LEARNING TO LIVE WITH CONFLICTS:

FEDERALISM AS A TOOL OF CONFLICT MANAGEMENT IN ETHIOPIA -- AN OVERVIEW

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Abstract

This article explores the relationship between federalism and conflict in the light of the experience of the federal experiment in contemporary Ethiopia. By reinforcing the truism in federal studies that federalism is not a panacea to the ailments of divided societies that are prone to conflict, it seeks to point out that while federalism, as a reaction to some long-standing historic problems, helps us deal with some conflicts, it also has the potential to generate some other (new) ones. By assuming that conflict is primarily a relation of divergence of interests among parties with diverging strategies and methods, the article describes federalism in general and the federal experiment in Ethiopia and its persistent attempts to deal with the old and new conflicts that emerged in/from the past and are emerging day by day. Throughout, it is argued that we need to understand federalism as a tool of governance that both solves and generates different kinds of conflicts, and that we need to lessen our expectations of the federal experiment (by remembering that it does not establish the 'peaceable kingdom' that idealist philosophers long hoped for), and take the modest road of learning to live with the conflicts.

Key Words:

Conflict, constitution, ethnic diversity, Ethiopia, federalism, states.

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Introduction

Ethiopia is a land of diverse peoples with divergent interests.[1] The demographic diversity is expressed in multiple ways such as ethno-national, cultural, religious, economic way of life, and so on. Of late, diversity of the ethno-cultural type has become salient in the public square.[2] As a result, ethnicity is taken seriously in the endeavor to reconstruct the state as a multi-national, multi-cultural federal polity, *de facto* as of 1991 and *de jure* as of 1995.[3] This salience of ethnicity in public life is the result of a history of uneven and conflicted relations among ethnic groups. Federalism was allegedly chosen to respond to the challenge of ethno-national conflicts that beleaguered the old Ethiopian state from the time it has been built into a multi-ethnic empire often seeking to build one nation out of many.[4] This has been taken to mean that federalism is opted for in order to serve as a panacea for all the conflicts in Ethiopia.[5] Needless to

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[1] This diversity has prompted the Italian historian, Carlo Conti-Rossini, reportedly to have said the now almost proverbial saying that Ethiopia is "*un museo di popoli*" to mean a museum of peoples. See, for example, Donald N. Levine (1974), *Greater Ethiopia: the Evolution of a Multi-ethnic Society*. (Chicago and London: University of Chicago Press), pp. 19-20.

[2] Bahru Zewde refers to this increasing salience of ethnicity as "the deification of ethnicity". See Bahru Zewde (2008), *Society, State and History: Selected Essays*. Addis Ababa: Addis Ababa University Press, p. 20.

[3] Both the Transitional Charter of 1991 and the Federal Democratic Republic of Ethiopia (FDRE) Constitution of 1995 stress the constitutive power (alias *pouvoir constituant*) of "nations, nationalities, and peoples" although the wording in the Preambles of the two constitutional documents differs slightly in the two cases. Thus the Charter arrogates the constitutive power to "the Peace Loving and Democratic Forces/Elements of Ethiopia," (paragraph 4 of the preamble) whereas the Constitution begins with "We, the Nations, Nationalities, and Peoples of Ethiopia." See the Transitional Period Charter of Ethiopia, Proclamation No. 1, *Negarit Gazeta*, 50th Year, 22 July 1991 and Proclamation N0.1/1995, the Constitution of the Federal Democratic Republic of Ethiopia, *Federal Negarit Gazeta*, 1st Year, No.1 (1995).

[4] The old Ethiopian state had a varying territorial expanse over the centuries, its peripheral boundaries bulging and shrinking, and bulging again, across time in history. The idea of building one nation out of many evokes the thought of the *E Pluribus Unum* (*out of many, one*) motto which is more benign than the assimilationist stance of the old Ethiopian state, although this in itself is more integrationist than the *plures in uno* (to mean *many in one*, or *within one, many*) motto that should be the hallmark of a pluralist, multi-culturalist polity that tolerates, nurtures, and cherishes diversity.

[5] This is what prompts many among the public to ask if the federal dispensation has solved conflicts or has perpetuated and intensified the incidence of conflicts. One quickly notes that this (at times misguided) question is often asked rhetorically only to answer it by saying that it has actually triggered more conflicts than it has solved. But in truth—and scholars of federalism agree here—federalism is not a panacea. As such,

say, facts emerging from the federal experiment for the last decade and a half did not prove that it is a panacea. Indeed at times, it might have contributed to the emergence of new--or the accentuation and multiplication of old—conflicts.[6]

This article aims at exploring the potential of the Ethiopian federalism as a way of managing, or rather living with, conflicts. In order to do that, I address myself to the following questions: Does federalism resolve or prevent conflicts or does it cause, multiply, and perpetuate them? Was the Ethiopian federalism a response to and a cause of conflicts? What conflicts did it respond to? How effectively did it do so? What conflicts has it caused? How did it prepare for them? How has it responded to conflicts that are its own creation? In other words, has it given solution to pre-constitutional conflicts? Has it faced post-constitutional conflicts? How did it respond to both? Is there any normative, institutional, and procedural capability to effectively respond to and learn to live with post-constitutional/federal conflicts? What were the old conflicts anyway? How effective was our federalism in its response to it? What are the new conflicts? How effective have we been in our response to them? What challenges have been faced? How have they been overcome? Where did we fail, and why?

In this article, I argue that conflicts are bound to be with us always. We won't "resolve" them. Nor can we eradicate them. We can prevent them. We can handle or manage them when they do occur. We can transform them when we are lucky. Federalism, with all its limitations, helps in this venture.

It is a truism to say that Ethiopia is riddled with conflicts. Class conflicts and status conflicts predominated the political terrain of the 20th century. Economic conflict and ethno-national conflicts were singled out as the

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while it "dissolves" some conflicts, it might also, unwittingly, trigger or resuscitate others. See, for example, Ronald Watts (2008), *Comparing Federal Systems* (2rd ed). (Montreal and Kingston: McGill-Queen's University Press) and George Anderson (2008), *Federalism: An Introduction*. (Oxford: Oxford University Press) both of whom hold that federalism is far from being a panacea for all conflicts.

[6] The many disputes that the state and federal institutions (such as the House of Federation [HoF], Ministry of Federal Affairs, the Council of Nationalities of the SNNPRS, etc) are seized with suggest that there is a notable incidence of conflicts in many parts of the country. Such disputes that are presented to these institutions for their legal/adjudicatory resolution include: the Silte quest for self-definition and distinct recognition; the numerous border conflicts that often occur between the Oromia region and the Somali, SNNPRS, Amhara, etc regions; conflicts over access to power through election (between groups dubbed 'highlanders' and 'natives' in the Benishangul/Gumuz region; conflict related to the quest for reassignment in one Zone as opposed to another (e.g. Dalena Woreda of the Wolaita Zone); the quest for one's own Zone (e.g. Gofa) or Special Woreda status; etc.

politically most important conflicts in Ethiopia's political history.[7] In recent years, ethnic conflict gained salience. Resolution, management, and transformation or responding to ethnic conflict has gained pre-eminence in the political realm.[8] Consequently, the quest for ethno-cultural justice, equality, and self-determination is high on the priority agenda.[9] Federalism is conceived as the only effective, appropriate, and legitimate response to ethno-national conflicts. Indeed, in the Ethiopian context, federalism was a response to old ethno-national conflicts. As such, it blunted some demands.[10] It responded to some demands.[11] It led to looking at some questions squarely in the eye—taking the bull by the horn.[12] As a result, one can say that it helped pacify "the big house". It devolved

[7] The 1974 Revolution succeeded in making class conflicts (conflicts arising out of economic hierarchy) as the most salient and the most pressing ones and, indeed, tried to respond to the demands of the poor chiefly through land redistribution schemes. Conflict of ethno-national type (conflicts arising out of status hierarchy) were appreciated but subordinated to the economic conflicts. Edmond J. Keller (1995), "The Ethnogenesis of the Oromo Nation and its Implications for Politics in Ethiopia," *Journal of Modern African Studies*, vol. 33, No.4, p. 623, refers to the 1974-1991 revolution as one of the two social revolutions of Ethiopia, the second being the one that succeeded it since 1991 ("1991 onwards"). Following his track, one can thus describe the 1974 revolution chiefly as a class revolution and the 1991 revolution chiefly as a revolution for ethno-cultural justice.

[8] One needs only making a cursory glance at the Transitional Charter of 1991, Proclamation no 7/1992, the FDRE Constitution, and the nine State Constitutions to confirm this pre-eminence of ethnicity.

[9] One can say that these are the underlying values that shaped the making of the FDRE Constitution. The Transitional Charter, negotiated among major ethno-nationalist liberation fronts, was chiefly a truce document meant to confront ethno-nationalist clashes by responding to the quest for ethno-cultural justice (demand for the exercise and enjoyment of cultural, linguistic and religious rights, the demand for recognition of one's identity, the demand for participation in public decision-making, the demand for autonomy, etc), equality, and self-determination (internal and external).

[10] Such is the case, for example, with regard to the claim for autonomy, or linguistic justice, cultural rights, etc. In some cases, even the claim for self-determination (e.g. secession) has lost its sharp edge. The postponement of the Somali demand for secession temporarily and the vacillation of the Oromo Liberation Front (OLF) between the choice of secession or of asserting equality and autonomy in a democratic Ethiopia are examples of such blunted demands.

[11] E.g. the right to equality and non-discrimination (art 25), political participation through representation (arts 38 cum 54(2)), the right to use of language in education, courts, civil service, and media (at least within one's locality, with or without translation), the right to enjoyment of culture (art 39(2)), the right to self-government (art 39(3)), etc.

[12] The secession clause in the now (in)famous art 39(1) of the constitution marks a bold move with few, if any, precedents. By inscribing it in the constitution as a right,

conflicts to sub-national levels.[13] It reduced national ailments to sub-national and local levels. And that is as it should be.

Ethiopian federalism triggered other conflicts. One cannot gainsay that new conflicts have emerged. The federalist project has two tasks to perform at a time: 1) that of responding to old conflicts, transforming them, answering old questions, satisfying old demands; and 2) that of managing new conflicts, coping with new challenges, investing in conflict transformative projects.

Detractors of Ethiopia's federalism often ask simple questions that suggest an oversimplification of the matter: *has the federal arrangement solved or exacerbated conflicts?* This must have come from the misunderstanding that federalism is a panacea. Federalism does not guarantee a "perpetual peace,"[14]or "the peaceable kingdom."[15] *Federalism is a compromise, a negotiated*

Ethiopia went beyond the "kill the tribe to build the nation" motto of many an African country. It reduced Ethiopia to a destructible union of (perhaps indestructible) sovereign ethnic units ("nations, nationalities, and peoples"). This clause originally meant to remove the military solution from the political equation—to serve as the paradoxical case of the dividing that unites—served, rather strangely, the purpose of preserving the unity while threatening it. Whatever its advantage, by endorsing secession, Ethiopia took the bull by the horn and so far, the bull hasn't killed it. One can surmise—stretching the metaphor of the bull--that perhaps through this clause, the bull finally might be domesticated.

[13] Hence, the numerous local cases that are vying for attention at the regional level (e.g., in the Council of Nationalities of the SNNPRS) and at the Federal level (e.g. in the House of Federation).

[14] Immanuel Kant is said to have penned a book entitled *Perpetual Peace* but mainly referring to peace among nations, in the realm of what today can be called Public International Law. See Immanuel Kant (1795), *Perpetual Peace: a Philosophical Sketch*, available in electronic version at http://www.mtholyoke.edu/acad/intrel/kant/kant1.htm (accessed in June 2009).

[15] The famous painting by Edward Hicks entitled *The Peaceable Kingdom* inspired by the verses in Isaiah 11: 6-9 readily come to mind. The text of Isaiah 11:6-9 reads as follows:

"The wolf will live with the lamb, the leopard will lie down with the goat, the calf and the lion and the yearling together; and a little child will lead them. The cow will feed with the bear, their young will lie down together, and the lion will eat straw like the ox. The infant will play near the hole of the cobra, and the young child puts his hand into the viper's nest. They will neither harm nor destroy on all my holy mountain, for the earth will be full of the knowledge of the Lord as the waters cover the sea."(See Holy Bible, NIV, 1978).

Will Kymlicka (1995) appropriately used the painting as the cover page for his book *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: Clarendon Press).

settlement, a covenant, a human institution, an imperfect one at that, more a project than a reality.[16] Federalism is not a panacea. It does offer some solution. But it also solves problems by diverting old conflicts, or creating (new), or transforming all, conflicts. To put it more bluntly and directly: just as much as it solves, it creates (and, at times, multiplies) conflict. Ethiopian federalism preserved (partial) unity, brought about partial peace, established temporary truce, attempted to guarantee ethno-national equality, and partially dispensed ethno-cultural justice. But by doing so, out of the solutions for old problems, are born new conflicts: conflicts for new power,[17] new resources,[18] and new opportunities.[19] As a result, there is now heightened awareness of the new self. There are now new demands for a distinct identity,[20] new demand for self-governance and autonomy,[21] new quest for local economic justice, new quest for political empowerment and participation, new quest for statehood,[22] new quest

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[16] As a compromise, it does not grant all the demands of all the parties involved. Consequently, most parties will be half happy (or more or less) rather than fully happy. As a project, an unfinished one at that, it invites experimentation, trial and error, ups and downs, successes and setbacks.

[17] New power spaces created as a consequence of devolution of power to local (State, Zone, and Woreda) centers.

[18] New resources include those that local authorities are entitled to use (e.g. economic facilities such as land) but mainly budgetary resources that come to them in the form of transfer (be it as a grant, subsidy, etc from the federal government) or revenue they are entitled to raise at the sub-national level.

[19] Opportunities that create access to social capital such as network, education, health, and other economic facilities.

[20] The case of the Silte, the Donga, the Zay, and a host of others exemplify this. The Silte case for self-definition and local self rule has long been decided by the House of Federation (HoF). The Donga and the Zay cases are yet to be decided.

[21] The case of the Gofa exemplifies this kind of claim. The Gofa quest for a Zone status separate from the Gamo-Gofa Zone has been presented to the HoF, the Office of the Prime Minister, the Legislative Council of SNNPRS, Council of Nationalities of SNNPRS, and the political parties of both the federal and the state offices of the EPRDF in a letter dated 21/7/98 EC. The case has not yet been decided.

