship with the people. In such an arrangement, each level of government could have some issues on which it makes final decisions provided that there is a high federal court to adjudicate disputes.

The sovereignty of the general and regional governments is significant. Does sovereignty (conceived in its core meaning of ultimate authority) reside in the general government or the whole (in one people) or in the regional parts (in many peoples)? This is determined by a formal allocation of competences among the two governing levels on a permanent basis under a constitution or a common basic code. Each level is thought to be "sovereign" within its allocated sphere, with the final say (Martin Diamond, "The Federalist's View of Federalism," in George Benson, ed., *Essays in Federalism*, Institute for Studies in Federalism, Claremont, CA, 1961: 21-64). Sovereignty is therefore generally believed today to inhere in neither level exclusively under federalism, but to be the property, in part, of both (John Law, "Sense on Federalism," *Political Quarterly*, LXXXIII(3): 2012: 550). A caveat, however: the laws of a regional state with its powers limited by the federal constitution, cannot invalidate a federal law. Thus, states cannot enforce local laws or covenants against any national citizen if such local laws invalidate citizenship rights under the federal constitution.

Frenkel notes that every federal system is dynamic. "The balance between center and units, once achieved, does not remain static. It has to adapt itself continuously to new circumstances." Although the conceptual elements essential for federalism--autonomy and participation--remain, their contents change. A "new" federalism arises which eventually will be replaced by a newer one (Frenkel, 57).

"Moreover, governmental, civil societal, education and cultural institutions must cooperate in building a sense of national identity, upon which national integration can be advanced while increasing national awareness about minority identities" (AhmedT. El-Gaili, "Federalism and the Tyranny of Religious Majorities: Challenges to Islamic Federalism in Sudan" 45 Harv. Int'l L.J. 503 (2004)).

Carl Friedrich put forward a theory of "federalism as process," in which he argued that it was possible to define federalism and federal relations "in dynamic terms." In this approach, the concept would not be seen "only as a static pattern or design, characterized by a particular and precisely fixed division of

powers between governmental levels;” instead it would be conceived as “the process of federalizing a political community” (Carl Friedrich, *Trends of Federalism in Theory and Practice*, Pall Mall, London, 1968: 7). Such federalizing of political communities in a geographic area of the state can be based on historical, geographic, or even artificial factors.

Compromise is essential to the legitimation of federalism, in “an equilibrium arrived at in a given historic moment, balancing separatist and unitary tendencies” (Frenkel, 102). Another element of the political culture of federalism “is the readiness not to consider politics as a zero-sum game or a game where the only alternatives are complete power and total powerlessness” (Frenkel, 104). Toleration is federalism's “game,” and “this means a willingness to claim noninterference not only for oneself but to grant it to others, as well as the perception of compromise and power-sharing as appropriate mechanisms for conflict resolution” (Livingston, 106). The expression of all this is to be found in rules, that is in conventions and legal norms as set forth in a constitution (Friedrich, *Limited Government*, 63).

Ideally, “Federalism 1) increases the opportunities for dissenting minorities to make their views known to other citizens and policy makers; 2) multiplies the opportunities for citizens to participate in political life; 3) enhances consensus in political discussion in the sense that solutions are sought that will reduce the size, resentments, and coercion of defeated minorities; 4) greatly improves the chances of the peaceful resolution of conflicts; 5) aids the solving of urgent policy questions by providing an opportunity for experimenting with solutions on a limited scale; and 6) enhances confidence in and loyalty to a constitutional polity” (Friedrich, *Limited Government*, 57).

Having set down guideposts of widely accepted definitions of terms pertinent to understanding federalism, let us proceed on the winding road of analysis of the record of the EPRDF comparing empirically-grounded knowledge (what is) with normative theories (what ought to be) to evaluate the EPRDF and its legacy.

