

***CONSTITUTIONAL FRAMEWORK FOR
A MULTI-ETHNIC SOCIETY OF ETHIOPIA***

by

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INTRODUCTION

Plagued by a recurrent and severe famine and torn apart by a very prolonged civil war, Ethiopia at the moment stands on the threshold of a new era of peace. A faint light of hope is flickering on the horizon. We are in a very delicate situation. Whatever is done, one wrong move can put out the faint light, and can plunge the country in a darkness never seen before. If the present "peace" fails, the crisis and the bloodshed to follow will dwarf even the past Ethiopian civil war that has been termed as one of the greatest human tragedies in history.

The crisis in Ethiopia was largely an institutional crisis. And mostly, it was a state crisis. When we say it is a state crisis, we mean that it is also a constitutional crisis, for constitutions are nothing but the collection of principles according to which the powers of government, the rights of the governed, and the relationship of the two are adjusted. The past constitutions were not able to adjust the relationship between the two, and hence the crisis, and the demand for a new constitution.

This is a time for leaving aside uttering lofty political phrases and getting into the nuts and bolts of the problem to offer practical solutions. It is only once these things have been done that we can have an enduring constitution that can lead to stability in this corner of the world. And as recent history has shown, it should be emphasized that instability in Ethiopia is not a phenomenon that is confined to the country but is a crisis that affects the whole of the Horn of Africa. And hence the importance of the constitutional issue for Ethiopia and for the whole region.

True, constitutions are not by themselves magic formula or panacea that solve all the problems of a country. But all the same, bad constitutions or constitutions that do not accord with objective reality could have an adverse effect on the political, social and economic life of the country. Constitutions which are drafted or copied from different sources or which are eclectic without being based in the history and socio-economics, and that do not take into account the diversity of the country will obviously eventually lead in other crises. Therefore, it is of paramount importance that the constitutional issue should not be

utterly left to politicians, but should also be the concern of academics from different disciplines.

What Options are Open?

Political philosophers accept the tripartite classification of states: monarchy, oligarchy and democracy. But this paper, when it tries to discuss the options open to the country, as there is no controversy in choosing between the three, does not deal with the problem from the prospect of this classification. Nor does it use the classification based on the economic basis that classifies states in feudal, capitalist and socialist states. This not only because it is not so much of a burning issue, but because such a classification deals more with a type and not with the form of government which is our only interest and which is more of a constitutional question.

The classification used here is based on the sovereignty structure. And if the sovereignty structure is utilized, the only options open to the country will be choosing between a unitary and a federal state.

Unitary states are states whose central government power is unrestricted, in the sense that in such a form of government, besides the central parliament, no other subsidiary law-making body is admitted in the constitution. This means in unitary states there is undivided sovereignty to which all political decisions are finally referable - there is only a single focus of authority. This does not mean that there is no delegation of power or does not imply that there are no local governments in unitary states. What is meant is only that if there are such things, they are done at the discretion of the central power, which implies that there is no possibility of conflict between the central and local authority with which the central authority cannot cope. The existence of the local power simply depends on the will of the central authority.

When we come to a federal form of government the basic mark that distinguishes it from a unitary state is the existence of division of sovereignty which is expressed by the existence of two kinds of legislative bodies--that of the federation and that of the state. Here unlike the unitary states, the states comprising the federation have exclusive rights with which the federal authority cannot interfere

without amending the constitution. In a federal arrangement, the units continue to be states retaining certain rights short of some sovereign rights which they have by agreement surrendered to the federation.

In history, federations are created as a result of various reasons like geographical, economic and historical reasons or to solve a nationality problem. In the United States, for example, more than any other thing, economic and historical reasons are the major factors that led to federal formation in the sense that the thirteen states which rebelled against British colonialism had developed before federating a distinct economic character and interest which worked against the formation of a unitary state. And on the other hand, the fact that they were all colonies of the British and the common fear they had of the former colonizer was a factor that contributed to the formation of some kind of a union rather than each forming a separate sovereign state. If we take Australia, the most important factor is the geographical factor; i.e. the existence of a large uninhabitable desert existing between the settlement areas, which was not suitable from many angles for the formation of a unitary state. In Switzerland, it is the common insecurity from Germany and the existence of different races that led to the adoption of the federal form of government and when we come to the situations of countries that "opted" for federation later, like the U.S.S.R., Yugoslavia, India, Nigeria, etc. the main reason behind the formation of federations is to find a solution to the nationality problem.