[22] E.g. the case of the Gamo and the Sidama in SNNPRS. The Gamo quest for a separate Statehood (from SNNPRS) has been formally presented to the Federal, State, and Zonal authorities in a letter dated 10 Hamle 1997 EC. The Sidama quest for statehood separate from the SNNPRS has been presented to the Council of Nationalities (CON) of SNNPRS in an application/petition dated 02/01/98 EC. The Sidama Zone has since dropped their request with a letter dated 26/8/98 EC apparently after a long series of political negotiation.

for territory (hence border disputes).[23] Some conflicts emerge out of the problem of design, some out of the problem of practice.[24]

It is my key argument therefore that instead of expecting federalism to solve all our conflicts, it is advisable to take the more modest road and learn to live with conflicts. That is what federalism offers: to learn to live with conflicts. I also argue, albeit only tangentially, that federalism is often the only, not necessarily the best, choice countries have.

The overall goal is to contribute to the effort at clarification of thought and visions regarding conflicts and federalism. If we have a clearer idea of what conflicts are, how they are to be handled, what federalism is, how it is to be framed and implemented, especially in diverse and divided societies, then we will be better fortified to appreciate the predicaments we are in and to develop a more systematic approach to conflicts that federalism is meant to manage or that it has perhaps triggered. Thus, it will be in order to ask as many questions as possible about conflicts and federalism and try to give an answer to these questions. In order to do that, I will chiefly rely on survey of literature and analysis of laws and policy documents.

Given the fact that conflict is a dynamic process rather than a static incident,[25] discussion on the *Anatomy of Conflicts* with a particular reference to the meaning, phases and methods of their management would have been necessary as a prelude to the theme of this article. However, the limited scope of this article does not allow it, and I will address the theme in a forthcoming article. This article is organized into three major sections (other than the introduction and conclusion). In section one, I discuss ethno-national conflicts: what they are, what they call for, how they are conceptualized, and how they are approached for their resolution or management. In the second section, I discuss the methods of living with conflicts through and/in federalism. Here, I try to approach federalism both as a solution to and a 'cause' of conflicts at a time.

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[23] The case of the Yem, the case of Dale Woreda between the Sidama and Wolayta Zone of the SNNPRS, the case of the Guji Oromo in the Sidama Zone, the border dispute between the Somali and Oromia Regions, are only examples of these conflicts.

[24] See Tsegaye Regassa (ed) (2009), *Issues of Federalism in Ethiopia: Towards an Inventory* (Constitutional Law Series, No.2). (Addis Ababa: AAU Press), for an elaborate discussion of the issues of Ethiopian federalism in three categories, namely that of Design, Practice, and Culture.

[25] See Medhane Tadesse (2006), *The Quest for Conflict Settlement in Ethiopia's Periphery*. (Addis Ababa: Friedrich-Ebert Stiftung (FES)), for example, on the dynamic and processual nature of conflicts. "Conflicts are historical processes, not static facts" p. 6.

In section three, I discuss federalism and conflicts in the context of Ethiopia. Ethiopia, being a country of many—and at times conflicting—images, heritages, or personalities, it is imperative that we discuss issues related to 'images' and perception of its problems and solutions. The contending ethnic demands and the federal response thereof are also considered. Federalism and its place in Ethiopia's past and present are discussed relatively extensively. Issues related to the design and the practice of the federal dispensation are identified. Some of the challenges and the limits of the federal dispensation in the face of increasing tensions and competitions among groups at the local and sub-national levels is also sketchily presented by referring to examples of recent cases that emerged from the states. The section is brought to an end through a tentative description of the prospect as we look ahead into the years to come.

1. Ethno-National Conflicts and their (Ir)resolution

1.1- What are they?

What are ethno-national conflicts? In simple terms, ethno-national conflicts can be viewed as conflicts between and/or among ethnic or national groups that are in relationships. But not much clarity is obtained from such a definition. There is undertheorization of the nature of ethnic conflicts. As a consequence, both the definition of, and the theories that explain, ethnic conflict do not command consensus among scholars. Donald Horowitz, in his magisterial work on ethnic conflicts (entitled *Ethnic Groups in Conflict*) suggests that ethnic conflict is "the struggle for mutually exclusive rewards or the use of incompatible means to a goal."[26] By alluding to Lewis Coser's definition, Horowitz goes on to adopt a definition which views ethnic conflict as "a struggle in which the aim is to gain objectives and simultaneously to neutralize, injure, or eliminate rivals."[27]In Horowitz's definition, conflict--posed as a struggle, strife or collision--is distinguished from competitition.[28]

Clearly, this definition assumes diversity/plurality and relations among diverse groups. It also implies a divergence of pursuits of benefits and incompatibility of means used to attain a goal. Ethno-national conflicts thus can be viewed as a struggle between and/or among diverse groups who, having (perceived) incompatible goals, use incompatible means to achieve their goals. This definition however assumes clarity as to what we mean by ethnicity or nation. Adrian Hastings makes a helpful distinction between ethnicity and nation by stipulating that while ethnic groups are peoples tied to one another chiefly

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[26] Donald Horowitz (1985), *Ethnic Groups in Conflict* (Berkeley: University of California Press), p. 95.

[27] *Ibid*.

[28] *Ibid*.

through a shared *spoken* language, a nation is a group tied to each other through a *written* vernacular.[29]

1.2- What Causes Ethnic Conflicts?

There are a number of theories forwarded to explain the nature and causes of ethnic conflicts. Donald Horowitz, for example, identifies three major categories of theories of ethnic conflicts, namely modernization theory, class theories, and cultural difference theories.[30] According to modernization theories, ethnic conflicts, as a "mere relic of an outmoded traditionalism"[31], will go away if modernization penetrates the domain of ethnic existence. Ethnic conflict is also viewed as an obstruction to the inexorable progress toward modernity,[32] and as such may result in the inevitable tension between tradition and modernity which in turn causes some conflict. The competition among groups for the fruits of modernity (infrastructural, educational, new wealth, etc) might also cause conflict.[33]

Class theories of ethnicity hold that belief in a particular ethnic identity is part of an ideology that "masks class interests and diverts the working class from pursuing their interests."[34] As such it is malleable to elite manipulation and instrumental utilization for the elite's own pursuit of class and political interests. Cultural difference theories such as the one promoted by Furnivall maintain that conflict among ethnic groups arises out of incompatibilities among their cultures. It is an attempt at explaining many an ethnic conflict on the basis of cultural differences. It holds that plural societies are "defined by dissensus and pregnant with conflicts."[35]

According to Will Kymlicka,[36] a proponent of liberal multiculturalism, liberalism's blindness to groups rights, and the consequent insensitivities to minority claims lead to ethnic tensions in a polity. The quest for freedom (of a group) from 'external domination' and (of an individual) from 'internal restrictions' thus justify the quest for ethno-cultural justice. The denial of justice

[29] Adrian Hastings (1997), *The Construction of Nationhood: Ethnicity, Religion, and Nationalism* (Cambridge: Cambridge University Press), pp. 1-35, but especially pp. 3, 11-12.
[30] See generally Donald Horowitz, *supra* note 26.
[31] *Ibid* , p 96.
[32] *Ibid.*
[33] *Ibid*, p. 102.
[34] *Ibid*, p. 106.
[35] J.S. Furnivall (1954), "Some Problem of Tropical Economy" in Rita Hinden, ed., *Fabian Colonial Essays* (London: Allen & Unwin), (as quoted in D. Horowitz, *Ibid*, p.136).
[36] See generally Will Kymlicka, *supra* note 15.

often leads to conflicts and tensions. Misrecognition causes tensions and conflicts. Similarly, Iris Marion Young characterizes most ethnic demands as part of the response and resistance to different classes of oppression, namely exploitation, marginalization, powerlessness, violence, and cultural imperialism.[37]

John Markakis, a long-time scholar on Ethiopia, suggests that causes of ethnic conflicts are mostly competition for resources and power although in what looks like a lapse in thought he also seems to endorse the cultural difference theory when he tried to explain the Issa-Afar conflict in the light of historical/traditional enmity between the two groups.[38] Merera Gudina[39] attributes ethnic conflicts in Ethiopia to, among other things, contending nationalisms that have emerged and evolved over time in Ethiopia. He also deplores the incomplete transition to democracy as a result of which we continue to have political instability that is rooted in ethnicity.[40]

In a similar vein, Lovise Aalen[41] alludes to the democratic deficit, human rights deficit, and the one party dominance in Ethiopia as the cause of many an ethnic discord. Likewise, Assefa Fiseha[42] makes the observation that poor political culture and poor federal culture continue to serve as the hotbed for ethno-national contentions in Ethiopia. In the context of Ethiopia, one can fairly say that the sources of ethnic conflict have often revolved around the competition for resources, power, and opportunities.

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[37]See generally Iris M. Young (2000), *Inclusion and Democracy* (Oxford: Oxford University Press). See also I. M. Young (1990), *Justice and the Politics of Difference*. (Princeton: Princeton University Press).

[38] John Markakis (1998), *Resource Conflict in the Horn of Africa* (London: Sage Publications). See also his (1987) *National and Class Conflict in the Horn of Africa*. (Cambridge: Cambridge University Press). See also Edmond J. Keller (1981), "Ethiopia: Revolution, Class, and the National Question," *African Affairs*, vol 80, No. 321, pp. 519-549, for a summary of the various explanations of ethnic conflicts in Africa in general and in Ethiopia in particular.

[39] See generally Merera Gudina (2003), *Ethiopia: Competing Ethnic Nationalisms and the Quest for Democracy,* 1960-2000 (Addis Ababa: N.P Shaker Publishing).

[40] *Ibid*, e.g. pp. 160-161.

[41] See generally Lovise Aalen (2000), *Ethnic Federalism in a Dominant party State: The Ethiopian Experience, 1991-2000*. (Bergen: Christian Michelsen Institute). See also her (2008), *Institutionalizing the Politics of Ethnicity: Actors, Power, and Mobilization in Southern Ethiopia under Ethnic Federalism*. (Oslo: PhD Dissertation (submitted to the Department of Political Science of the University of Oslo).

[42] Assefa Fiseha (2005/2006), *Federalism and the Accommodation of Diversity in Ethiopia: A Comparative Study* (Nijmegen: Wolf Publishers), pp. 432-433, for example.

1.3- Modes of Responding to Ethno-national Conflicts

Anyone dealing with the problems of ethno-national diversity has a number of options to choose from in order to deal with them. But mostly, the responses depend on the nature and types of claims put forward by the different groups within a polity. Some groups, considering their numerical smallness, might just want security of survival. They thus claim recognition and security of existence, equality and non-discrimination, identity, enjoyment of cultural and linguistic rights, the right to a homeland, representation and participation in the politics of the encompassing polity, and autonomy. In extreme cases, they might demand self-determination.[43]

The responses to these diverse demands differ from country to country and from time to time. The approaches often taken in response to the demands of diversity and difference historically took the form of extermination (genocide), assimilation, misrecognition, marginalization, exclusion, domination, and recognition.[44] A positive response took the form of tolerance, equalization, affirmative action, power-sharing, and accommodation treading the multiculturalism road.[45] Federalism is also a mode of positively responding to the challenge of diversity. (But in most divided societies concerned with the task

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[43] Note that these are more or less the kind of rights minorities can claim in multi-ethnic, multi-linguistic, and multi-cultural/religious communities. For a comprehensive list and rigorous legal analysis of the rights of minorities, see Patrick Thornberry (1991), *International Law and the Rights of Minorities*. (Oxford: Clarendon Press).

[44] Thornberry, *supra* note 89, identifies a spectrum of responses to demands by minorities by specially noting those that range in between assimilation and integration including fusion and segregation (p.3). In relation to genocide as a response, he says "regrettably, crude attempts at physical destruction of groups are still made by states, even if not admitted to be such: no state proclaims genocide as a policy." (p.4). For the many and varied responses to the demands of diversity, see also the two oeuvres by Iris Marion Young, *supra* note 83. For incisive analyses of the two most prominent forms of negative reaction to the demands of diversity, namely exclusion and domination, see Melissa S. Williams and Stephen Macedo (eds) (2005), *Political Exclusion and Domination*. (New York and London: New York University Press).

[45] The responses offered by voices of multiculturalism such as Charles Taylor (1994), "The Politics of Recognition" *Multiculturalism* (Amy Gutmann, ed). (Princeton: Princeton University Press); Will Kymlicka (1995), (chiefly in his) *Multicultural Citizenship*, *supra* note 15. James Tully (1995), *Strange Multiplicity: Constitutionalism in an Age of Diversity*. (Cambridge: Cambridge University Press); and Alain-G Gagnon and James Tully (eds) (2001), *Multinational Democracies*. (Cambridge: Cambridge University Press).

of nation-building, positive responses were hard to come by, the most extreme form of which propagated the slogan 'kill the tribe to build the nation.'[46])

1.4. Federalism as one among Many Responses to Ethno-national Conflicts

Federalism is often used as a tool of accommodating diversity. Daniel Elazar, one of the leading proponents of the expansion of the federal idea in modern times, and who is otherwise very skeptical about the success of ethnic federalism, says that "Federalism has become a very popular "solution" for problems of ethnic conflict in public discourse."[47] But owing to the fact that the American model is often taken as the prototypical model of federalism, a federal type that takes ethnicity into account in the process of carving its constituent units is viewed as rather unconventional. They also observe that:

> [E]thnic federations are among the most difficult of all to sustain and are least likely to survive because constituent units based on ethnic nationalisms normally do not want to merge into the kind of tight-knit units necessary for federation. It may be that confederations of ethnic states have a better chance of success. Ethnic federations run the risk of civil war, while ethnic confederations run the risk of secession. *The management of ethnic nationalism is both the most common and the most difficult reasons for federalism today.*[48](Italics added.)

Indeed most scholars consider ethnic federalism with a degree of suspicion because to base a federal arrangement on such an inflexible trait such as ethnicity is to freeze the compromise and negotiation inherent and necessary for an operational federal system.[49] Nonetheless, trends in recent years suggest that perhaps ethnic federalism must be given a chance because it has two major

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[46] This was the expression frequently used in post-colonial countries that not only took nation-building seriously but sought to do it even at the expense of internal diversities. See the phrase used in Will Kymlicka (2007), "The Global Diffusion of Multiculturalism" in *Governing Diversity: Democratic Solutions in Multicultural Societies* (Razmik Panosian, Bruce Berman, and Anne Linscott, eds). (Montreal/Kingston: Rights & Democracy/EDG (Ethnicity and Democratic Governance)). Here, Kymlicka says: "'kill the tribe to build the nation' was a popular expression in many post-colonial African countries." p. 11.

[47] Daniel Elazar (1994), *Federalism and the Way to Peace*. (Kingston/Queen: Institute of Intergovernmental Relations), p. 167.

[48] *Ibid*, pp.167-168.