SOME OF THE PROBLEMS OF EPRDF ETHNIC FEDERALISM

Since the Federal Democratic Republic of Ethiopia (FDRE) officially came into being on 21 August 1995, the EPRDF has operated under a system called Ethnic Federalism, sometimes referred to as “Zenawism” (Teshome M. Borago, *The Dangers of Zenawism in Ethiopia and Africa*, Ethiomedia.com, 22 July 2015). The EPRDF brand of hyphenated or qualified federalism is not widely known outside of Ethiopia. “Ethnic federalism” is not included in Max Frenkel’s rather definitive catalog of 460 federalisms, although “tribal federalism” made the list.

The parameters of the system are laid out in the constitution of the FDRE (see generally, David A. Turton, *Ethnic Federalism: The Ethiopian Experience in Comparative Perspective*, James Currey, Oxford, 2006). To take a few examples:

Article 39, Rights of Nations, Nationalities, and Peoples 1. Every Nation, Nationality and People in Ethiopia has an unconditional right to self-determination, including the right to secession.
So much for the acid test of authority; see “sovereignty” above.

Article 46, States of the Federation

1. The Federal Democratic Republic shall comprise of States.
2. States shall be delimited on the basis of the settlement patterns, language, identity and consent of the peoples concerned.

Many Ethiopians believe this to be dangerous and divisive for the country. Many ask, why not go back to the old pre-Derg state configurations?

Article 47, Member States of the Federal Democratic Republic of Ethiopia shall have equal rights and powers.

4. Member States of

somewhat different.

A good normative statement. The reality may be

The EPRDF's ethnic federalism emphasizing rights of "nations, nationalities, and peoples" is diametrically opposed to the ideology of nationalism and a "Greater Ethiopia." In the FDRE, ethnic groups are identified, territorially fixed and "killilized," and are handed over to ethnic parties. Unions and professional associations also are forced to organize on an ethnic basis. This is in contrast to democratic countries where the free play of class, gender, ethnic and other interests, all are subordinated to the respect of the universal and inclusive attributes of citizenship.

Ethnic federalism really does not divide power in a meaningful way. Each state is dominated by the central government and acts as an enforcer for the EPRDF. Under the Woyane's modus operandi of "democratic centralism," ethnic organizations are mere satellites of the EPRDF which dominates each state's operations and inhibits effective decentralization and democratization (Alem Habtu, "Ethnic Federalism in Ethiopia: Background, Present Conditions and Future Prospects," PDF 2003: 28).

THE FEDERAL REGIONS

The federal regions, organized along ethnic lines, purportedly enjoyed increased autonomy, with greater local control over fiscal and political issues. In keeping with EPRDF strategy, ethnicity became the foci of regional government and party activity with basic services and social organization based on tribal affiliations. In truth, however, the Front imposed a monolithic pattern on the political life of the regions. In every regional government, a shadow party organization operated as a disciplined phalanx to carry out the will of the EPRDF leadership.

An example of this is evident in the security apparatus of each killil. In theory, security in the regions is in the hands of local militia who act in tandem with military detachments, but ostensibly under local political control. In reality, security committees, consisting of local officials, political cadres of the EPRDF or its affiliates, and army officers, control these "peasant militias." The committee system makes the militia an integral part of the national political structure and places them under the control of the central government through the ruling party apparatus. They provide the interface between local authorities, the militia, the army, and the ruling party, in practice subordinating local security structures to the central authorities.

The federal regions also provided the central government with a subterfuge for refusing to take action on matters petitioned for by citizens. Petitioners, such as farmers from the Amhara Region complaining about new land tenure policies, found themselves in a political no man's land with neither the central nor the regional government responding to their appeals ("Farmers from Gojjam Flock to Addis Ababa to Lodge Protest," *Ethiopian Register* 4 (April 1997): 6-8; see generally, Stephen Buckley, "Ethiopia Takes New Ethnic Tack: Deliberately Divisive," *Washington Post*, 18 June 1995, A21). When circumstances require it, the government can dodge difficult questions by localizing conflicts or take on the ones they want by nationalizing them.