And so federations could be formed for different reasons. But to the question of why unitary states are preferred to that of federal forms, giving a categorical reply or list of factors that lead to such an option will be very difficult. Federal arrangements are adopted to solve specific problems that country encounters, or to put it another way that are imposed upon countries for different reasons, and in the absence of such problems the unitary form of government is a natural form of government, therefore it becomes almost impossible to explain in the positive what leads a country to form a unitary state. Rather it could in general be explained in the negative by saying that where factors that lead to a federal form of government are not present, unitary governments are adopted.

Because Ethiopia has existed as an Empire or a unitary state for the last century, and since from the geographical, historical or economic

aspect strong reasons negating the existence of a unitary state are not visible, or at least since these factors have not been put forward as an issue for adoption of a federal form of government, we will consider only the controversial issue. Is there a nationality problem in Ethiopia that necessitates the adoption of federalism to cope with the problem?

Ethiopia is an Empire that was created by forcefully incorporating other peoples adjacent to her borders. And since it was created in this way, like any empire elsewhere, there has been a continuous and systematic endeavour on the part of the conquerors to suppress and eliminate the history, culture, language, on the whole the identity of the local people and to replace it with their own. And on top of this, on the economic front, the southern people were denied ownership to their land and were made serfs to the Amhara Neftegnas. The Neftegnas who settled among the southern people, besides acting as a military force stationed to check the legitimate struggle of the people, were the means of Amharanization and also had their recruits from among the local peoples themselves. And the most important point that glaringly shows and is still the basis of national inequality in Ethiopia is related to the method of formation of towns in southern Ethiopia. Most of the southern towns were initially the place where the Neftegnas settled together in a group in view of protecting themselves against possible local reprisals; they were in effect garrison towns. And as garrison towns, they represented the symbol of authority and repression to the local people. They were in the midst of an alien land. But this had an even more lasting consequence.

The birth of bureaucracy that almost coincided and even to some extent was caused by the conquest of the southern people also made its seat in the garrison towns and transformed them into administrative centres. It not only started to protect the interest of the Neftegnas among which it was based, it also started to recruit people who manned it almost exclusively from among them; the association was complete. Bureaucracy is the arm of the central government, it is the representative of the government, and as far as the local people are concerned it is the government, and therefore for the southern people, the government was nothing but a Neftegna government, for the bureaucracy was the Neftegna bureaucracy. both as administrative centres and as a seat of the bureaucracy the former garrison towns also became the centre of commerce and modern social services; they

developed into urban centres. And again the southern people were alienated from modernization. The Neftegnas were urbanized, the local people for the most part remained rural. And in some instances by associating everything urban and everything modern with the Neftegna rule, the southerners further alienated themselves. In relation to the town dwellers, the southern people were marginalized. The contradiction not only took the form of ethnicity, but also took the form of the countryside versus the town.

Some in arguing against the contention that in Ethiopia ethnic differences are associated with economic status, or economic discrimination, try to put forward as proof the comparison of the standard of living of the southern peasant with that of the northern ones. True, in most cases, the southern peasant is better off than his northern brother. But this is only because the southern part is in most cases much more fertile. Therefore, since there is a completely different situation it would not be proper to compare the standard of living of the two regions and use this as evidence of non-existence of a relation between ethnic difference and economic status. On the contrary, the proper comparison is between the standard of living of the local southern people and that of the Neftegnas found among them.

It is sometimes asserted that the land proclamation has got rid of the economic basis of the Neftegna system, and therefore there is no longer domination of one nationality or the Neftegna system no longer exists. This assertion is wrong for two reasons. In the first place, the bureaucracy that was borne during Menilik's reign and developed by Haile Selassie was not broken, but on the contrary strengthened and developed by the Dergue, and in many situations and in many economic aspects supplanted the individual Neftegnas in exploiting the peasantry. As bureaucracy in Ethiopia is nothing but Neftegna rule; maintaining it has the consequence of maintaining Neftegna rule. And secondly, most of the Dergue's economic and social policies were intentionally geared to promoting the position of towns over the countryside. And in the south, towns are by and large Neftegna centres, and so every policy that favours the town always has the consequence of strengthening Neftegna rule over the southern people.