[49] Daniel Elazar, who says, "ethnic nationalism tends to subordinate all free government to its uncompromising position. Federalism is a democratic middle way requiring negotiation and compromise. All aspects of society fostering uncompromising positions make federalism more difficult, if not impossible" in *Ibid*, p. 168, is only an example.

advantages: a) it brings about peace and stability in conflicted societies; and b) it entrenches and institutionalizes ethno-cultural justice. In countries such as that of the horn –which share common peoples, cultures, fears, and vulnerabilities— ethnic federalism with the secession clause might even help for regional integration.[50] It is important, however, that for ethnic federalism to effectively respond to the challenge of diversity, it needs to be augmented by an electoral and political system that provides for power-sharing, equal representation, veto power on select matters, etc. It should also be working under the provenance of a legitimate, supreme, and rigid constitution that can be interpreted impartially and neutrally (or evenly). It should also be supported by a robust minority rights regime that can protect new minorities or minorities within minorities.

2. Learning to Live with Conflicts through Federalism: Federalism as a Solution and as a Cause of Conflicts

As has been hinted at earlier on, federalism is not a panacea to all ailments. It is not an insurance against conflicts. It is therefore imperative that a society learns to live with conflicts in and through a federation by preparing for conflicts that might be triggered by the adoption and operation of a federal structure.[51] Such a preparation requires the institutional and procedural readiness and readiness in terms of putting in place a systematic set of policies, strategies, and methods for handling conflicts. But before we delve into the discussion of how we live with conflicts, it is important to discuss the features, variants, types, and modes of operation of federalism.

2.1. Federalism in General

2.1.1. What is Federalism?

The conventional view with regard to federalism is that it is a form of non-centralized mode of organizing a polity.[52] Thus it is said that "federal polities are

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[50] See Tsegaye Regassa, "Federalism in Ethiopia and its Relevance to other Multi-ethnic Polities of Africa" (Unpublished paper presented in the Law Faculty of the University of Trento, Italy, May 2009, forthcoming in *Bahir Dar University Law Journal*, 2010) for a discussion of its transplantability elsewhere and its use as a tool of (re)integration of the countries of the Horn of Africa.

[51] Conflicts that might be triggered by a federal arrangement are those that result from the units' and sub-units' heightened self-awareness and increased awareness of their rights and powers to be claimed both vertically from the federal government and horizontally from each other. Such conflicts include, but are not limited to, competition over (newly discovered) power, resources, and opportunities.

[52] See Daniel Elazar (1985), "The Role of Federalism in Political Integration" in *Federalism and Political Integration* (Daniel Elazar, ed). (Lanham, MD: Jerusalem Center for Public Affairs/ University Press of America), pp. 13-16.

characteristically non-centralized."[53] It refers to a "union of separate states in which power is divided and shared between a strong union government and strong state governments."[54] Inherent in the federal idea is thus the idea of "shared rule and self-rule."[55] Moreover, federalism presumes the existence of at least two layers (tiers) of government in a polity, namely, that of the Federal (General, also Union) government and of the State (Local, also Provincial, or even Cantonal-- in the case of Switzerland) governments.

The idea of shared rule and self rule in federalism is advantageous in many respects. Kincaid argues that federalism, as it is practised in the United States, has "solved the fundamental problem of human governance and liberty." He goes on to state that federalism aspires to "maximize the democratic and economic advantages of both small and large republics by minimizing the anarchistic temptations of small republics to fight each other and the monopolistic temptations of large republics to become tyrannical."[56]

Thus it is evident that federalism intensifies democracy by creating an atmosphere of popular participation at, at least, two levels. Further, federalism helps preserve the particularities of smaller republics in a big polity by first *protecting them from potential degeneration into non-existence and by, secondly, breaking the imperialistic hegemony of larger republics*. (Whether this value of federalism can still be maintained in a post-cold war era where there is a resurgence of politics of identity is extensively debated relatively recently in Graham Smith's work.[57]) But the potential for pluralism, and better local liberty and consequent better legal and even political penetration in federalism can

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[53] *Ibid* p. 14. Here, Elazar rightly insists on the distinction between non-cetralization and decentralization by saying, "Non-centralization is not the same as decentralization, though the latter term is frequently—and erroneously—used in its place to describe federal systems. Decentralization implies the existence of a central authority, a central government that can decentralize or recentralize as it desires. In decentralized systems, the diffusion of power is actually a matter of grace, not right; in the long run, it is usually treated as such."

[54] John Kincaid (1995), "Foreword" Federalism: What is it? Where Might it take us?, *(Law Related Education)*, Vol 19, No.3.. (Chicago: American Bar Association), p.1.

[55] Ronald Watts, *supra* note 5, p. 7. See also Daniel Elazar, *supra* note 92, pp.5-16. See also the centrality of this idea in other works such as Michael Burgess (2006), *Comparative Federalism: Theory and Practice*. (London/New York: Routledge), pp.11-49 (which analyzes the conceptual roots of federalism, federations, and federal political systems); and Daniel Elazar (1996), "Federalism, Diversity, and Rights" in *Federalism and Rights* (Ellis Katz and G. Alan Tarr, eds). (Lanham, MD/London: Rowman and Littlefield), p.2.; George Anderson, *supra* note 5, ch. 2.

[56] Kincaid, *supra* note 54, p.2.

[57] Graham Smith(ed) (1995), *Federalism: The Multi-ethnic Challenge*. (London: Longman).

hardly be denied. It is important to note at this juncture that while federalism is an important instrument to accommodate local differences and the quest for local/provincial autonomy in a large polity, it is not only large polities that need it. Small nations, too, might want to adopt federal arrangements for various reasons one among which is diffusion of power across the land so that central tyranny is avoided.[58]

2.1.2- Variants

Etymologically the word 'federalism' comes from the Latin, *foedus*, meaning "covenant".[59] Hence, the covenantal roots of American federalism[60] which is considered an example of a prototype of federations.[61]   Traditionally therefore, federalism, being essentially a covenant or a treaty, is a solemn agreement among smaller polities to form a larger perpetual polity. It is from this covenantal idea intrinsic to federalism that Daniel Elazar develops his thesis of various forms of organizing governments on the federal line. He thus identifies four major forms of state organization that could roughly be called "federal", namely: a) Federation; b) confederation; c) federacy; and d) associated statehood.[62] A brief explanation of each is in order.

Federation, for Elazar, is a kind of government which "establishes a common general government in which to form a polity, and constituent units which both govern themselves and share a common constitutional government of the whole."[63] It is the form of government in which "powers are delegated to [the general government] by the people of all the units. Its dissolution can only come about through the consent of all or a majority of its constituent units."[64] It is a system in which "the general government has direct access to every citizen and supremacy in those areas in which it is granted authority."[65]

Moreover, for Elazar, *Federation*, which is the prototype of a federal political system, "is the form of government invented by the founding fathers of

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[58] Anderson, *supra* note 5.

[59] Kincaid *supra* note 54. But see also Daniel Elazar and John Kincaid (1984), *The Covenant Connection: Federal Theology and the Origins of Modern Politics*. (Lanham, MD: Center for the Study of Federalism and University Press of America) for a more comprehensive treatment of the federal idea as essentially covenantal.

[60] Donald Lutz (1988), *The Origins of American Constitutionalism*. (Baton Rouge: Louisiana State University Press).

[61] Elazar *supra* note 47.

[62] *Ibid*, pp. 159-160

[63] *Ibid*, p. 159.

[64] *Ibid*.

[65] *Ibid*.

the United States in the constitution of 1789."[66] Archetypal examples of modern federations are the US, Switzerland and Canada.   In his opinion therefore prototype federations are those which are formed through aggregation rather than devolution. Consent of the unit is also inherent to (convenantal) federation. This notion of federation can be more clearly understood when it is contrasted to the other forms of organizing states on the federal line such as confederation and federacy.

Confederation is a system in which "the constituent units form a union but retain most sovereign and constituent powers."[67] Thus in a confederation the constituent units "establish and maintain continuous control over the general government which must work through them to reach the citizenry."[68] Moreover, "the secession of individual units may be possible by prior constitutional agreement without general consent."[69] As can be noted from the foregoing, while the general government has direct power over citizens of the states in a federation, such is not the case in a confederation. In the latter case, the constituent unit's government serves as a medium between the citizens and the general government. In addition, in a confederation, the units have a pre-arranged right of secession preserved for them from the very beginning. Thus, in confederation, unilateral withdrawal from the "Union" is possible. This is perhaps because in confederations, the units preserve their sovereignty. The Greek Achean League, and the United provinces of the Netherlands are mentioned as classic examples of confederations, while the European Union is taken as the best modern example.[70] It is important to note here that confederations, to the extent they allow secession, mark less permanent commitment to form a "more perfect union" which is the essence of covenantal federalism.

Federacy is "an asymmetrical relationship between a federated state and a large federate power, providing for potential union on the basis of the federated state maintaining greater internal autonomy by foregoing certain forms of participation in the governance of the federate power."[71] It is thus a transitional step to union. Notable also is the imbalance between the units, i.e., between "the federated state" (which usually might not have had a prior experience as a viable state) and the (larger) "federate power". While federacy is similar to federations in the sense that both have potential for subsequent unity, it does not seek to

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[66] *Ibid.*

[67] *Ibid*, p. 160.

[68] *Ibid.*

[69] *Ibid.*

[70] *Ibid.*

[71] *Ibid.*

preserve the identity of the constituent units, thereby always leaving sufficient space for self-rule-which is the essence of federations. It is significant to note that while federations might facilitate homogeneity among the citizens in the constituent units, it does not necessarily and usually lead to a unity that obliterates the constituent units. Federacy, however, might lead to subsequent obliteration of the autonomy of the federated state. Elazar [72] and Friedrich[73] mention Puerto Rico as a federacy (to the US), although it is noted that the term frequently used for this kind of arrangement in the US is "commonwealth."

Associated statehood is also an asymmetrical relationship in which the "federated state is less bound to the federate power, and the constitution which binds them usually has provisions for the severance of ties between the two under certain specified conditions."[74]This arrangement "is similar to federation." That is to say, just in the same way confederation differs from federation because it allows secession from the union, associated statehood differs from federacy because it allows breaking of ties from the federate power. Thus, one can say that associated statehood is a loose a federacy as confederation is a loose federation.

The foregoing are the four major forms of organizing polities on a federal basis, but other quasi-federal arrangements also exist. Unions (like the UK); leagues, condominiums (Andorra with France and Spain); constitutional regionalization (e.g. Italy); and constitutional home rule (like Japan) are mentioned by Elazar as forms of quasi-federal arrangements.[75]

2.1.3- Federalism as a Mode of Organizing a Polity

From among the three basic ways of the emergence of polities, namely *conquest* (or force), *organic development* (or accidental evolution), and *covenant* (or reflection and choice), federalism is akin to covenant (or reflection).[76] That is to say, federalism is different from a form of government established by use of force which usually culminates in "hierarchically organized regimes ruled in an authoritarian manner."[77] It is thus different from a system in which there is a "power pyramid" in which "the conqueror (is) on top, his agents in the middle,

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[72] Elazar (1987), *Exploring Federalism*. (Tuscaloosa, AL: University of Alabama Press); See also Elazar, *supra* note 47.

[73] Carl J. Friedrich (1968), *Trends of Federalism in Theory and Practice* (New York: Praeger).

[74] Elazar, *supra* note 47, p. 160.

[75] *Ibid*.

[76] *Ibid*, pp. 18-19 citing Madison in *Federalist* 1. Also, see Elazar *supra* note 72.

[77] *Ibid*, p. 18

and the people underneath the entire structure."[78] As such, federalism seems to be at odds with centralist authoritarianism.

Federalism is also seen as distinct from organic evolution which:

> involves the development of political life from its beginning in families, tribes, and villages to large polities in such a way that institutions, constitutional relationships, and power alignments emerge in response to the interaction between past precedent and changing circumstances with a minimum of deliberate constitutional choice.[79]

Being largely a product of historical accidents, organic evolution results in oligarchic regimes with a predilection to be on the top of the power pyramid or at the center.[80] It thus might create a center-periphery tension with the regime ending to be at the center and at the top. Interestingly, in similitude to conquest, this form of state "creation," also tends to be hierarchical which is not necessarily the case in federalism. Federalism, being a product of "reflection and choice" (in the words of *The Federalists*[81]), is unlike *conquest* and *evolution.* Elazar states that "polities whose origins are covenantal reflect the exercise of constitutional choice and broad-based participation in constitutional design."[82] Such polities are "essentially federal in character"- in spite of their structure-i.e., "each polity in a matrix compounded of equal confederates who come together freely and retain their respective integrities even as they are bound in a common whole."[83] Moreover, "such polities are republican by definition."[84]

Most, characteristically, federalism is a system in which decisions are made after deliberate negotiation.[85] It is the element of negotiation inherent in federalism that attracts societies that even "ail" from "natural" diversities such as culture religion, ethnicity, etc, to federalism. Such societies that are divided on "transgenerational religious, cultural, ethnic, or ideological" lines (also called consociational polities) venture to adopt non-territorial federations which are jointly governed by coalitions of the leaders of each group.[86] Such trends leaning towards non-territorial federations which is necessitated by "re-assertions of ethnic and regional identities, now worldwide in scope," have given

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[78] *Ibid.*

[79] *Ibid*, p. 19

[80] *Ibid.*

[81] *The Federalist Papers* (1969/1999), (Charles R. Kesler and Clinton Rossiter, eds). (New York: Mentor), p 1.

[82] Elazar, *supra* note 47, p.20.

[83] *Ibid.*

[84] *Ibid.*

[85] *Ibid*, p.71.

[86] *Ibid*, p.22.

rise to various paces of federalism, while also ushering in what is called "the federalist revolution."[87] A post-modern federalism, "a federalism that is not simply based upon territorial boundaries but recognizes the existence of long enduring peoples as well,"[88] is suggested for the purpose of handling pluralism of recent years.

