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Ethiopian Constitutional Law: The Structure of the Ethiopian Government and the New Constitution's Ability to Overcome Ethiopia's Problems

T. S. TWIBELL*[†]

Woe to the nation in which each tribe claims to be a nation.
—Kahlil Gibran

I. INTRODUCTION

In 1994, Ethiopia enacted its new Constitution. After one of the longest legacies of monarchal rule in Africa, Ethiopia's

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† The author would like to dedicate this Article to Rima A. Wahab of the Capacity 21 Project, the United Nations Development Program in Lebanon, who contributed to the concept of this Article and who dedicates herself to the mission of a thriving Africa and who was inspired by her father, Dr. Ali Wahab's interest and scholarly contributions to Africa.

monarchy and recent dictatorship are no more.¹ Ethiopia is now a democracy. The new Ethiopian Constitution provides extensive protection for democracy, individual rights and freedoms. Or does it? Some scholars believe the rights and freedoms that are so extensively addressed in the Ethiopian Constitution² are not adequately protected because of structural flaws.

Ethiopia needs a sound constitution that adequately protects democracy and individual rights. The twentieth century has brought political turmoil, war, starvation,³ and stagnated economic development in Ethiopia. Further, its north-eastern lands have ceded to become the new African nation of Eritrea.⁴ Ethiopia's new Constitution ambitiously seeks to remedy the ills that have plagued most African nations long after the colonial influence⁵ has been removed.⁶ With Ethiopia's new government in 1991, and its 1994 Constitution, perhaps Ethiopia is on the brink

1. Monarchal rule in Ethiopia ended in 1974 when the Marxist dictatorship, led by Mengistu Haile Mariam, came into power. His rule ended in May, 1991, when Mengistu fled to Zimbabwe in exile. See ETHIOPIA: A COUNTRY STUDY xxvi-vii (Thomas P. Ofcansky & LaVerle Berry eds., 1993). For a discussion of Haile Sellassie, who was Ethiopia's monarch for much of the twentieth century, see CHRISTOPHER CLAPHAM, HAILE-SELLASIE'S GOVERNMENT (1969).

2. For a textual discussion solely devoted to the Ethiopian Constitution, see FASIL NAHUM, CONSTITUTION FOR A NATION OF NATIONS: THE ETHIOPIAN PROSPECT (1997).

3. See, e.g., Janice J. Bole, *Feast or Famine: Do Ethiopians Have a Choice?*, 10 DICK. J. INT'L L. 3 (1986).

4. For a discussion on the secession of Eritrea and the Eritrean Revolution, see DAN CONNELL, AGAINST ALL ODDS: A CHRONICLE OF THE ERITREAN REVOLUTION WITH A NEW AFTERWARD ON THE POSTWAR TRANSITION (1997); TEKESTE NAGASH, ERITREA AND ETHIOPIA: THE FEDERAL EXPERIENCE (1997).

5. For a discussion on other new African states struggling after the end of colonialism, such as Kenya, Somalia and Zambia, see YILMA MAKONNEN, INTERNATIONAL LAW AND THE NEW STATES OF AFRICA (1983). See Dr. Makau Wa Mutua, *Why Redraw the Map of Africa: A Moral and Legal Inquiry*, 16 MICH. J. INT'L L. 1113 (1995).

6. France, which along with England, was one of the two primary colonial forces that shaped Africa, and has recently criticized the United States for its failed role in African politics, just as France's role failed decades ago. See Ben Barber, *France finds policy vindicated in Central Africa Calls U.S. goals naïve as 2 nations vie for hegemony*, THE WASH. TIMES, Sept. 17, 1998, available in 1998 WL 3458603. For a more in depth discussion of American failures in Africa, see Kenneth Roth, *American Failures in Africa*, TIKKUN, July 17, 1998, available in 1998 WL 11213814. For a criticism of the United States' role in Africa and particularly with Ethiopia, see Don Melvin, *Carter Says U.S. Lacks Strategy to Help Africa*, THE ATLANTA J., June 5, 1998, available in 1998 WL 3697268. See also JEFFREY HERBST, U.S. ECONOMIC POLICY TOWARD AFRICA (1993).

of a new era, serving as an example for other African nations, which now appear to be headed for major conflict.⁷

This Article examines Ethiopia's 1994 Constitution to determine whether it truly instills the constitutional and legal structure necessary to overcome the obstacles that have befallen Ethiopia. While this Article will be comprehensive, it will focus on the goals included in the Constitutional Preamble. While it is unlikely that a critical look at Ethiopia's constitution will lead to amendment, it is necessary, in order to maximize Ethiopia's ability to become a successful thriving African nation, to understand where the strengths and weaknesses lie.