Critics of "decentralizing" power to the killils believe that the federal policy has more to do with divide-and-rule tactics and the allocation of national resources, than justice for the regions. Some liken it to the former Soviet Communist party, which retained tight control over its regions through local parties. Apparent devolution, while real power is retained at the center and used repressively, has increased rather than lessened the disharmony of Ethiopia's ethnic groups ("Ethiopia, Federal Sham," *The Economist*, 16

August 1997: 36; see also, John Young, "Ethnicity and Power in Ethiopia," *Review of African Political Economy* 23 (December 1996): 531-42). At its worst, ethnic federalism has loosed the dark side of Ethiopians' psyche: their capacity for tribalism, violence, selfishness and cruelty.

Ethnic Federalism has failed to nurture tolerance among the country's various ethnic groups. The current system is accentuating conflicts between ethnic groups and heightening polarization instead of promoting values of coexistence, unity, and solidarity. The regional constitutions also are part of the problem (Yohannes Gedamu, 14 Aug 2018, "What Ethiopia Needs is a New Federal Arrangement" <https://www.aljazeera.com/indepth/opinion/ethiopia-federal-arrangement-180814121031286.html>). Instead of developing states into "laboratories of democracy" as described by U.S. Supreme Court Justice Louis Brandeis (*New State Ice Co. v. Liebmann*, 285 U.S. 262 (1932)), the EPRDF tribal states have become arsenals of hatred and discrimination against "the other."

Democracy in Ethiopia will require institutions and laws, but it also will depend on what might be called democratic dispositions. These include a preparedness to work with others different from oneself toward shared goals; a combination of strong convictions with a readiness to compromise in the recognition that one cannot always get everything one wants; and "a sense of individuality and a commitment to civic goods that are not the possession of one person or of one small group alone." Ethiopians should also develop a political culture that promotes the institution of the family, fosters the organization of civil society, and upholds democratic values (Gabriel Almond and Sidney Verba, *The Civic Culture: Political Attitudes and Democracy in Five Nations*, Center for International Studies, Princeton University, Princeton University Press, April 19, 2016: 576 pp.).

Switzerland presents an example of a successful integration of linguistic diversity for Ethiopia to come to grips with the ethnic language problems fostered by the EPRDF. The Swiss have benefited from "a system of cross-cutting cleavages: the formation of associations that cut across ethnic, linguistic, religious, or other sectional barriers" (Arend Lijphart, *Democracy in Plural Societies*, New Haven, Yale University Press, 1980: 10). For them, the State has fostered a feeling of belonging and of involvement among the various peoples of the country, to the end that loyalty to the nation overrides sectional loyalties.

Ethiopia, then, must liberate itself from the stifling past and enter into a new era with an interweaving of separate ethnic strands into a new national design. To secure the public good and private rights against the danger of ethnic factions, and at the same time to create a truly democratic government, is the great object to which freedom-loving Ethiopians should direct their thoughts and their individual actions. They should strive to develop "a kind of public rhetoric which sets the ideals of collaboration, comprehensive planning, and trust against conflict and waste" (Jürgen Harbich, *Der Bundesstaat und seine Unantastbarkeit*, Duncker & Humblot, Berlin 1965).

By letting the people decide for themselves what governing arrangements they want, there is hope for a well-ordered Ethiopian society. Then Ethiopia can get on with fulfilling its destiny as the jewel in the crown of Africa. Then at last the nation can put away its enduring image as a famine-wracked land and become the breadbasket of Africa that it is capable of being (Theodore M. Vestal, *Ethiopia: A Post-Cold War African State*, Westport, CT, Praeger, 1999: 207).

The people planning this democratic transformation will need wisdom, ability, and vision to create such a society. They also must be carefully prepared and imminently resourceful. Changing the nation's political culture will not be easy. The hard road ahead to democracy will traverse conflict, bargaining and compromise, reverses, new attempts at reform, and possibly violence (Marina Ottaway, "From Political

Opening to Democratization?" in Marina Ottaway, ed., *Democracy in Africa: the Hard Road Ahead*, Boulder, CO, L. Rienner, 1997: 2).

But a critical mass of Ethiopians share a sacred hunger for democracy. They tire of a leavening of malice in their daily bread. With opposition at home and abroad finally organized, pressures for democratic change will mount on the government (Vestal, *Ibid.*) A democratic federal system upheld by a nationally enforceable bill of rights, is the country's most viable path forward. May the path be traversed soon and in quick time.

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