That federalism is congenial to pluralism is too obvious to argue. That pluralism safeguards liberty is the basic federal argument.[89] But the manner of institutionalizing pluralism constitutionally determines the durability of federal arrangements. Thus, pluralism rooted in individual liberty and choice is more convenient to sustain in federal arrangements than those rooted in primordial ties.[90] The latter forms of pluralism sustain themselves by making it difficult for integration to happen. In the context of such rigid form of pluralism (such as the ones evoked by multi-ethnicity), federal principles are said to work if they can "combine kinship (the basis of ethnicity), and consent (the basis of democratic government) into politically viable, constitutionally protected, arrangements involving territorial and non-territorial polities."[91] In such circumstances, federalism both maintains and contains pluralism." "The virtue of federalism," Elazar asserted, "not only lies in its utility in maintaining pluralism but also in simultaneously containing it."[92]

Comparative studies of federalism indicate that federalism can best be maintained in societies where: a) there are strong civil societies that help limit government; b) sovereignty is broken thereby allowing for division and sharing of powers between the general (federal) government and local (state) governments, also leaving room for continuous vibrant intergovernmental relations; c) territoriality is the basis of state formation, although at times it might need to be "augmented by ... consociationalism or ... other forms of non-territorial power sharing"[93]; d) there is a total or uniform federalism that is evenly spread over the entire polity created by the federalism thereby disallowing different patterns of behavior to be displayed by the federal government vis-à-vis the different constituent units. (In other words, there should be no special empowerment of some constituent units as against others or no special restriction of the power of one as against the other.); e) there is a

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[87] *Ibid*, pp. 21-23.
[88] Daniel Elazar (ed) (1991), *Federal systems of the World: A Hand book of Federal, Confederal, and Autonomy Arrangements*. (London: Longman Group), P. 2-3.
[89] Elazar, *supra* note 47, p. 25.
[90] *Ibid*.
[91] *Ibid*, pp.23-24.
[92] *Ibid*, p.31.
[93] *Ibid*, p. 164.

political culture that is supportive of, or congenial to, federalism; f) a will to federate exists; g) there is a broad-based consent obtained usually through negotiations, renegotiations and compromises; h) there is "balance between cooperation and competition" in intergovernmental relations, i.e., where there is a degree of cooperation that engenders dual and cooperative federalism, and yet sufficient room is left for the states to make their own decisions and exercise their "freedom to say "no" to the federal government decisions[94]; and i) where there is an efficient system of separation of powers among the organs of the federal government.[95] In sum, therefore, civil societies, broken sovereignty, territoriality, uniformity, supportive political culture, the will to federate, mass consent, balanced intergovernmental cooperation and competition, and a system of separation of powers can be viewed as factors that make management of federalism easy in a polity.

Nonetheless, federalism is not universally accepted without any opposition. There are oppositions that come from two directions. According to Daniel Elazar,[96] the forces that oppose federalism are forces of centralization and of fragmentation. Those who oppose federalism on behalf of centralization tend to be totalitarian with consolidationist trends while those who oppose it on behalf of fragmentation are ethno-nationalist movements seeking secession. From among the two, "ethnic nationalism is probably the strongest force against federalism."[97] Yet contemporary problems of ethnic conflict seem to have brought about a drift into ethnic federations as a situation. But can ethnic nationalism be handled through a federation? The answer from commentators is often skeptical, as we have noted earlier on.[98]. Being egocentric, Elazar maintains, ethnic nationalism is at odds with the principle of federalism. In federalism, consent is the basis of division and sharing of power, not "language, religion, national myths," as is the case in ethnic nationalism.[99] As the elements emphasized in ethnic nationalism are those which breed cleavages among people, a multiethnic federal system (Elazar seems to suggest), can succeed only if the basis of state formation is anything other than ethnicity. Thus, ethnic configurations and state borders should not be coterminous if ethnic federalism

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[94] *Ibid*, p. 166.

[95] *Ibid*, p.177. These factors are identified as important elements of a workable federal arrangement in the works of various scholars of federalism such as Alan Seligman (1992), *The Idea of a Civil Society*. (New York: Free Press); Daniel Elazar, *supra* note 72; and Ivo Duchacek (1987), *Comparative Federalism: The Territorial Dimension of Politics*. (Lanham, MD: University Press of America).

[96] Elazar, *supra* note 47, p.167.

[97] *Ibid*.

[98] *Ibid*, p. 93.

[99] *Ibid*, p. 168.

is to succeed. Federalism, for Elazar, is "formulated through covenanting or consent of publics of individuals," and in contrast, "ethnic nationalism tends to subordinate all free government to its uncompromising position."[100] Furthermore, federalism is "a democratic middle way requiring negotiation and compromise. All aspects of society fostering uncompromising positions [such as ethnic nationalism's] make federalism more difficult, if not impossible."[101]

Nonetheless, one can hardly fail to notice the following features of federalism (which have all been hinted at directly or indirectly in the discussion above): allocation of power between federal and state governments; representation at the center; and territoriality.[102] Other commentators see yet other features of federalism such as its importance "as a form of empowerment", i.e., its capability to create "opportunities for regional voices to be heard; and to create regional political elites where they previously did not exist," and to "establish more civil service jobs for local regional groupings."[103] Thus, federalism, being a form of empowerment, creates "more opportunities for negotiating the territorial distribution of power and more representative institutions.[104] Smith further notes that innovation is also an aspect of federalism.[105] This means that federalism lets the states exercise creative politics in meeting local needs thereby serving, in a sense, as "a social laboratory."[106] As such, federalism might be a helpful tool to be used against legitimacy crisis. To this list, one can add the following features as basic to one's description of federalism, namely, the existence of: at least two orders (tiers, or spheres) of government; a written constitution which is legitimate, supreme, rigid, and adjudicable by an impartial body; allocation of legislative powers to states with

[100] *Ibid*.

[101] *Ibid*. But See also Andrea Eschet-Shwartz (1991), "Can the Swiss Federal Experience Serve as a Model of Federal Integration," in Daniel Elazar, (ed) *Constitutional Design and Powersharing in the Post-Modern Epoch*. (Lanham, MD: Univ. Press of America); Fried Sterbauer, Guy Heraud, and Peter Pernthales (eds,) (1977), *Foderalismus*. (Vienna: Wilhelm Braumuller); Geofferey Sawer (1977), "Constitutional Issues in Australian Federalism," *Publius* 7 No. 3; Anup Chand Kapur(1970), *Constitutional History of India: 1765-1970*. (New Delhi: Niraj Prakashar); Ronald Watts (1989), *Executive Federalism: A Comparative Analysis*. (Kingston: Institute of Intergovernmental Relations).

[102] Preston King (1993), "Federation and Representation" in Michael Burgess and Alain-G Gagnon (eds), *Comparative Federalism and Federation: Competing Traditions and Future Directions*. (London: Harvester Wheatsheaf).

[103] Graham Smith, *supra* note 57, p.16.

[104] *Ibid*.

[105] *Ibid*, p. 17.

[106] Alain-G Gagnon (1993), "The Political uses of Federalism and Federations," in Burgess and Gangnon, *supra* note 102, p. 37.

some genuine autonomy for each order; equal or equitable representation of the constituent units at the center often in an upper house; an umpire and/or procedure (e.g. courts, referendum, or upper house) to rule on constitutional disputes between governments; and a set of processes and institutions for facilitating or conducting relations between governments.[107]

The above mentioned features of federalism also imply some of the values inherent in federalism such as lessening tyranny especially of the executive, being responsive to local public needs, and encouraging innovation. These values of federalism however should not blind one to some of its drawbacks, among which are: complexity and overlapping of state structures, redundancy, potential of local tyranny, and its potential as incentive for secessionist movements.[108]

Federalism not only has drawbacks but also involves ever changing challenges that it has to deal with. Post-cold war times, for example, have presented federalism with three major challenges to confront, namely: a) the challenge of majoritarianism in multi-ethnic societies, b) the challenge of globalization; and c) the challenge of sub-state nationalism.[109] In other words, federalism, being a territorial and non-majoritarian mode of organizing a polity, is exposed to the criticism of majoritarian democracy especially in ethnically pluralized societies.

Moreover, because of globalization i.e., "the internationalization of capital, the greater mobility of labor, the growth of continental trading blocs,"[110] has made the role of the national (and even local) governments grow less and less in intensity or importance. Further, because of contemporary reemergence of local (or sub-state) nationalism, federalism, as a consensual mode of organizing a polity, is facing the challenge of identifying a workable basis of state formation. It is important to recall from our earlier discussion that ethnic nationalism is one of the movements against federalism. So far, federalism's meaning, aspects, values, factors for and against and the challenges posed to it are discussed. This discussion is hoped to have a bearing on the analysis of federalism in Ethiopia later.

2.1.4- Origins and Waves

Depending on how they came to be, federations are often classified into two major categories and a third which is a hybrid of those. These are: (a) coming-together (or better known as those formed through aggregation or integration of

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[107] See Anderson *supra* note 5 on these features.
[108] Smith, *supra* note 57, pp. 2-4.
[109] *Ibid.*
[110] *Ibid*.

pre-existing states); (b) holding-together (or famously known as those formed through devolution of a previously centralized system of power in a unitary country); or (c) a combination of these two (in case where polities are reconstituted through a double - flanked process of devolving an old centralized polity while being re-associated with another polity—which used to be a separate polity-- or a unit that went to a temporary independence from the old unitary polity at the beginning of the devolutionary process.) George Anderson identifies some six "waves" of federation namely: (1) classical federations (18th and 19th century federations such as USA, Switzerland); (2) post-colonial federations (e.g. India, Nigeria, etc); (3) post-communist federations; 4) post-conflict federations (e.g. Iraq); (5) new federations (e.g. Belgium, Spain, etc); and 6) transnational federations (e.g. EU).[111]

2.1.5- Types: A Taxonomy of Federations?

Federations can also be viewed as falling in one or the other of the following categories either: a. *based on origin*: Aggregative, Devolutionary; Coming together, Holding together[112]; b. *based on operation*: dual or cooperative (integrated or interlocked); or parallel or administrative/executive; c. *based on the mode of state formation*: territorial/personal; administrative/ethno-linguistic (or multi-national). In practice, federal systems' operational success depends on the kind of inter-governmental relations that exists in a polity. Thus a federation may be characterized as: (a) dual/co-operative; (b) legislative/executive; (c) parallel/integrated.

2.1.6- Division of Powers in Federations: Approaches

Division of powers between the federal, the state, and local governments is the hallmark of federal systems. Dispersion of power territorially is (by setting up at least two tiers of government and dividing, often, the legislative but also the judicial and executive powers between them) is one of the key features of federalism. Powers can be allocated to each tier as follows: Federal Powers, State Powers, and Concurrent (alias joint, or shared) powers. The constitutional method used to divide the powers might follow one of the following techniques, namely:

a) Explicitly enumerate distinctly federal, state, and concurrent powers and leave the rest (i.e., the residual powers) to the states—as it is the case, for instance, in the USA; or

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[111] *Ibid*. Note that Anderson, *supra* note 5, does not use the term "transnational federations".

[112] Alfred C. Stepan (1999) uses this distinction between coming-together and holding-together types of federations in "Federalism and Democracy: Beyond the Us Model" *Journal of Democracy*, Vol.10, No.4, pp. 19-34

b) Explicitly enumerate state powers (without enumerating the federal powers) and reserve the rest (i.e., the residual powers) to the federal government—as it is the case for example in Canada.

When enumerating some powers as either "federal" or "state" and grant it to them explicitly, we also grant them other powers which are either *implicit* in, or *necessary* to exercise, the explicitly granted powers. Implicit and necessary powers come to be visible in the process of exercising the explicitly granted powers.

2.2 Federalism as a Peace-making Tool

As has been hinted at repeatedly in earlier sections, federalism may serve as a tool of peace-making. Such is the case in conflicted and post-conflict societies. The fact that it is a mode of molding a polity through reflection and choice and the consequent fact that central to its formation is consent (agreement, or treaty) makes it a veritable tool of peace. If a polity has been beleaguered by tensions and wars that are fought for the sake of better recognition of diversity, accommodation of difference, equal or fair participation in the political life of a nation, or/and autonomy to govern oneself and one's resources in one's chosen way, federalism can be a way out of the political quagmire. If the wars are fought for the sake of ensuring protection of particular identities within an encompassing bigger polity, then federalism can afford that protection, and it can interest groups to come to negotiation. If the wars are fought to preserve national unity in the face of fragmenting local nationalisms, then federal diversity in unity can offer a solution to the concern of both "national" and local nationalisms. (Often "national" patriotism/nationalism is haunted by fear of disintegration; particular/local nationalists are haunted by fear of oppression.[113] But federalism offers that golden mean sought to keep both fears at bay.)

In such scenarios, federalism can be an incentive for peace. However, it can do so only if both/all groups are willing to compromise having realized that the

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[113] By "national" nationalism I mean that expressed by proponents of the bigger encompassing polity often propagated through the instrumentality of the "central" or "national" state (hence, state nationalism). The emphasis of such a nationalism is the "sovereignty and territorial integrity" of the country. The metaphor for the country is often "the Motherland, or the Fatherland". The fear of dismemberment haunts such nationalism whenever the idea of granting greater autonomy to the constituent units is discussed. By "particular/local nationalism" I mean that which is expressed among proponents of greater autonomy for the constituent units often in the name of equality, justice, and freedom to govern oneself. The fear that haunts such nationalism is the fear of oppression. The two nationalisms manifest the tensions between two legitimate political ideals, namely *unity* (of the larger polity) and *equality* (of the units).

military option is not viable any more. It is important that the warring groups, especially the "center", are all exhausted. The guarantee of self-rule at the sub-national level, the security that there will be a meaningful fair participation in decision-making at the "center" (shared rule), the preservation of the bigger encompassing polity, the guarantee against the danger of centralization, etc appetize 'stakeholders' to put their arms down and seek a political/diplomatic solution to their stalemates. Hence, the significance of federalism as a peace-making tool.

2.3. Federalism as a Peace-keeping, Peace-building and Conflict Transformation Tool

In post-conflict societies, where there is a rift and tension among centripetal and centrifugal forces, federalism might serve as a peace-keeping and peace-building tool. The terms of the federal covenant help regulate the relationship between/among the various groups that negotiated the federal dispensation. Old rivalries and competitions which used to have a violent (military) expression will now take a constitutional-legal mode. The legal battle—supported and reinforced by the political (.e.g., electoral) battle—replaces the military strife, and as such help to build and reinforce peace culture.

Conflicts evolve. Their dynamic nature warrants their evolution. A creative use can transform them. Federalism has the potential of transforming conflicts to make them take a trajectory that helps build a nation in a new direction. Articulation of old incompatible interests helps to gather ideas based on which to reconstruct a polity and reconstruct the state in a way that is agreeable to all groups. The transformation of the conflicts might happen by changing the rules of the game, or the field at which to fight them out, or the form they take. National conflicts might be devolved to sub-national and local levels. Tensions between two major groups in a predominantly bi-polar polity might be multiplied to take a multi-polar format so that there will be numerous horizontal conflicts that help keep the equilibrium at the national level. What used to be competition for the "national" cake (of resources, power, and opportunities) becomes a competition for a sub-national one. In this way, by multiplying and fragmenting conflicts, federalism transforms conflicts and makes them available for political maneuvers. One needs to note however that this process needs a strong vibrant legal and political culture infused with hope and optimism rather than frustration and cynicism.

2.4 Enhancing the Lesson: Learning to Live with Conflicts

In transforming conflicts, federalism simply makes us prepare for an important lesson: that a mature polity learns to live with conflicts rather than trying--rather naively—to resolve them mostly by wishing them away. By providing for a normative, institutional, and procedural framework for an effective and efficient

handling of conflicts, federalism makes its peace with conflicts. The *normative framework* is an assemblage of laws, policies, strategies and plans for prevention, management, settlement, and transformation of conflicts. This in turn refers to a body of rules beginning from the constitution to other primary and subordinate laws that help handle incompatibility of interests of the diverse actors in the matrix of actors in a federal arrangement. Once the routes that political and legal actions take are predicted or made fairly predictable, then the escalation and violence of conflicts are avoided. All actors will know the legal and political resources they can mobilize within the ambits of the constitutional framework. The normative framework also provides for an elaborate *legislative frame* which grants specific guidelines on a peaceful settlement of disputes whenever they arise. It will also provide for a rational conflict *policy* that systematically responds to conflicts. Institutions in charge of handling diverse constitutional disputes emanating from federalism also come up with a conflict strategy that is directed, intentional, methodical, rational, effective and efficient in its response to conflicts (overt or covert, latent or manifest).