Therefore, in Ethiopia not only do we find national oppression, but we still find Neftegna rule intact. And between the two there is a

difference, for some, conceding that there are some national inequalities here and there, nevertheless deny that the Dergue was a Neftegna government. The fact that the biggest opposition to the Dergue rule was from the nationalist movements and had nationalist overtones is further evidence that there is still an acute nationality problem that is not resolved. Some try to explain this by saying that the fact the movements were nationalist movements is only the form and does not explain the cause of Ethiopia's problem. But here, without going into the controversy, we assert only that the fact that they took nationalist form and rallied the people behind such slogans is by itself enough, for our purpose to show that there is a nationality problem.

All this shows that Ethiopia is not a single nation, but a multi-national government comprising a group of nations retaining their separate nationhood among which some have gone to the extent of waging armed struggle against domination and oppression and for the right of self-determination. If this is the fact, then the question that follows is, "how will this reflect in the choice between unitary or federal government?"

Many believe that nationality problems can be easily resolved by democratizing the country which they use in equating it to a unitary state. For them, if all the peoples are given equal rights to use their language and if there is religious equality then national oppression could be resolved in the context of a unitary government. Such solutions are largely based on two considerations taking Ethiopia as a nation and equating the problem of nationalities with a cultural problem.

But will this solve national oppression in Ethiopia? Is it an appropriate form of government that accords with the Ethiopian problem? Would not such a form of government in a multi-national country where there was domination and oppression, lead to the disintegration of the characteristic quality of the former dominated nationalities and drain them of their vitality? Would it not frustrate the national aspirations of self-administration on an ethnic level? In Ethiopia, where there is deep-seated diversity between nations, and in a situation where different ethnic groups have asserted their rights, to be realistic, the issue before us is not the choice between unitary form of government and a federal structure, but between a federal arrangement and forming an

independent state. In Ethiopia there is no unitary condition, therefore we will not go into detail and weigh the advantages and disadvantages of a federal in comparison with a unitary constitution in the abstract. The alternative to federation in Ethiopia is not unitary Ethiopia, but no Ethiopia.

Federalism for Ethiopia?

Though most federations, specially in the west, are uninational, in multi-national governments where the units want some kind of union without wanting to be united, the right form of government is federalism. Suggesting a federal form of government for a country means on the one hand recognizing the existence of a unit with a distinct character and its desire to preserve that character, and on the other hand, it also means that there is a common desire to form or maintain some kind of a union. There are always centrifugal and centripetal forces that work against each other to balance the desire of the units to remain separate within the general desire of a political union.

In Ethiopia the centripetal forces, as we have partly seen in the last chapter, are the very existence of a multi-national state, the desire of the nationalities to preserve their distinct character, national oppression and domination, existence of organized resistance, divergent economic interest, etc. This is one set of factors creating a federal situation, but if not balanced by other centripetal set of factors it will only lead to secession. The unitary factors are the hope that some economic advantage could be acquired through economies of scale, past common history, geographical proximity, inconvenient territorial situation to form independent states, etc. Therefore, though it will be discussed elsewhere whether federation could work in Ethiopia, here in general it could be said that there are both the desire to remain separate and the desire to form a union, i. e. factors which create a federal situation.

If it is said that federal situations exist in Ethiopia, and if it is suggested mainly as a form of government that gives a solution to nationality problems, then the unit's or state's boundaries should be based on ethnic territory. In multi-national federations where federations are not based on the recognition of the territory of nationalities, there is always instability and a demand for

reorganization. In a situation where the boundaries set fall short of the scope of the nationality, there is the urge to incorporate the excluded portions.

The question usually heard in connection with the boundary problem is whether nationalities in Ethiopia have a defined territory. And it is mainly raised in relation to the Oromos.