First, this Article provides a brief overview of the significance of Ethiopia. Ethiopia is a magnificent nation and perhaps the world's most ancient. Its history is rich and it has affected the religious, political and anthropological history of everyone on Earth.

Second, the legal and governmental structures of Ethiopia⁸ are provided because they are necessary for any discussion on a new, emerging democracy. This is especially true because the workings of Ethiopia's legal structure are unknown to most.

Third, as its main thesis, this Article will analyze the constitutional law of Ethiopia. The discussion will revolve around whether the extensive democratic rights and individual liberties delineated in the Constitution can be protected under the designed governmental and legal structure. Aside from the Constitution itself, this Article includes commentary on the Ethiopian Constitutional structure. The Article utilizes the U.S. Department of State Report on the Ethiopian government, as well as news reports, as actual evidence of whether the constitutional structure exists in Ethiopia. While a few articles have been written on the subject, these articles were written only a year after the Constitution was ratified. The Constitution has now been in effect for almost five years, and a new analysis is needed. For example, some scholars improperly analyzed the Constitution's use of

7. Ethiopia has been striving to overcome the problems of past regimes, particularly the dictatorial government of Mengistu that left in 1991, and the government is taking the unprecedented step of prosecuting the previous regime as well as striving for democracy.

8. See 1 & 2 CONSOLIDATED LAWS OF ETHIOPIA (Faculty of Law, Haile Sellassie I University eds., 1972) (discussing the legal structure of Ethiopia during the reign of the Imperial Majesty Haile Sellassie I).

“ethnicity” as the demarcation of its federal system. Their fears of an “ethnic federation” have not come to light. This Article will demonstrate that, considering Ethiopia’s history and the current African political environment, the use of “ethnicity” was the only viable alternative.

It is true, as stated by Kahlil Gibran, the famous Lebanese philosopher, author and poet, that “one should give woe to the nation in which each tribe stands as a nation instead of unifying into one nation.” This is noted by most scholars condemning Ethiopia’s federal-state structure because it is based on an ethnic delineation. It is necessary, however, after hundreds of years of domination by the Amhara, that the various tribes now have a chance to be afforded autonomy and recognition by their Constitution. With this autonomy and recognition in the newly forming democracy, the various groups in Ethiopia will begin to form a new common culture that will unify Ethiopia. Ethiopia, despite its ethnic diversity, has always remained united, and only by recognizing this diversity within the Constitution will the tribes be alleviated of the desire to form their own nations. Ethiopia can then stabilize and develop its economic, industrial, agricultural, and educational infrastructure. Once that is accomplished, human rights, individual liberties, and democracy will flourish.

II. ETHIOPIA: A CORNERSTONE FOR AFRICA AND ALL OF HUMANKIND

With the possible exceptions of nations such as Saudi Arabia and the Vatican, in no other country in the world is there more oneness between a leader and the people than in Ethiopia. Crown and Church in the person of His Imperial Majesty are also inextricably interwoven in this ancient Empire.⁹

Ethiopia has something for everyone.¹⁰ It has affected humanity on all major levels. Anthropological studies have found some of the earliest roots of homosapiens in Ethiopia. Ethiopia may in fact be the home of every human; “Lucy,” the famous human ancestor, crucial in the chain of human evolution, was

9. KENNETH R. REDDEN, *THE LEGAL SYSTEM OF ETHIOPIA* 1 (1968).

10. For books solely discussing Ethiopia’s history and culture, see STEVEN GISH, *ETHIOPIA* (1996); *ETHIOPIA IN PICTURES* (Lerner et al. eds., 1988); DENNIS BRINDELL FRADIN, *ETHIOPIA* (1994); RICHARD & BARBARA PANKURST, *THE ETHIOPIANS* (1998).

discovered in Ethiopia.¹¹ Ethiopia is also the only African nation to briefly halt colonialism.

Ethiopia has a history of over three thousand years and is mentioned in the Old Testament.¹² Under Menelik, the Ethiopian Ruler in the late nineteenth Century,¹³ Ethiopia was able to achieve its sovereignty and independence with the Anglo-Ethiopian settlement of 1897.¹⁴ It is the only country to win a major battle against the European powers.¹⁵ Some have stated that “[t]his unprecedented defeat of a modern European army by an African power is still considered one of the greatest battles ever fought in Africa.”¹⁶

Like many African countries, Ethiopia has a rich and varied mix of ethnic groups and religion.¹⁷ The three primary Abrahamic religions are represented by significant portions of the population.¹⁸ Although the chief language is Amharic, a language

11. See DONALD C. JOHANSON, ET AL., *LUCY: THE BEGINNINGS OF HUMANKIND* (1990); NICOLE VERRECHIA, ET AL., *LUCY AND HER TIMES* (1997).