The *institutional framework* outlines the legal, political, and diplomatic institutions that help the country constructively engage with conflicts. By *legal institutions* we mainly mean the judicial organs and their accompaniments (often known as the law-enforcement agents). Adjudicatory bodies with judicial and/or quasi-judicial authorities are all included. In the context of Ethiopia, institutions such as the ordinary Courts, the House of Federation (HOF), the Council of Constitutional Inquiry (CCI), the National Electoral Board, the Institution of the Ombudsman, or the Human Rights Commission fall within the category of legal institutions. By *political institutions* we mean the legislative bodies such as the House of Peoples' Representatives (HPR), its Committees, the Council of Ministers and Ministries (e.g. the Ministry of Federal Affairs) which, with or without delegation, make serious policy decisions on important matters that concern diverse actors in the federal matrix. Other Executive bodies and political parties that make *political decisions* or even lobbyists that influence the political parties within or outside of government form a part of the institutional frame. By *diplomatic institutions* we mean institutions that tend to offer good offices mainly by virtue of the moral (and at times political) influences that they command over the political and legal institutions. The *Office of the President of the Republic*--being beyond and above the heat of politics--can mediate between conflicting groups/actors and act as one example of such diplomatic institutions which work from the position of moral influence rather than of political or military power. The HoF, too, can have this role in its effort to find amicable solutions to various misunderstandings between/among ethnic groups, regional

states, various organs of government, or dominant political parties.[114]*Religious leaders, elders and traditional leaders* of diverse communities in society, *civic society organizations*, and others might also play a positive role in this diplomatic venture. These and other institutions can form part of the institutional infrastructure for handling conflicts and peace building in societies.

The *procedural framework* for handling conflict is often rooted in the legal framework but it is primarily about the process that the conflict handling endeavors take to prevent, arrest, manage, settle, and transform conflicts. Rules relating the *modus operandi* of courts, the HOF, CCI, the HPR, COM, Ministry of Federal Affairs (MoFA), etc are the major rules that from part of the procedural frame. Specific guidelines laid down by the HOF for, say, referendum on border disputes or identity or other forms of self-determination are examples of such procedural rules.[115] Specific guidelines used by the MoFA, or Regional Security Bureaus, or specific conflict strategies and policies devised by the powers that be, all form part of the procedural infrastructure for handling conflicts.

More importantly, it is imperative that we constantly remind ourselves of the fact that federalism is not a panacea for conflicts. We need to remind ourselves that while federalism solves some kinds of conflicts, it might induce the emergence of other kinds of conflicts. It is therefore important to prepare the federal arrangement for a new breed of conflicts that might arise with the advent of federalism. This helps us enhance our lesson that in federal systems, we learn more how to live with conflicts than how to do away with them.

3. Federalism and Conflicts in Ethiopia: Prospects and Challenges

3.1- Ethiopia: Personalities, Images, Conceptions of Problems

Ethiopia is one of oldest countries in the world, and definitely oldest in sub-Saharan Africa.[116] It is also one of the most actively engaged ones in the politics

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[114] Art 62(6) of the Constitution maintains that one of the responsibilities of the HoF is to offer a diplomatic solution to at least inter-state conflicts. It says that the HoF "shall strive to find solutions to disputes or misunderstandings that may arise between states." It is easy to note that the diplomatic solution is given a chance alongside the legal (adjudicatory) solution.

[115] Such rules are particularly elaborated in Proclamation 251/2001 and Proclamation 250/2001.

[116] See Ali Mazrui (1994), "Ethnicity in Bondage" (Keynote address to the UNRISD/UNDP International Seminar on Ethnic Diversity and Public Policies, NewYork,17-19August,1994, available at: http://www.mtholyoke.edu/acad/intrel/mazrui.htm last accessed in July 2009.

and security of/in the African continent and the East African sub-region.[117] As a polity, it is a country with "multiple personalities."[118] Depending on the historiographic paradigms that project Ethiopia's image, one can have at least six personalities in Ethiopia. Thus, according to Teshale Tibebu, a social historian of Ethiopia, Ethiopia can mean one or more of the following things:

a. **Christian Ethiopia**. This image is projected by the Aksumite paradigm of Ethiopian historiography. In this paradigm, Ethiopia is "a Christian island surrounded by a heathen sea."

b. **Semitic Ethiopia**. This image is projected by the Orientalist/Semiticist paradigm. Ethiopia, or more narrowly Abyssinia, is a black-Caucasian, Semitic-Christian nation. It is "the living land of the Bible", a black Canaan.

c. **The authentic African Ethiopia**. This image is projected by the pan-Africanist paradigm which views Ethiopia as "the spark of African political freedom," the 'rock of black resistance against white invasion", "symbol and incarnation of independence", the "pride of Africans and negroes" everywhere, the "metaphor for Africa wronged by the West", the "concentrated expression of Africa", the "hope and pride of Africa".

d. **The Black Colonial Power Ethiopia.** This is the image projected by the ethno-nationalist paradigm of Ethiopian history which postulates that Ethiopia was "the only Black African power that participated in the European Scramble for Africa" by taking control of many peoples of the wider south Ethiopia such as the Somalis, the Oromos, and the other Cushitic, Omotic, and Nilotic peoples of the far flung southern parts of Ethiopia and, in the post WWII times, (re)annexing Eritrea. This paradigm, otherwise known as the *colonial thesis*[119], contends that Eritrea, Oromia, Ogadenia (another name for the ethnic Somalis of Ethiopia who live in

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[117] The fact that it played a role in the formation of the Organization of the African Unity in 1963, steered towards the completion of the decolonization process.(e.g, pushing for liberation of Zimbabwe, Mozambique, etc), the fact that it contributed to the peace keeping efforts of the UN at times in Africa (e.g. Congo), and the more sub-regional engagement in war (with Somalia and Eritrea) and peace (Rwanda, Djibouti, and through IGAD) can be mentioned as evidence of this.

[118] Teshale Tibebu (1995), *The Making of Modern Ethiopia, 1855-1974.* (Lawrenceville, NJ: Red Sea Press). See also Teshale Tibebu (1996) "Ethiopia: The "Anomaly" and "Paradox" of Africa," *Journal of Black Studies*, Vol. 26, No.4.

[119] Merera Gudina, *supra* note 39, 2002 argues that there are three major theses on Ethiopia's historiography, namely the colonial thesis, the national oppression thesis, the nation-building or the national (re)unification thesis the unleashing of which partly contributed to the affairs of competing nationalisms in contemporary Ethiopia.

Ogaden), and other subject peoples of Ethiopia (e.g. the Sidama) are colonized as a consequence of which they deserve to exercise their right to self-determination to stay with or separate from Ethiopia. Self-determination is invoked as a tool of decolonization, and Ethiopia is projected as a colonial power.

e. ***Ethiopia with its own Triple Heritage.*** This image is projected in the heritages' paradigm of Ali Mazrui who says that Ethiopia, too, has its own triple heritage within Africa, namely, indigenous, Semitic, and Greco-Roman.[120]

f. ***Feudal Ethiopia.*** This is an image projected by a Marxist and/or Modernist paradigm which argues that Ethiopia is a feudal or feudal-like state akin to those in medieval Europe which needs to experience a series of social revolutions in order to fully partake in progress.

It is important to note that the move to a decentralized federal system was motivated by the impulse to overcome the deficits of equality, justice, and democracy that was the hallmark of "feudal", autocratic, and oppressive ("colonial" or otherwise) Ethiopia.[121]

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[120] Ali Mazrui argues that sub-Saharan Africa has a triple heritage, namely: indigenous, Islamic, and Christian. Ethiopia has its own triple heritage: indigenous, Semitic, and Greco-Roman. Mazrui (1993), *The Africans: a Triple Heritage (Documentary),* in Teshale Tibebu, *supra* note 118. Mazrui says that Africa has the indigenous, the Islamic, and the Christian heritages. Hence, the "triple heritage".

[121] Scholars who stress the "feudal" personality of Ethiopia insist that there was a national oppression in Ethiopia but it was not in any way one that we can characterize as 'colonial'. These recognize the fairness of the quest for ethnic equality and internal self-determination (i.e. autonomy) but stop short of justifying secession. On the other hand, there are those who, viewing, Ethiopia as but a black, poor, dependent colonial power, justify the use of self-determination (including secession) as a tool of decolonization in Ethiopia. Secessionist movements such as EPLF [Eritrean People's Liberation front], ELF [Eritrean Liberation Front], OLF [Oromo Liberation Front], SLM [Sidama Liberation Movement], ONLF [Ogaden National Liberation Front], are the political parties that are taken to have generally subscribed to the latter view. See Merera Gudina, *supra* note 85 on the distinction between the national (re)unification thesis, the national oppression thesis, and the colonial thesis in Ethiopia's historiography. See also Assefa Jalata (2005), *Oromia and Ethiopia* (2nd ed). (Laurenceville: The Red Sea Press), for an extended elaboration of the colonial thesis.

3.2- Federalism in Ethiopia: Past

The historic Ethiopian state was a unitarist state making the least effort to institutionalize federalism or other forms of decentralization. The commitment to *the ideal of a strong unitary state* had anathematized federalism as a step to the dismemberment of the country. The country was seen as *too united* or *too delicate* to accommodate such an arrangement.

The Ethiopian state constituting the territories that comprise today's Ethiopia was largely a creation of a century ago. The 1931 Constitution, the first written constitution which was promulgated only decades after the completion of the process of Empire-building, did not make any reference to federalism. True to its goal of unification and modernization of the country under an Emperor, it could envisage only a unitary state. The Italian occupation of 1935-41 disrupted the constitutional development.

In 1952, Eritrea was federated to Ethiopia by a Federal Act of the United Nations[122]. Two traits most describe the Ethio-Eritrean Federation: 1) that it was more of an international compromise than an internal 'convenant'; and 2) that it is, as most commentators called it, a marriage between unequals. Bairu Tafla[123] put his finger on this point when he said that the Federation had "two inherent problems" that led to its subsequent failure:

> [I]t was imposed from outside and was tolerated by both Eritrea and Ethiopia on the basis that 'half a loaf is better than nothing'. It was also a marriage between two incompatible beings-the giant and the dwarf, the strong and the weak, the rich and the poor, the autocratic and the democratic.[124]

So delicately constructed was the Ethio-Eritrean federation that it could lapse only for about a decade. The Ethiopian political tradition of the time, being autocratic and centralist, was not accommodative of the pluralism inherent in federalism. Indeed, in Ethiopia "[t]he rulers obviously confused administrative plurality with disintegration and anarchy."[125] Unity was equated with uniformity. Centralism was reinvigorated in the guise of unity and perfected by Emperor Haileselassie I.[126] The trend to centralism was perhaps the cause of mismanagement of the federalism which was subsequently liquidated in favor of unity in 1962.

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[122] United Nations General Assembly Resolution No 390 (V)/1952.

[123] Bairu Tafla (1994), "The Ethio-Eritrean Federation in Retrospect" in *Conflict and the Federal Alternatives in the Horn* (Woodman and Forsyth, eds). (Longman: London), p.7.

[124] *Ibid.*

[125] *Ibid*, p.6.

[126] *Ibid.*

The Eritrean Constitution and the Federal Act, which was passed on 10 July 1952 and came to force as Proc. no 124 of 11 September 1952 (*Negarit Gazeta*), federated Eritrea as an "autonomous unit" of Ethiopia (Art. 3) "under the sovereignty of the Ethiopian crown." The Government of Eritrea had its own legislative assembly representing the people (Art. 39). It had a government with legislative, administrative and judicial powers (Art. 4). The legislature had legislative competence over virtually everything in Eritrea, from criminal law to laws on education and resources, etc (Art. 5). Eritrea had a strong autonomy, with a rather ceremonial Imperial presence represented by his representative (Arts. 10 and 11). This representative of the Emperor formally introduces the Chief Executive after the latter is elected by the Parliament (Art. 12), opens and closes the Parliament's sessions with an address from the throne; and promulgates Eritrean laws passed by the Parliament (Art. 15 and 18). The Eritrean government had also judicial and executive powers to exercise. The executive is composed of the Chief Executive and his "Executive Secretaries" (a term preferred to "Ministers" for obvious reasons) (Art. 68). An Advisory Council, entrusted with economic planning and the drafting of statutes, was established (Art. 84).

Judicial independence was guaranteed (Art. 86). The Supreme Court and other courts as may be formed were vested with the judicial power (Art. 85). The court applies all the laws of Eritrea. Whether it also applies federal laws was not clear. The judges are nominated by the Chief Executive based on the recommendation of the President of the Parliament which in turn is supported by a commission's report (Art. 87). The Supreme Court, in addition to being the highest court of appeal, checks constitutionality of laws issued by the Parliament, decides on conflict between the Eritrean government and other organs and can impeach the Chief Executive (Art. 90).

Membership to the Parliament comes through elections, but as there were no strong political parties, the campaigns were not as strong as one would expect them to be today. The absence of many civic societies is also notable. The relative awareness of the mass was an asset, although to most of them federalism was a queer form of governmental arrangement. Thus there was a clear lack of federal culture as most highlanders sought total unity with Ethiopia while others (most of the lowlanders) sought total independence from Ethiopia or the powers that be.[127]

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[127] See Zewdie Retta (2000), *The Eritrean Affair* (*Ye Eritrea Guday*, in Amharic), (Addis Ababa: Mega) for a meticulous presentation of the details of the process that led to the federal compromise first and to the dissolution of the federation later. The book is full of extracts from minutes, exchanges, and letters from and to imminent political actors of the day.

Moreover, the relatively liberal constitution envisaged a democratic system of government which notionally challenged the autocratic Imperial rule in the other parts of the country. The practice in Eritrea was seen as a threat to the legitimacy of the Ethiopian regime. The 1955 Revised constitution was in a sense an attempt to catch up with the development in Eritrea. The 1955 constitution made no reference to the federalism, though. It established the supremacy of the constitution and by implication of federal laws. But it did not spell out the federal powers and state powers as such. This silence created a room for an unnecessary involvement of the imperial representatives in the affairs of Eritrean government which ultimately led to the dissolution of the Federation.