The problem emerges only when we see it in the present or past provincial settings. To say the least, existing administrative divisions are artificial and arbitrary in the sense that they are drawn in total disregard of national diversities, and without the consultation of the nations to be affected in the process. And in reality, even though administrative exigencies are given as a reason behind such delimitations, the truth is that they were the result of a carefully designed political machination--it was to divide the Oromo and weaken them so that they would not assert their right as one huge ethnic block. Thus seen in the context of the present administrative division, the Oromos appear not to occupy a single territory, but in actual fact, though there are some pocket nationalities amidst them, they live in one unbroken territory, a territory whose boundary could fairly easily be drawn in consultation with their neighbours. The Oromos, and for that matter any nationality in Ethiopia, unlike the African-Americans and the Jews in many countries have a locus territory.

Given the will to solve the nationality problem in Ethiopia, the territorial problem is not an insuperable obstacle to the establishment of a federal system.

Because of the fact that a unitary form of government cannot solve the acute nationality problem in Ethiopia, federalism is suggested out of necessity to be the form that the future Ethiopian state structure should take. But still, it should be examined if federalism could work in Ethiopia, what factors could be inimical to it, and if they are unique to the Ethiopian situation in its formation and what implication they could have.

In the past, in general, it could be said the way federations were formed could be roughly categorized into two parts. At the beginning like in the case of the Americans, Canadians, Australians and the

Swiss, federalism was the outcome of the merger of sovereign or semi-sovereign states. This classical way of formation we call here the merger method. The second method through which federations are formed is by partition from above. Here unlike the first way, or opposite to it, it is the former unitary states that were partitioned into units and then transformed into a federal structure.

In the situation of the federal form created through the merger system, in the formative stage because the states were former independent states, we see their interest being very much pronounced and hence the existence of a loose federation. But as time passed and their federal structure survived and matured, the idea of a loose federation that was dictated by necessity and mutual suspicion gave way and raised the question of the desirability of maintaining a loose federation. And as a result, we see in all federal governments that were formed by merger, the tendency of moving away more and more from a decentralized form to more of a centralized federation. But in general this method could be said has produced a workable federation.

In the case of federations created by partition from above, we rather find a situation that has no single pattern. This type is mostly imposed by colonial powers on their colonies before their departure. Mostly because it was not based on the realities of the local situation it did not pass the test of time. No sooner had the colonialists left, than it started to crumble to pieces as in the case of British India, colonial federation of Indochina, West Indies Federation and many others.

Where it did not end up in disintegration, it in most cases led either to a demand for more rights and state reorganization, or as the case may be for lack of forces that stand for the state (unit) rights culminated in a de facto unitary state or to a situation bordering it. And such outcomes are influenced very much by the very way federations were adopted or formed.

So we see that the federal form of government is not a stable form of government, in the sense that depending very much on the method of its formation, either starting from a looser federation it moves to a more tight or centralized one, or ends up in a complete break-up, or leads to a demand for state reorganization or looser federation. But in general there is no historical evidence that warrants the conclusion that

all federal arrangements finally lead to secession, or promote the feeling of secession.

When we come to the Ethiopian situation, if a federal arrangement is to be adopted, the way it is going to be adopted will have a significant unique characteristic of its own for which there is no precedence. It differs from the merger system in that Ethiopia is a unitary state, and differs from the devolution or partition from above in that if there is going to be partitioning, it is going to be from below. It is said from "below" not only in the sense that there has been a great demand and pressure from nationalist forces, but also in the sense that if there is going to be federalism, the nationalist forces from different nationalities which have been struggling for independence will be representing their people as if they are representing a sovereign state. And there is no historical experience of such a type which led elsewhere to federalism.

This will obviously have a significant impact on the type of federation that will be adopted and the trend it is going to take. As seen already in a situation of partition from above, because of the lack of force that stands up for states' rights in the formative stage, federalism led either, as the case may be, to a situation bordering on a unitary state or provoked a demand for more rights or for state reorganization, or to disintegration. But here, since the units will be represented by independent organizations, we will not have the situation of partition from above. This aspect of formation of federation in Ethiopia is more or less similar to the merger situation. Therefore hopefully, at least seen from the prospect of the method of its formation, federation in Ethiopia has the prospect of working and maturing and thereby bringing stability.