12. See PETER SCHWAB, *HAILE SELASSIE I, ETHIOPIA'S LION OF JUDAH* 10 (1979).

13. See HAROLD G. MARCUS, *THE LIFE AND TIMES OF MENELIK II: ETHIOPIA 1844-1913* (1995).

14. See HAROLD G. MARCUS, *A HISTORY OF ETHIOPIA* 103 (1994).

15. Italy suffered a great loss against the Menelik II's army assuming that “much of the Ethiopian army was either too ill to fight or was away from camp foraging for food and fodder.” *Id.* at 98. Ethiopia encountered Italy once again in World War II. See ANGELO DEL BOCA, *THE ETHIOPIAN WAR 1935-1941* (1965). After World War II, Ethiopia was practically a British Protectorate. For this discussion and many others, see JOHN H. SPENCER, *ETHIOPIA AT BAY: A PERSONAL ACCOUNT OF THE HAILE SELASSIE YEARS* (1984).

16. L. Mendola, *In the Shadow of the Lion, The Imperial Family of Ethiopia*, The Imperial House of Ethiopia 1 (visited Sept. 24, 1998) <<http://www.regalis.com/ethiopia.html>>. [Menelik II] owed his international fame and respect to his army's successful defense against an invading Italian force at Adwa on March 1, 1896. It was this event, more than any other, that prompted the European powers to take the African nation seriously. This unprecedented defeat of a modern European army by an African power is still considered one of the greatest battles ever fought in Africa. “All told, the Italian army lost 70 percent of its forces, an incredible disaster for a modern army.” MARCUS, *supra* note 14, at 99.

17. For information on Ethiopia in general, including historical, political and demographic data, see the following materials on the Internet: *Ethiopia the Beautiful* (visited Nov. 1, 1998) <<http://www.wube.net/history.html>>; *Ethiopia* (visited Nov. 1, 1998); <<http://www.odci.gov/cia/publications/factbook/et.html>>; *Ethiopia: Political Environment* (visited Nov. 1, 1998) <http://www.tradecompass.com/library/books/com_guide?ETHIOPIA03.html>; *Government of Ethiopia* (Nov. 1, 1998) <<http://www.emulateme.com/government/ethiopgov.htm>>.

18. Islam, Christianity and Judaism are all represented in Ethiopia.

of Semitic or Arabic origin,¹⁹ there are more than “70 languages and over 200 dialects are currently spoken in Ethiopia.”²⁰ Three major groups and their languages dominate: the “Semitic (Amharic, Tigrinya), Cushitic (Oromo, Sidama, Somali), and Omotic (e.g., Welayta, Kefa).”²¹ Out of the three, the dominant cultural identity is Amharic,²² the ruling class of Ethiopia who migrated from what is today the southern portion of Saudi Arabia.²³

While the Oromo are greater in number (about forty percent of the population as opposed to the Amhara with thirty percent), the Amhara comprise the dominant culture.²⁴ The Arabs, or the Semites, who originally developed in Ethiopia, migrated to areas of what is today considered the Middle East, and then back to Ethiopia in the seventh century B.C.²⁵

An estimated one-third to one-half of the population are Christian, the vast majority of whom are member of the Ethiopian Orthodox (Coptic) Church; another estimated 35 percent are Muslim; and about 25,000 are Falashas (an early Jewish sect). The remainder follow a variety of animist cults which frequently blend into Coptic or Islamic practice in areas where more than one religious practice exists.

REDDEN, *supra* note 9, at 19 (These numbers will of course vary because of the date of this book).

19. See AYELE BEKERIE, *ETHIOPIC, AN AFRICAN WRITING SYSTEM: ITS HISTORY AND PRINCIPLES* (1997) (discussing the Amharic language).

20. *Id.* at 16.

21. MULATU WUBNEH & YOHANNIS ABATE, *ETHIOPIA: TRANSITION AND DEVELOPMENT IN THE HORN OF AFRICA* 126 (1988).

22. See CLAPHAM, *supra* note 1, at 4 (Haile-Sellassie's government was basically an Amharic one.); see also WUBNEH & ABATE, *supra* note 21, at 131:

In spite of [the Amhara's] small numbers (they are not a majority group), the Amhara have dominated the Ethiopian political scene for several hundred years. The Amhara leadership of the twentieth century, which was primarily from Shewa, used Amharic and Christianity as integrating factors to forge a nation with a multi-ethnic society. This process of Amharaization has aroused some resentment among some Oromo and Tigray.