Eritrea became a state forming the federation not because it fit any mode of state formation, but rather because it outlived the Italian colonialism under which it was ruled since the 1880's to 1941 when the Allied Forces (chiefly the British) ousted the Italians and took over the Eritrean territory. After a lengthy debate in the UN on how to dispose of former Italian colonies in Africa, a compromise was reached in 1952 to federate it with Ethiopia. It is plain therefore that because it was an arrangement by the international actors, the Ethio-Eritrean federation defies both categorizations of federalism (i.e. of territorial or ethnic or personal). It was neither territorial nor personal. The boundaries of Eritrea were of colonial making and were as such arbitrary. Because there are the same people groups on both sides of the Ethio-Eritrean border, one cannot say this is an ethnic (=by extension, personal) federalism. Because the Eritrean territory was cut-off from the hinterland Ethiopia since the 1880's, it was not the reordering of the Ethiopian land-mass for the sake of federalizing the country that resulted in an Eritrean and an Ethiopian state. It tends to be an aggregative type of federalism in a sense. It is a queer association of a former colony (Eritrea) with a sovereign state (Ethiopia) who claimed that the colony was part of itself before it was forcefully alienated from it.[128] But the association had similarity to what Daniel Elazar calls federacy.[129]

What was the consequence of this? The major consequence was that the Ethiopian leaders failed to take the federalism seriously. This was manifest in their excessive involvement in the affairs of Eritrea, at times even contrary to the Eritrean constitution.[130] The eagerness to bring Eritrea to complete unity with

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[128] *Ibid.*

[129] See, for example, Elazar, *supra* note 47, for an elaborate distinction between Federations, Federacies, Confederations, Associated Statehoods, and other variants/species of the federal mode of ordering government. See also his other work *supra* note 72 for a more extended discussion of the variants of federalism.

[130] Bairu Tafla, *supra* note 123, p. 7.

Ethiopia led to the revocation of the constitution early in the 1960's by an order of the Emperor. Those who sought independence from the beginning protested against the abolition of the federalism with armed violence. Legal solution to the crisis was not at hand--and was not even sought. The abysmal failure of the federalism left us with hardly any lesson to draw from the experience. Yet in retrospect, one cannot fail to see the fact that the imposed nature of the federalism, the absence of a federal culture, and the absence of civil societies, and excessive emphasis on unity as uniformity, have played a role in leading to its failure.

Since the failure of the Ethiopia-Eritrean federalism, no effort was made to restore it in the subsequent years. A nationalist war started in Eritrea. In the 1960s and 1970's a student movement leaning progressively to the left arrived on the scene. At the same time, centralism continued to be the creed of the system. The Eritrean liberationist movement inspired other ethno-nationalist movements in other parts of the country. An inarticulate Oromo nationalist movement started to be in the subtext of Ethiopian politics. The student movement started to discuss the "National Question" in Ethiopia. The Somalis of the Ogaden were also part of the discussion of the time. Later, the Tigrean Liberationists, inspired by the Eritrean movement joined the league of those who challenged the Ethiopian centralism that was moving on in total ignorance of the self-defining pluralism. Conflated with the issue of class (mainly the farmers' quest for land), ethnic and religious questions came out to demand a benign response.[131] The 1955 Revised Constitution was not of course capable of handling this move. Intensified by other political factors, a popular revolution ensued. The revolution changed the regime. But centralism continued to be the norm. "Ethiopia First" became the motto. Ethno-nationalism was perceived to be a threat to national sovereignty and territorial integrity of Ethiopia. It was even considered counter-revolutionary and reactionary.

The provisional government (the PMAC or the Dergue as it is popularly known) did not opt for federalism. On the contrary, it exerted the maximum effort to intensify rigorous centralism. Although it made a concession to the

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[131] See Kiflu Tadesse (1993), *The GenerationThe History of the Ethiopian People's Revolutionary Party, (parts I and II). (*Trenton, NJ: Red Sea Press). See also the Amharic version of the same work entitled *That Generation* (*Ya Tiwlid*, Amharic). (Addis Ababa: Shama) for the details on the key issues that exercised the imagination of the left leaning student revolutionaries of the 1960s and 1970s. Their response to the challenge of ethnic diversity was complex. To some, ethnicity was secondary and subordinate to the class question. To others, it was primary and superior. To yet others, it was only an instrument of mobilization against the imperial order.

question of "nationalities" as it recognized the equality of "nationalities" and their languages and while it could admit the fact of diversity, the government did not even change the number and powers of the provinces (except in name, as they were changed *from teklay gezat* to *kiflate hager*). That is to say, there were 14 *teklay gezats* which became the 14 *kiflate hager*, with no substantive devolution of power. The time from 1974 to 1987 was a time during which Ethiopia did not have any formally written (comprehensive, "codified") constitution. When in 1987, the PDRE was established the centralism was maintained except that there were now about 24 provinces and 5 autonomous administrative regions. The recognition of some regions as autonomous was an effort to diffuse the mounting pressure by opposition fighters in what was otherwise a centralist state with "democratic centralism" as its motto.

In reaction to the grip of tough centralism, ethno-nationalist groups mounted opposition against the PDRE regime until it collapsed in 1991 leaving the political space for ethno-nationalist groups who, for a while, appeared to take decentralization seriously. The Transitional Charter was the first legal document to institutionalize decentralization. Being a product of compromise among ethno-nationalist movements, it emphasized "nations, nationalities, and peoples" (roughly ethnic groups) as the units serving as the basis for decentralization. Proclamation no. 7/1992 made this ethnic-based decentralization more articulate and real. The 14 self-governing regions were mainly ethnic in their making although almost none were entirely homogenous. Based on this proclamation, National, Regional (then the equivalents of what are now called States) and Local Governments were formed and an incipient form of self-government was made apparent. Nonetheless, it was only after the promulgation of the FDRE Constitution that federalism as such was formally institutionalized in Ethiopia.

3.3. Ethiopian Federalism: Present

3.3.1-Origins

The origins of the current federal option are in the ethno-nationalist liberationist rhetoric of the post-1991 era of Ethiopian history. Led by the Ethiopian Peoples' Revolutionary Democratic Front (EPRDF), a number of ethno-nationalist liberationist fronts came together in a National Peace Conference that led to a Transitional Charter (TC) that served as the interim constitution from 1991 to 1995. It is in the negotiations that led to the TC that for the first time in Ethiopia's history ethnic groups' rights as such are guaranteed a formal legal recognition. Ethnicity was at last "free from bondage"[132] in the oldest of sub-

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[132] Ali Mazrui, *supra* note 116 observes that in Ethiopia and South Africa, the oldest and the newest, respectively, of black African nations, ethnicity is free from bondage but asks the questions rhetorically if its freedom is rather premature.

Saharan African countries. Along with this also came the introduction of what was the nucleus of the contemporary federalism. The TC recognized the right of "nations, nationalities, and peoples" to self-determination up to and including secession.[133] A subsequent proclamation, Proclamation No.7/1992 established 14 self-governing regions.[134] It also reinforced the recognition extended to the right to self-determination by the Charter.

In complete departure from the unitary past, the Charter and the Proclamation devolved power from the center to the self-governing regions and signaled the beginning of a 'holding together' federalism.[135] In 1995, this move to a federal system through 'scaling down'[136] was perfected when the explicitly federal (Federal Democratic Republic of Ethiopia's [FDRE] Constitution came into force. While diverse and divergent perspectives have emerged on the merit or wisdom of the federal option in Ethiopia[137], one cannot genuinely gainsay that

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[133] See the Preamble and article 2 of the Transitional Charter.

[134] See Transitional Government of Ethiopia (TGE), Proclamation to Proclaim the Establishment of National Regional Self-Governments, *Negarit Gazeta*, Proc. No. 7/1992

[135] Alfred Stepan, *supra* note 112, makes a distinction between 'coming together' and 'holding together' federalisms by looking at their origin.

[136] I am indebted to Donald Horowitz (2007), "The Many Uses of Federalism" *Drake Law Review*, Vol. 55, pp. 101-113, for this term.

[137] One quickly notes that the literature so far can be summarized as projecting three contending views. There are thus those who support the federal restructuring of Ethiopia considering it as an innovation to address age-old grievances of the marginalized ethnic groups of the country. Alemseged Abay (2004), 'Diversity and State Building in Ethiopia,' *African Affairs*, Vol. 103, No. 413; Andreas Eshete (2003), 'Ethnic Federalism: New Frontiers in Ethiopian Politics' in MOFA and GTZ, *supra* note, 26; Kidane Mengisteab (1997), 'New Approaches to State building in Africa: The case of Ethiopia's ethnic-based federalism', *African Studies Review*, Vol. 40 No.3; and John Young (1998), 'Regionalism and Democracy in Ethiopia,' *Third World Quarterly*, Vol 19, No. 2; are only examples. There are also the sceptics who are uncomfortable with the 'heavy' accent on ethnicity. This includes: Lovise Aalen (2006), '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; Jon Abbink (1997), 'Ethnicity and Constitutionalism in Contemporary Ethiopia,' *Journal of African Law*, Vol 41; Bahru Zewde (1994), 'Historical Legacy and Democratization Process in Ethiopia' (paper presented on the *Workshop on Historical Legacy and the Democratization Process in Africa, 26-29 April 1994*, Bamako, Mali); and Terrence Lyons (1996), 'Closing the Transition: The May 1995 Elections in Ethiopia,' *The Journal of Modern African Studies*, vol. 34, No.1. There are yet others who, while agreeing with the federalist project, are critical of the lack of political will on the part of the dominant party (EPRDF) to implement the promises of the constitutional federalist commitment. Asafa Jalata

the federal option was a reaction to what was thought to be an oppressive unitary past, a reaction to a state nationalism that sought to unite the country through, among others, involuntary assimilation and homogenization. One can also say that the federal option was taken due to the exhaustion of centralization and unitary system of government. It came when the long suffering nation-building project (which has been on the political scene from 1855 to 1991) has spectacularly failed. The centralist and unitarist model has little resources with which to flexibly respond to the strains imposed on the state by ethno-national diversity.

3.3.2- The Federal Compact: Negotiating the Federal Idea

Federalism was formally ushered in by the 1995 Constitution. The Constitution constituted the federation and continues to be its compact. Preeminent in the negotiation of the Constitution were ethno-nationalist forces, principally a coalition of ethno-nationalist fronts and movements called collectively the Ethiopian Peoples' Revolutionary Democratic Front (EPRDF). The Constitution was drafted by a Drafting Commission duly established by law.[138] The Commission engaged in teaching the public about constitutions, democracy, human rights, civic participation, etc with a view to raising the constitutional consciousness of the public. After preparing a preliminary draft which it submitted to the Legislature of the Transitional Government (the Council of Representatives), they also organized several events at several levels all over the country on which the draft text of the Constitution was discussed. Although the turnout was low and the level of engagement was modest, there were discussions in which the issue of self-determination, especially secession, and federalism were hotly debated. In the Transitional Legislature, it was very hotly debated even though the single most dominant party in there was the EPRDF. After this rather sporadic and in many ways inconsequential deliberation, the draft was submitted to the Constitutional Assembly in 1994 for further deliberation upon it and for adoption. The Constitutional Assembly was an assembly that was popularly elected in 1994, an election the fairness and free-ness of which was contested by the parties opposed to EPRDF. Even in the EPRDF dominated Constitutional Assembly, the points that were very much at issue were the issue of the federal choice, the mode of state formation, the issue of languages, national symbols (flag and emblem), etc.[139]

(1993), 'Ethiopia and Ethnic Politics: The Case of Oromo Nationalism,' *Dialectical Anthropology*, Vol. 18, falls in this last category.

[138] TGE, Constitutional Commission Establishment Proclamation, *Negarit Gazeta*, Proclamation No. 24/1992.

[139] See the Minutes of the Meetings of Constitutional Assembly now compiled into six volumes (in Amharic). See also the Minutes of the deliberations of the Transitional

Consequently, the federal option, its bases for carving out the constituent units, the constitutional recognition of the unconditional right to secession were among the most contested points as a result of which federalism remains to be a controversial subject in Ethiopia to date. But what does the federal constitution, Ethiopia's federal compact, offer? I now turn to a brief description of the federal constitution.

The Federal Constitution is a compact document made up of a total of 106 articles divided into 11 chapters. As a legal document, it is a well organized document with an enviable degree of simplicity and clarity. It is the legal document that *constituted* the federation. From its preamble, we note that it is a compact agreed upon among the "nations, nationalities, and peoples" of Ethiopia. It is thus a solemn contract, treaty, even a vow, among these groups who reconstituted Ethiopia into a federation of disparate ethno-linguistic groups that aspire to build "one economic community" based on a "common destiny" born out of a shared past.[140]

From the preambles, one can glean such principles with far reaching consequences as the principle of the salience of self-determination, the sanctity of human rights, the sacredness of the principle of inter-personal and inter-group equality, and the primacy of the need to build a democratic order based on the principle of the rule of law for the sake of a sustainable peace. Apart from these, the constitution postulates five basic principles as 'fundamental' pillars of the constitutional order. These principles are that of sovereignty of 'nations, nationalities, and peoples', constitutional supremacy and constitutionalism, sanctity of human rights, secularism, and of transparency and accountability of government.[141]

In its chapter three[142], the Constitution provides for a catalogue of fundamental rights and freedoms. About 31 "kinds" of rights are recognized and granted a constitutional guarantee. The provisions of this chapter are *entrenched*, i.e., they are protected from easy (and often unilateral) tinkering by making the amendment procedure rather rigid.[143] Nevertheless, the absence of an

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Council of Representatives (CoR) (also in Amharic) for a more substantive debate over these issues.

[140] Paragraphs 3-5 of the preamble of the FDRE Constitution.

[141] See arts 8-12 for these principles.

[142] Chapter three, the chapter that can be taken as Ethiopia's Bill of Rights chapter, extends from art 13 to 44 in which all the traditional civil and political rights, economic, social and cultural rights, as well as the rights to peace, development, and environment are enshrined.

[143] According to art 105(1) of the FDRE Constitution, chapter three can be amended only through the consent of all the nine state legislatures and the 2/3rd majority vote

application clause (that indicates whether they have *direct*[144] or *indirect*[145] application), *interpretation*[146] clause (that clearly indicates the principles, methods, and steps to be used in the construction of human rights clauses), *limitation*[147] clause (that regulates the manner in which limitations are imposed when necessary), and the ambiguity with regard to the role of courts to interpret constitutional human rights clauses—owing to the bifurcated division of the

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of the Federal Houses (i.e., the House of peoples' Representatives and of the House of the Federation).

[144] *Direct application* relates to the situation whereby the provisions of chapter three are invoked in the process of litigation to assert a particular claim hoping to obtain a specific remedy emanating from the self-executing nature of the human rights chapter. It is so invoked when the chapter is viewed as a special law directly applied in the course of litigation to assure the plaintiff a special regime of remedy.