Against such a background, then what type of federation is appropriate to the Ethiopian condition? The term federation has a very elastic meaning covering all the situations from confederation to de facto unitary governments. There is no ideal of federation and there is no consistent, uniform, or logical pattern in allocating power among the states and the federal government. Therefore which form of federation should be adopted and which powers should be given to the central or federal state and which ones should be left to the states is a complex question. Here without going into the details, only some points will be raised.

It has already been pinpointed that there is an acute nationality problem in Ethiopia, that nationalities have been waging armed struggle, and that federalism is suggested out of necessity and that the choice facing Ethiopia is not federalism or unitarism but federalism or no Ethiopia. All these point to the direction that the situation is only conducive to a coordinated or loose type of federation. It is said that a federation will be adopted to solve nationality problems then an arrangement that comes nearer to conferring statehood on nationalities will be in order, for the desperate need at the moment is only a modicum of union.

Therefore in the constitution, the exclusive rights of the central power and the units should be clearly delimited through clearly providing for the rights of the centre and leaving the residual powers to the units. And except on the matters under the exclusive and concurrent lists, the federal state should not have power over other matters. The units in Ethiopia, if they are worth having, should in general have power over education, local government and administration, natural resources, police, local laws and law courts, and it should be stressed that the power of the units will be fictitious in the absence of financial powers.

But is the federal arrangement applicable or appropriate to all the nationalities in Ethiopia? Not at all. A federal type of government is a form of government that requires, to be run effectively, a fairly developed state organ and trained manpower. Therefore before opting for federalism out of fashion, such things should be carefully considered. A state structure that does not accord with the level of development of a nationality, rather than solving a problem will only be a burden that cannot be shouldered. Just like the case of a little girl who tries to walk putting on her mother's shoes, rather than an aid, it would be an obstacle.

Problems of Stability

In a federal structure, once the ground is laid to resolve the nationality problem, one more problem that will be encountered is the relationship that should exist between different organs of the federal government. Should Ethiopia adopt the parliamentary or cabinet type of government? Or should she opt for a presidential type of government or should some kind of a middle-of-the-road system be found?

Parliamentary democracy means in short, the situation where the party or coalition of parties that get the majority seat in the parliament form the government. The executive government which comes out of this arrangement forms a cabinet led by a prime minister. There could be a president but his actual power is very limited. In a situation where there are no strong parties and in countries which do not have a long democratic heritage behind them, and in a situation where the resignation of the majority of the cabinet member leads to the collapse of the government, it is in general believed that this type of government does not lead to a stable government. If there are no strong parties, then in this system governments will be formed by coalition of parties. And as history has shown governments formed by coalitions of parties are not that stable. If the coalition somehow breaks then another government should be formed. It could be imagined what effect the change of government from time to time could have in such countries as Ethiopia. And on top of this, since in Ethiopia most of the organizations are based on nationality lines, if the party which wins the majority vote in the representative assembly is a local party, in the sense that it is organized on the basis of nationality, then this could create discontent among others for example if all ministers are from one nationality. Therefore adopting this form of government seems inappropriate to the Ethiopian situation.

By presidential republic is meant the system whereby the president is elected by the people independent of parliamentary elections. After the election, the president forms the government. His ministers, unlike in the case of a parliamentary government are his subordinates, their resignation does not lead to the fall of his government; his party need not necessarily have the majority seat in the house of representatives. The existence of a strong president who symbolizes an important father figure is sometimes said important for stability in countries like Ethiopia. But it should also be added that this system also has a relatively strong potential of leading to a dictatorial rule. But more relevant to the Ethiopian situation, electing of a president directly by the people throughout the country has the danger of promoting a negative nationalist feeling among people. Other elections in federal arrangements are confined to regions and therefore do not pose such dangers. Even though presidential forms of government have the credit of leading to stable governments elsewhere, because of the point just raised, it seems again not to be the right type for Ethiopia. Besides, it

doesn't seem to solve all in all the problem of representation of nationalities in the federal cabinet, for again the elected president could choose all or most of the ministers from among those who belong to his organization, and his organization could be a nationality organization. It should be realized that a system that makes it possible for a regional party to systematically capture the presidency will not produce a stable government as such.