Id.

23. See RICHARD PANKHURST, *THE ETHIOPIAN BORDERLANDS: ESSAYS IN REGIONAL HISTORY FROM ANCIENT TIMES TO THE END OF THE 18th CENTURY* 280 (1997) (The migration of the Oromo, the second or third largest ethnic group in Ethiopia, from the southern portion of Ethiopia into the core of the region was a turning point in Ethiopian history).

24. See WUBNEH & ABATE, *supra* note 21, at 128.

25. See HAGGAI ERLICH, *ETHIOPIA AND THE MIDDLE EAST* 3 (1994). “Waves of immigrants from the southern parts of the Arab Peninsula imported their Semitic culture and languages, beginning in the seventh century B.C., settling on the African coast of the Red Sea and on the Ethiopian Plateau.”

Ethiopia once ruled much of Southern Arabia until the Persian navy arrived on the Southern Arabian coast around 570 B.C., "perhaps even on the day Muhammad was born," and ended Ethiopian authority in the region.²⁶ Thus, instead of the Arabs moving into Ethiopia and taking rule, it may be that they were merely returning home.²⁷

Although the Amhara were Arab in origin,²⁸ they were Christian. Ethiopia is the home of Coptic Christianity, which has now spread into Egypt, and Ethiopia is now considered a "core-based Christian state."²⁹ Ethiopia's form of Christianity is unique because of its isolation from other Christian states, and can best be described as being akin to Eastern Orthodox Christianity.³⁰ When the Prophet Muhammad began to preach the new religion of Islam, some of his first converts were Ethiopians.³¹

Although a minority in relation to Islam and Christianity, Judaism also has a rich history in Ethiopia. Israel launched a massive, unprecedented campaign that ended in 1985, to move all Ethiopian Jews from refugee camps to Israel.³²

26. MARCUS, *supra* note 14, at 10.

27. *See id.* at 3.

Evidence is strong that the Afro-Asiatic (Hamitic-Semitic) group of languages developed and fissured in the Sudan-Ethiopian borderlands. There Proto-Cushitic and Proto-Semitic began their evolution. In Ethiopia, the Semitic-branch grew into a northern group, today echoed in Tigrinya, and a southern group, best heard in Amharic. It simultaneously spread to the Middle East, whence, millennia later, it returned in a written form to enrich its cousins several times removed.

Id.

28. *See* SCHWAB, *supra* note 12, at 10.

Once known as Abyssinia (the term is said to derive from the Habahat, A South Arabian tribe that settled in East Africa), Ethiopia is mentioned by both Homer and Herodotus and is also referred to in the Old Testament. The Semitic settlers of original Ethiopia arrived from Arabia in the first half of the first millennium B.C., mixed with local Cushites

Id.

29. PANKHURST, *supra* note 23, at 433.

30. *See* WUBNEH & ABATE, *supra* note 21, at 126.

31. *See* ERLICH, *supra* note 25, at 9-10. According to some Muslim texts, the King of Ethiopia converted to Islam from Christianity and "[s]ome of Muhammad's close associates and important figures in Mecca during the times of the four *caliphs* were sons of Ethiopian women." *Id.*

32. *See* Arthur M. Aaron, Recent Developments, *Humanitarian Intervention, Nationality and the Rights of Refugees—Operation Moses: The Israeli Airlift of Ethiopian Jews*, 26 HARV. INT'L L. J. 585 (1985).

Ethiopia's northern lands were once heralded by the ancient Egyptians in Pharaonic times as "God's land."³³ Ethiopia is said to be the last resting place for the Ark of the Covenant.³⁴ Ethiopia also has one of the longest histories of monarchical rule. The famous Queen of Sheba was Ethiopian. She and King Solomon parented Menelik I, who then became King of Ethiopia.³⁵ "The contemporary rulers of Ethiopia were descended from the Kings of Shewa who, according to the longstanding tradition, descended from Menelik . . . through the "Solomonic" line that ruled most of Ethiopia from 1268 until 1854."³⁶

Thus, all through history, Ethiopia has been the center stage of human development in many pivotal ways. It also has remained unique compared to the rest of Africa. Perhaps as Ethiopia, armed with a Constitution promoting values of human dignity and freedom of cultural identity, strives to overcome the starvation and dictatorial rule of the past century, it may reemerge in a form as rich as its history.