[145] *Indirect application* is said to exist when the human rights chapter, by permeating the system from behind, prompts all public decisions (be it in court or otherwise) to be respectful of the rights and freedoms recognized therein. In these circumstances, the human rights chapter serves more as a framework of understanding, a tool of interpretation of other laws, than as a special regime of law applicable directly in its own right. In indirect application, the human rights chapter of the constitution "loses" itself into the other (ordinary) laws and disciplines them thereof. For an elaborate discussion on direct/indirect application, see generally Johan De Waal, Iain Currie, and Gerhard Erasmus (2001), *The Bill of Rights Hand Book* (4th ed). (Lansdowne: Juta & Co. Ltd.).

[146] An interpretation clause would clarify to us as to what modes, principles, and techniques ought to be adopted in the course of constructing the provisions of chapter three. In particular, it would clarify issues of procedure (jurisdiction, standing, and justiciability), content (the scope and limitations of a particular right), and remedies (as to the consequences of the decisions of the tribunal that is engaged in the work of 'making sense' of the chapter). It would also hint at the steps and principles (e.g. textual/literal, historical, purposive, etc) to be used in the actual task of interpretation. The reason all these are not self-evident in the 'normal' judicial process in Ethiopia is because, at least since 1991, the courts have had no experience in the hermeneutics of human rights; it is also the result of the fact that the courts' position vis-à-vis the Constitution is ambiguous. See Section 38 of the Constitution of South Africa for how constitutions deal with interpretation of human rights provisions.

[147] The Constitution does not set aside a separate provision dealing with limitations to be imposed on the exercise of human rights. But built into specific provisions are some limitative phrases. But absent a general limitation clause, we hardly know how to rule on the (im)propriety of a limitative legislation, decision, or any other measure.

interpretive power between courts and the House of the Federation—have played a role in the diminished implementation of human rights in Ethiopia.[148]

The Constitution establishes a parliamentary system of government with a formally (weak) bicameral legislature at the federal level.[149] The lower house is the supreme legislator and the supreme political organ.[150]The upper house has little legislative role; instead it has interpretive and adjudicatory powers.[151]It is a house in which nations, nationalities and peoples (and, indirectly, states) are represented in proportion to their numbers.[152] The Constitution also establishes an executive made of the Prime Minister, the Council of Ministers and the Ministries.[153]It also provides for a ceremonial executive headed by a President who serves as the non-partisan, non-political Head of State.[154] Furthermore, it provides for a three-tiered, parallel, court system of federal and state judiciary.[155]

A Constitutional Inquiry Council with an advisory power (to send recommendations on constitutional interpretation) that assists the House of the Federation is also provided for.[156]Moreover, the constitution lists down the policy objectives and directive principles that guide government policies, decisions, and activities in its chapter 10. Thus the directives that guide the foreign affairs, defence, political, social, cultural, and environmental policies of the country are specified therein.[157]

3.3.3- The States and the Federal Government

The Ethiopian federation is composed of nine constituent units carved on the basis of "settlement patterns, language, identity, and consent of the people concerned."[158] These nine states, officially called variously as "National

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[148] Art 13 is only partially about application and interpretation. Art 13(1) states that the state—at all levels-- is the duty bearer of obligation emanating from chapter three. Art 13(2) states that interpretation of chapter three must conform to international human rights instruments, but says no more. Art 13(1) is thus about the *reach* of the Human Rights Chapter.

[149] Art 53 of the FDRE.

[150] Arts 54-55 of the FDRE Constitution.

[151] Art 62 of the FDRE Constitution

[152] All nations, nationalities, and peoples are represented by one member having one more additional member for every additional one million. See Art 61 of the FDRE Constitution.

[153] Art 72 of the FDRE Constitution

[154] Art 69-71 of the FDRE Constitution

[155] Arts 78-79 of the FDRE Constitution.

[156] Arts 82-84 of the FDRE Constitution.

[157] See Arts 85-92 for these policies.

[158] Art 46(2) of the FDRE Constitution

Regional States", "Regional States," "Regions", or simply "States",[159] are: Afar, Amhara, Benishnagul-Gumuz, Gambella, Harari, Oromiya, Southern Nations, Nationalities, and Peoples (SNNPRS), Somalia, and Tigray.[160]Most of these states are ethnically heterogeneous although in most of them there are dominant ethnic groups after whom the states are often named.[161]

The power of the states is provided for in Article 52 of the FDRE Constitution as the "reserved" or 'residual' power that is "not given expressly to the Federal Government alone, or concurrently to the Federal Government and the States."[162]   While the Constitution reserves the "plenary" powers to the states, it also makes it clear that states, among other things, have the power to set up their own administration "that best advances self-government, a democratic order based on the rule of law; to protect and defend the federal constitution", to "enact and execute" their own state constitutions, and other laws, to administer land within the framework legislations of the federal government, to levy and collect state taxes on their own revenue sources, to establish and administer their

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[159] Throughout this paper, the term used will be "states" at times interchangeably with sub-national entities. This is done only for reasons of convenience.

[160] Art 47 (1) of the FDRE Constitution.

[161] Hence, we have the states of Amhara, Oromia, Somali, Afar, and Tigray, in all of whom we have diverse peoples other than the Amhara in Amhara state (such as the Agaw, the Argoba, the Oromo, etc), other than the Tigrayans in Tigray (such as the Erob and the Kunama), other than the Oromos in Oromia (such as the Zay, and pockets of other peoples living mostly in urban centers all over the state), other than the Afar in Afar State (the urban dwellers who have migrated into the region over the years), the Somalis in the Somalia State (urban dwellers in the cities and towns). The SNNPRS is demographically intensely diverse, and is obviously an exception in this regard, i.e., in the sense that there is not one predominant group that can be associated with the identity of the State. Harari state is composed predominantly of the Oromos, the Harari, and many other people groups who live in the city of Harar. Given the fact that the Harari are numerically small in the state, Harari, too, is an exception in having a political predominance that lets the state be identified with it while it is the smallest in terms of numbers. Harari is also unique in its adoption of a mode of democracy that is more consociational than any of the states or even the federal government can afford. Gambella is composed of the Anywaa, the Nuer, the Mezenger, the Mao, and the Opo peoples but 'Gambella' does not signify a people group. Likewise, Benishangul-Gumuz is composed of the Berta, the Gumuz, the Shinasha, the Mao and Como peoples and the name hardly refers to anyone group in the state. Interestingly, in these latter states of the Western periphery of Ethiopia, there is a distinction made even in the constitutions between 'indigenous nations, nationalities' [of, for example, Berta, Gumuz, Shinasha, Mao and Como in Benishangul-Gumuz State] and 'other peoples residing in the region'. (See for instance Preamble, Paragraph. 3 and Article 2 of the Constitution.)

[162] Art 52(1) of the FDRE Constitution.

own police force, etc.[163] Obviously one can have a fuller picture of the 'residual' powers only after considering the list of federal powers in the preceding provision[164] which includes those powers traditionally known as federal powers (such as foreign affairs, defense, interstate commerce, interstate relations, currency, foreign trade, national security, transportation, postal services, and telecommunication, some natural resources including land, etc). Because the list of federal powers seems to be long, people often reasonably doubt if the residual powers reserved to the states in Ethiopia are really significant. Nevertheless, it is important to note at this juncture that state constitutions play an immense role in articulating these 'plenary' powers so that they can be better exercised by the states in consonance with the principle of self-rule that constitutes an aspect of federalism.

It is interesting to observe that some of the state powers "enumerated" (by way of example) in Art 52(2) (a-b) tend to impose an obligation on states. Thus, to an extent, they seem to be determining the key elements of the state constitutions. That is to say, a state constitution that does not recognize the pre-eminence of the principles of self-government, democracy, and rule of law, and is not poised toward protecting and defending the federal constitution cannot be accepted as valid. It stands to reason, then, that all state constitutions, minimally, need to abide by these principles.

In the Ethiopian federation, symmetry is the norm.[165] Thus, states have "equal rights and powers."[166] State legislatures command the supreme political power and are accountable to the people(s) of the states.[167]States are obliged to establish local governments at various administrative levels so that there are possibilities for local people "to participate directly in the administration" of these levels of governments.[168] The state legislatures' powers "to draft, enact, and amend" the state constitutions is also recognized in the federal constitution.[169]Its supreme legislative power is similarly recognized in the same provision. The states' executive and judicial powers—and by extension all the powers that mark sovereignty at the local level—are also recognized in the

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[163] See Art 52(2) a-g of the FDRE Constitution.

[164] Art 51 of the FDRE Constitution

[165] It is true, though, that in multi-national polities, asymmetry is almost inevitable. See, for instance, Rainer Bauböck (2001), *Multinational Federations: Territorial or Cultural Autonomy?*. (Malmö: Malmo University (Willy Brandt Series of Working Papers in International Migration and Ethnic Relations 2/01)). Bauböck says that "Asymmetry is endemic to multinational federations...." (p.11).

[166] Art 47(4) of the FDRE Constitution.

[167] Art 50(3) of the FDRE Constitution.

[168] Art 50(4) of the FDRE Constitution.

[169] Art 50(5) of the FDRE Constitution.

constitution[170]. Although the constitution does not explicitly stipulate the existence of the *principle of federal supremacy*[171] in the Ethiopian federation, it holds, in consonance with the *principle of federal comity*, that "The states shall respect the powers of the Federal Government and the Federal Government shall likewise respect the powers of the States."[172] This provision is indicative, at least in theory, of the dual nature of the Ethiopian federation.

The perusal of this provision in conjunction with the provisions that indirectly (through nations, nationalities, and peoples) grant the right to self-determination[173] to the states, give the impression that the Ethiopian federal system guarantees state sovereignty. As a result, it is incumbent upon the state constitutions to articulate, elaborate, and give institutional expression to this state sovereignty that seems to be regnant in the Constitution.

3.3.4- Ethiopian Federalism: Distinctives

The federation that was born out of the concern for ethno-nationalist groups' right to self-determination (which in turn was a result of an age-old quest for ethno-cultural justice[174]) manifested a number of *unique features*. The recognition of the right of secession[175], the use of ethno-linguistic criteria as a

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[170] Art 50(6-7) of the FDRE Constitution.

[171] The principle of 'federal supremacy' or 'federal paramountcy' maintains that the federal government, its laws, and institutions are supreme, i.e., superior to, and override, the state laws and institutions.

[172] Art 50 (8) of the FDRE Constitution.

[173] Art 39 of the FDRE Constitution.

[174] It is to be noted that the two most important questions that dominated the Ethiopian political terrain since early 1960s, and indeed the predominant preoccupation of the student movements of the age, were the question of land (typified by the slogan, "Land to the Tiller") and the "Question of Nationalities". There is a huge body of literature on this. Balsvik's (1985), *Haile Selassie's Students: The Intellectual and Social Background to Revolution, 1952-1977*. (East Lansing: African Studies Center, Michigan State University); Kiflu Tadesses's, *supra* note 177; Edmond Keller, *supra* note 84; Merera Gudina, *supra* note 85; Assefa Jalata *supra* note 167; Andargatchew Tiruneh's (1993), *The Ethiopian Revolution, 1974-1987: A Transformation from an Aristocratic to a Totalitarian Autocracy*. (Cambridge: Cambridge University Press), are only a few notables among a morass of books and articles on the historic questions of class and ethnicity in Ethiopia. The "question of nationalities" was subordinated to the question of class in the course of the making of the 1974 revolution and its unfolding in the subsequent years, but since 1991 it seems that, on the wake of the collapse of the *Dergue*, the former has triumphed as the preeminent question that, if repressed, hardly dies out.

[175] Art 39(1) recognizes the "unconditional right to self-determination, including the right to secession" of every nation, nationality and people.

basis of state formation,[176] the unconventional constitutional interpretation
through the upper house of the federal legislature[177], the fact that states are not
directly represented in the upper house,[178] the fact that the upper house has little,
if any, legislative role,[179] etc, can be mentioned as evidence of its unique
features.)

3.4- Ethiopia: Pre-federal and Post-federal Conflicts

The quest for an anatomy of conflicts in pre- and post-federal Ethiopia leads one
to the nature of political relations in historic and contemporary Ethiopia. In pre-

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[176] See Art 46(2) which holds that states are formed "on the basis of settlement patterns,
language, identity and consent of the people concerned".

[177] The House of Federation poses formally as the upper house of the federal legislature.
See Art 53 which says that "There shall be two Federal Houses: the House of
Peoples' Representatives and the House of the Federation." This obviates the fact
that Ethiopia's legislature is bicameral in form although it is unicameral in actual
operation. That aside, Art 62 cum 82-84 indicate that the House of the Federation
(with the support of the Council of Constitutional Inquiry) is the ultimate interpreter
of the constitution. Subsequent federal legislations, namely Proclamations No.
250/2001 and 251/2001 and confirm and elaborate on the interpretive powers of the
House of the Federation and of the Council of Constitutional Inquiry. This makes
Ethiopia's system unique compared to other contemporaneous constitutions of its
time (such as that of South Africa, Namibia, etc).

[178] The House of the Federation, the upper house of the Ethiopian parliament, is
"composed of representatives of Nations, Nationalities, and Peoples" (art 61(1)).
The House is thus a representative of the ethno-cultural groups rather than the states.
But the states may have their interests aired through the ethnic groups that come out
of them. Besides, the fact that the representatives are—in practice so far--selected by
the state legislatures (often from within the state legislatures), rather than by direct
popular vote, has created the impression that they represent the states. The state
legislatures are of course allowed to elect the representatives themselves or to "hold
elections to have the representatives elected by the people directly" (Art 61(3)).

[179] In deed the House of Federation has little legislative role. This is evidenced by the
fact the list of powers and mandates under Article 62 refers only to two matters,
among a total of 11, 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"
(Art 62(7)); and b) determination of "civil matters which require the enactment of
laws by the House of Peoples' Representatives." (Art 62(8)). One can quickly note
that even these are not legislative matters *in stricto sensu*; they are rather directions
on what to legislate upon, sort of a license for the HPR to legislate on the matters
indicated.

federal Ethiopia, for the large part of the conflicted 20[180]th century, two issues dominated the agenda of those involved in conflicts, namely the issue of class and the issue of ethnicity. The question of economic (class) and status (ethnic) hierarchy were salient. The 1974 revolution dealt with the issue of class hierarchy. The issue of status hierarchy still remained unattended to fully because it was subordinated to and/or conflated with the issue of class hierarchy. It was so subordinated perhaps because the issue posed a direct challenge to the unity of the country by raising the difficult question of who the Ethiopian is,[181] and what the terms of being "in" or "out" of Ethiopia are.