It is sometimes suggested that if organizing along nationality lines is prohibited or at least if such organizations are not allowed to run for state power, the problem could be easily averted. But if the aim is to form a democratic society in Ethiopia, it will be difficult to justify such a move, for it goes against accepted democratic principles. And besides, such restrictions are restrictions that could be easily bypassed just by changing the name of the organization and changing the programme here and there without very much affecting the substance. Therefore it doesn't seem that such restriction is of much help, and this is all the more true in a country where all the major political organizations are organized around the national question. Then, what is the way out?

The way out and the best alternative that could solve the problem seems adopting, *mutatis mutandis*, the Swiss experience of quasi-independent executive. Here the Federal Council (which has functions almost similar to those of a cabinet) is elected by the federal assembly. But unlike the parliamentary republic, they may not be members of either House of the Federal Assembly. And most important in Switzerland, each of the Federal councilors should come from a different canton. And the practice is to elect a council in which the main political parties, the Catholic and Protestant communities and the main language groups in the population are represented.

This besides fulfilling the need for a wide regional representation in the federal cabinet, by also avoiding the dependence of the formation of the government on one party or coalition of parties can very much contribute to the formation of a stable government in Ethiopia. And the position of a Head of State, President of the Supreme Court, Speaker of Assembly, etc. could be made by rotating it between different units.

It should be remembered in this connection that of all the classical federal states, the position of Switzerland has similarities with our condition in that the Swiss federation is composed of different nations.

Lastly, the relationship between democracy and federalism should be raised briefly. Federalism is a system that requires a written constitution to exist. Though constitutions are not by themselves a guarantee against totalitarian rule, at least they have to some extent a certain value of restricting the power of the ruler. Therefore the very fact that federalism means having a constitution is one step forward towards a democratic society.

But this is not all. Federalism as seen above, besides being based on division of sovereignty, because it is being a decentralized government is an unsuitable form of government for a "charismatic", all powerful, all dominating despot. Such a leader cannot accept and tolerate restrictions and limitations that are imposed on the central government. Either he should go or the federation should not be--both could not exist in the same system. And as the history of federations have shown in federal countries such as Pakistan and Burma where there were no democratic rights federal experiments were a lamentable failure. Therefore federations worthy of their name need democracy for their existence. But the above, besides showing that authoritarian rule is inimical to the system of federation, does not show the relationship that exists between a federation and a multiparty system.

But a system that tries to implement a federal arrangement and above all a system born by the method of partition from below to work should adopt the multi-party system. If nationality problems are resolved in a democratic way, then a system that accepted this should also accept the multi-party system, otherwise it means democratic solutions as regards the nationality issue are adopted only as a tactical measure and therefore there is a danger of reversal, for one cannot be "half-democratic" too long.

CONCLUSION

We are very conscious of the danger inherent in our suggestion of federalism as a form of state structure for Ethiopia. There is no precedent to guide us. The former federal experiences could be

misleading or out of place. But still we have no choice but to start trudging on previously uncharted land. One false step and we do not know where we will end up. In spite of all this, at least from the prospect of the formerly dominated people, a new era of hope has set in. If all take this opportunity and work towards a real democratic society, if all work together to break the chain that tied the different nationalities of this country, then a bright future is in sight. Times have changed in Ethiopia. And new thinking, or a return to the thinking of the late 60s or early 70s is needed. If not, then everybody will be a loser, for as R.M. MacIver has said:

Under all conditions the discrimination of group against group is detrimental to the well-being of the community. Those who are discriminated against are balked in their social impulses, are prevented from developing their capacities, become warped and frustrated, secretly or openly nurse a spirit of animosity against the dominant group. Energies that otherwise might have been devoted to constructive service are diverted and consumed in the friction of fruitless conflict. The dominant group, fearing the loss of its privileges, takes its stand on a traditional conservatism and loses the power of adapting itself to the changing times... Each side conceives a false image of the other, denying their common humanity, and the community is torn aside.

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