The proponents of the movements that led to the dethronement of Haileselassie and the unleashing of the popular revolution took divergent positions on the articulation of and the response to the "question of nationalities." The articulation endorsed divergent paradigms of Ethiopian history (national reunification thesis, colonial thesis, national oppression thesis, etc). Likewise, the responses took divergent forms (nation-building and/or modernization, self-determination/decolonization, democratic equality and equalization, etc). Multi-ethnic political groupings such as those within the auspices of the Dergue seemed to endorse an amalgam of the national unification and national oppression theses. The EPRP, in its earlier version, argued for self-determination rights of Eritreans and Ogadenis but not the remaining groups. The AESM (*Meison* in Amharic) endorsed the national oppression thesis and argued for democratic equality and equalization of hitherto oppressed groups. But the regime which came out victorious after a brief season of confusing militant competition and strife, i.e. the Dergue, suppressed all voices and imposed socialist style prioritization of class conflicts thereby subordinating ethnic conflicts to the former. By conflating ethnic conflicts with class conflicts, they sought to resolve the issue through addressing class conflicts

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[180] This refers mainly to the time since the early 1960s when the legitimacy of the regime of Emperor Haile Selassie I began to be questioned among the military and the educated elite. Earlier to this, a peasant protest in Tigray (the First *Woyane* movement) and the protest by the Bale Oromo/Somali (?) Nationalists reared their head as a form of bottom up resistance but were suppressed. It is important to note Haileselassie's regime enjoyed the most peaceful season of Ethiopia's history except for the short-lived Italian occupation from 1936-1941. This peace begun to be 'disrupted' by the sign of dissonance expressed first among the army, then among the students, and later among the general public, especially the farmers.

[181] It comes as no surprise that one of the polemical pamphlets widely distributed among student leaders was the one written by Wallelign Mekonnen entitled "On the Question of Nationalities in Ethiopia" (1969).

head on while also recognizing the linguistic and cultural rights of ethnic groups (at least partially).[182]

The subordination of ethnic demands led to a multiplication of groups that are mobilized around the motto of self-determination for, and subsequent liberation of, their particular groups. As a result, ethno-nationalist liberation fronts proliferated in many parts of the country. These groups used the rhetoric of colonialism (EPLF, ELF, OLF, WSLF, SLM, etc), national oppression (TPLF and a host of other groups within the wider south of Ethiopia), and victimization (via genocide, forced assimilation, cultural denigration, etc). Most of these also used the rhetoric of self-determination as they articulated their demand for justice, equality, and self-governance. After a protracted and long-suffering armed struggle, they finally succeeded in forcing the military regime to implode and collapse in 1991. The conflicts in these times were generally vertically postured: the groups versus the state (at times characterized as primarily Amhara). The conflicts looked like ones propelled by resistance to oppression, quest for equality, dignity, cultural and linguistic justice, self-governance, and independence.

These demands were captured in the Transitional Charter which, as an interim constitution, quickly established a *de facto* federal or quasi-federal system. The charter was a response mainly to the quest for ethno-cultural justice: equality and non-discrimination on ethnic and religious basis, the right to one's identity, language, culture, and way of life, the right to one's history (and one's narrative of history), the right to self-administration within one's territory, the right to self-determination including and up to (conditional) secession. Hidden within this quest for ethno-cultural justice was also the general demand for a democratic order which respects human rights under the rule of law. This accent

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[182] A quick glance at the PDRE Constitution (1987) and the National Democratic Revolution (NDR) Program of the PMAC (of April 1976) make this clear. The PDRE Constitution recognizes the rights of nationalities to *equality* (Art 2(1-2)), *equalization* (Art 2(3)), *autonomy* (Art 2(4)), and *language* (Art 2(5)). But the ultimate 'owners' of political power were the "*working people*" of Ethiopia" (Art 3). The NDR Program reads in part:

"The right to self-determination of all nationalities will be recognized and fully respected. No nationality will dominate another one since the history, culture, language, and religion of each nationality will have equal recognition in accordance with the spirit of socialism. …. Each nationality will have regional autonomy to decide on matters concerning its internal affairs. Within its environs, it has the right to determine the contents of its political, economic and social life, use its own language and elect its own leader and administration to head its own organs. This right of self-government of nationalities will be implemented in accordance with all democratic procedure and principles."

on ethno-cultural justice was the consequence of the identity of the negotiators (chiefly ethno-nationalist liberation fronts). Moreover, the Charter, as is the constitution that succeeded it, was an expression of the bitterness and sense of resentment of oppressed ethnic groups. The charter as a legal document was also a peace document, a pact among warring factions, who based on a document with a thin content, agreed to a temporary arrangement that they hoped will guarantee that all their fears (of oppression, ethno-cultural injustice, and denigration) are prevented from happening again. One quickly notices how even a tentative (quasi-)federal arrangement can be a tool of truce. One also should note the fact that this was also possible mainly because the "center" (or forces of centralism in general) was exhausted. The Charter, however, by endorsing self-determination and secession, made unity and integrity of Ethiopia vulnerable to the challenge of secession and fragmentation. As a result, there was a latent fear and tension among some circles.

In 1995, with the adoption of the federal constitution, the quest for ethno-cultural justice was elevated to a full-blown constitutional right. Built upon the premise that the nation-building project via assimilation and homogenization has failed, the constitution ventured to reconstruct the Ethiopian state as a multi-cultural multi-national state. In a sense Ethiopia ennobled the ethnicity ('tribe') that was supposed to be killed 'to build the nation'. Hence, Mazrui's comment that, in the oldest nation in sub-Saharan Africa (whose boundaries are formed less arbitrarily than other African nations that lived under colonialism), a 'cultural federation' was established and ethnicity at last was freed from bondage.[183]

So federalism was put in place in 1995. Ethnic groups were made sovereign (Art 8). They were the building blocks out of which we build multi-ethnic, multi-national Ethiopia (preamble). They were granted the right to self-determination including secession (Art 39(1)). The right to language, culture, and history were guaranteed (Art 39(2)). The right to full measure of self-governance at least at the local level was recognized (Art 39(3)). The right to fair and equitable representation at the "center" (in the organs of the federal government) was recognized. Thus an upper house in which each ethnic group is represented, HOF, is established (Arts 61 *et al*). Territorially concentrated groups were guaranteed the right to self-administration either within a heterogeneous regional state or within one's own separate state (Art 46). A group's right to statehood is also guaranteed (Art 47(3)). By doing so, the constitution attempted to of transform an age-old conflict between the center and peripheries of Ethiopia.

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[183] Ali Mazrui, *supra* note 116.

Nonetheless, at the foot heel of the federal dispensation were born new conflicts, post-federal conflicts. The following is a brief list of such new conflicts: a) an intensified quest for self-definition and distinct identity intent on securing local self-rule to get more resources, power, and opportunities[184]; b) border disputes between and within states; c) competition for federal grant and subsidy; d) quest for having one's language given a co-equal status as a federal working language; e) competition for access to and authority over federal, state, and local capital cities[185]; f) conflict over mistrust about one's lot with/in a state or in the country[186]; g) the quest for a more robust minority rights regime, especially right to representation; etc.

Owing to the conversion of the old minorities ('nations, nationalities, and peoples') to sovereign entities, there emerged 'new' minorities (minorities within minorities, etc) who are now unattended to in the new federal constitutional dispensation. One might wonder as to who these new minorities are. One can roughly identify at least five categories of new minorities: 1) scattered groups who are children of our legacy. In this category, there are: a) children of empire builders; and b) children of villagization and (re)settlement programs; 2) children of freedom of movement in the new constitutional dispensation; 3) stranded groups, i.e., groups that are caught in between two or more regions when the new mapping of the constituent units of the federation was conducted (e.g. the Yem in SNNPRS and Oromia; the Mezenger in SNNPRS and Gambella; the Argoba in Afar and Amhara; the Guji in Sidama Zone of SNNPRS and Oromia; the Oromo in Gedio Zone of the SNNPRS; the Agaw in Benishangul Gumuz; the Oromos in Benishangul Gumuz; the Opo in Gambella and Benishangul Gumuz; the Oromos in Harari State; the Afar, the Amhara, and the Oromo in Tigray; etc.); 4) Occupational caste groups (e.g., the Fuga, the Enewari, the Hadicho, the Menja, and others); 5) Indigenous groups in the hinterland of rural South Omo or Bench-Maji Zone of SNNPRS who could not exercise their constitutional rights for reasons of historic marginalization. To these, one can add the category of religious minorities, or of the minorities of mixed ethnic origin, Ethiopians of Eritrean origin, etc.

The new minorities seek a diverse array of rights such as recognition; identity; exercise and enjoyment of linguistic rights (in schools, administration, courts, and media, etc); exercise and enjoyment of cultural rights; right to representation in offices of local, sub-national, and national government;

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[184] E.g. the Silte case and myriads of similar others.

[185] This is the case of the claim of the Oromos over Addis Ababa/Finfinne, the Sidamas over Hawassa, the Guarge and Qabena over Walkite, etc.

[186] E.g of Oromia, or Somali region vis-à-vis Ethiopia and Sidama or Gamo in the SNNPRS, etc.

participation in decision-making; self-rule; self-law; reassignment in what they consider to be their "home region"; etc[187].

In post-federal Ethiopia, apart from minority claims, there are a host of claims that are mostly expressed in terms of competition for resources (natural endowments as well budgetary resources coming to them in the form of fiscal transfer, i.e., subsidies and grants), opportunities (jobs as well as education), and power (at the local, sub-national, and national levels). Local elites tend to contribute to the escalation of some kind of conflicts for the purpose of securing a better access to coveted resources, opportunities, and powers. One notices that the federal dispensation which was devised to respond to old conflicts which arose out of the quest for ethno-cultural justice did address, more or less, these conflicts. But it triggered a new sort of competition for resources, power and opportunities. Consequently, the threat of fragmentation (of states) has become a challenge. Lack of trust among diverse groups in constant interaction has become another challenge.

In closing this section, it is to be underscored that federalism has the potential to handle these new ethno-national conflicts. Some problems of design (normative, institutional, and procedural) and some problems of practice (lack of implementation of constitutional norms) should not distract us from pursuing the ideal of federalist management of conflicts. A more systematic approach to conflicts and a more robust redemptive constitutional practice should be worked out in order to make us learn to live with conflicts.

3.5- Federalism and Conflicts in Ethiopia: Looking Ahead— Challenges and Prospects

As has been repeatedly hinted at in these pages so far, federalism can be viewed as a tool of handling conflict. There are a number of resources to utilize in order to manage conflicts. Although the kind of conflicts that recur in a federal polity are primarily those that relate to inter-state, inter-governmental, and inter-organ relations, in a multi-ethnic federation, there are more conflicts that federalism can help handle. Such are the ones relating to ethno-cultural justice, minority rights, border disputes, identity-related disputes, disputes over local self-rule (mainly for resources, opportunities, and for power) and others. In Ethiopia, federalism has been opted for primarily to respond to the quest for ethno-cultural justice. Old ethno-national conflicts have been addressed directly and frontally. New conflicts are emerging. Federalism needs to be used more creatively than it has so far been to handle the new conflicts more systematically and institutionally. This requires, among other things, the need for a positive

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[187] For example, divergence of opinion over the symbols that signify united shared national ethos (such as flags, emblem, and anthem) feed into other causes of tension.

posturing of conflicts and viewing them as demanding a more deliberate, intentional, directed effort that can prevent, manage, and transform them. Federalism, if equipped with the necessary institutional, procedural, and manpower infrastructure, can be part of the scheme to prevent, manage, and transform conflicts.

As we look ahead, the challenge of more and more demands for better recognition, local self-rule, sub-national autonomy, fair and equitable representation in government at various levels, self-law, separate statehood, a better regime of minority rights, reassignment in another state or Woreda/Zone, etc might confront us. These challenges put a lot of demands and pressure on the meager financial, institutional, infrastructural, and human resources of government. But they need to be met. To meet these challenges, as we look ahead into the future, it is imperative that we develop a full-blown policy and strategy for conflict. We also need to work on the refinement of the norms, institutions, and procedures pertaining to federalism and its experimentation. Constitutional rethinking might be needed at some places (such as in the areas governing the upper houses both at the federal and sub-national levels, constitutional interpretation, mode of representation of ethno-national groups, meeting and voting patterns, electoral systems, rules of power-sharing in the executive, etc). It is also important that we make a more aggressive use of resources that are hitherto underutilized such as the state constitutions. It is also imperative that state constitutions are designed in such a way that they respond to specific local demands and needs. Such responsiveness to realities and diversifying institutional and procedural devices will indeed enrich the federal experiment thereby making the states 'laboratories of democracy'. At all levels, the practice of redemptive constitutionalism (through constitutional fidelity, constitutional reinvention via positive amendment and positive interpretation, responsible legislation that serves as corrective to constitutional problems, and responsible use of new constitutional moments) is imperative. All along, we need to remember that through federalism, we learn to live with conflicts and transform them in such a way that they outlive us into posterity.

Conclusions

In conclusion, let me try to reiterate some brief answers to the questions I set for myself at the beginning of this paper. Conflict and federalism have an interlocked relation as conflict of a specific type might necessitate a federal mode of governance while federalism might also generate its own type of conflicts in the wake of its adoption. The nature of conflict in a polity may color the kind of federalism adopted. The nature of federalism in its turn might trigger types of conflicts that are peculiar to the kind of federalism adopted. The nature of the federal arrangement might also determine the kind of conflict management strategy we seek to adopt.

A federal arrangement does help to prevent or handle some conflicts, but it also generates others. At times, it even multiplies them. Such is more or less the case in Ethiopia. The Ethiopian federalism was both a response to (old) and a cause of (some new) conflicts. It responded chiefly to ethno-national conflicts and the associated quest for ethno-cultural justice. But it failed to comprehensively respond to the quest for a better regime of minority rights protection. As a result, it showed itself to be ill-prepared for new conflicts ignited by the new minorities. It also showed itself to be ill-equipped to respond to conflicts caused by the (local elites') competition for new resources (e.g. state budget), opportunities (education, jobs, network, and other forms of social capital, etc), power (political positions at the local, sub-national, and federal levels).

Furthermore, in its practice so far, it seems to be unprepared for a new type of demand for linguistic justice (e.g. the quest for a coequal status as a working language at the federal, state, or local levels), competition for ownership over a capital city (be it local, sub-national, or federal). All this reinforces the theme that federalism is not a panacea to conflicts. The Ethiopian federal experiment empirically informs the comparativists' argument that federal arrangements do not necessarily eradicate all conflicts. It is thus not proper to demand from federalism—the Ethiopian or otherwise--what it does not promise and can not possibly deliver. The more appropriate approach is to lower one's expectation of the potentials of federalism, to correct our (often negative) view of conflict, and to try to make use of the potentials of both in transforming polities and conflicts respectively. In sum, let it be said once again that we need to learn to live with conflicts *through* and *in* federalism as we also seek and try to maximize the potentials of federalism and its institutional and procedural resources for a better handling of conflicts.   ∎