III. THE ETHIOPIAN CONSTITUTION

As with all constitutions, the Ethiopian Constitution was drafted to address the ills of the previous regime and the political turmoil that preceded it.³⁷ The new Constitution then becomes a sort of solution or recipe to remedy past mistakes, and to put the nation on the path of a chosen policy.³⁸ The language of the

33. PANKHURST, *supra* note 23, at 3. For an account of Ethiopian Jews in Israel, see TESHOME G. WAGAW, *FOR OUR SOUL: ETHIOPIAN JEWS IN ISRAEL* (1993); DURRENDIA ONOLEMHEMHEN, ET AL., *THE BLACK JEWS OF ISRAEL: THE LAST EXODUS* (1998).

34. See, e.g., GRAHAM HANCOCK, *THE SIGN AND THE SEAL: THE QUEST FOR THE LOST ARK OF THE COVENANT* (1993).

35. See REDDEN, *supra* note 9, at 2.

36. Mendola, *supra* note 16, at 1; see also MARCUS, *supra* note 14, at 17. "Article 2 of the revised Ethiopian Constitution of 1955 claimed that the ruling line descended from Menilek I, the son of Makeda, queen of Ethiopia, and King Solomon." *Id.*

37. The preamble of a nation's constitution brings to light some of the concerns of the drafters. For example, in Zambia, the Preamble include specific workers' rights: "Recognizing the right to work to free choice of employment, to just and favorable conditions of work and to protection against unemployment." ZAMBIA CONST. preamble ¶ 6.

38. An extreme but excellent example of a constitution in its forefront bringing up as its perceived "past ills," is the Constitution of Iran. The Iranian Constitution is a very complex document that provides detailed discussion of the ideology behind it. For example, after the Preamble, there is a section titled, "The Dawn of the Movement,"

Ethiopian Constitution makes its goals and remedies very clear, especially considering Ethiopian political history and the strife it has experienced during this century.³⁹

In its brief existence, the Constitution has drawn only a modest amount of scholarly attention.⁴⁰ Much of this work was written at almost the exact moment the Constitution was ratified, calculating the time for publication and editing.⁴¹ Of course, most of the authors were attempting to evaluate the Constitution and determine whether it would accomplish its ratifiers' goals.⁴²

The Constitution's Preamble specifically sets forth Ethiopia's goals.⁴³ Each clause evidences Ethiopia's past and its desired

which begins by stating:

The devastating protest of Imam Khomeini against the American conspiracy known as the 'White Revolution,' which was a step intended to stabilize the foundations of despotic rule and to reinforce the political, cultural, and economic dependence of Iran on world imperialism, brought into being a united movement of the people and immediately afterwards, a momentous revolution of the Muslim nation in June 1979.

IRAN CONST., *The Dawn of the Movement*. For a discussion on the Iranian perspective of the United States and the Middle East, see T.S. Twibell, *Implementation of the United Nations Convention on Contracts for the International Sale of Goods (CISG) Under Shari'a (Islamic Law): Will Article 76 of the CISG be Enforced when the Forum is in an Islamic State?*, INT'L LEGAL PERSP. (forthcoming).

39. For a more detailed discussion on the role of Ethiopia's history with its current legal system, see John W. Van Doren, *Positivism and the Rule of Law, Formal Systems or Concealed Values: A Case Study of the Ethiopian Legal System*, 3 J. TRANSNAT'L L. & POL'Y 165 (1994).

40. See Jon Abbink, *Ethnicity and Constitutionalism in Contemporary Ethiopia*, 41 J. AFR. L. 159 (1997); Minasse Haile, *The New Ethiopian Constitution: Its Impact Upon Unity, Human Rights and Development*, 20 SUFFOLK TRANSNAT'L L. REV. 1 (1996); James C. N. Paul, *Human Rights and the Structure of Security Forces in Constitutional Orders: The Case for Ethiopia*, 3 WM. & MARY BILL RTS. J. 235 (1994); and Ugo Mattei, *The New Ethiopian Constitution: First Thoughts on Ethnical Federalism and the Reception of Western Institutions* (visited Nov. 1, 1998) <<http://www.gelso.unitn.it/card-adm/review/Constitutional/Mattei2.html>>.

41. See generally *id.*

42. See *id.*

43. ETH. CONST. *preamble*:

We, the nations, nationalities and Peoples of Ethiopia:

Determined to build by the exercise of our right to self-determination, for ourselves and of our own free will, a single political community which is based on our common consent and the rule of law so as to ensure lasting peace, an irreversible and thriving democracy and an accelerated economic and social development for our country Ethiopia;

Strongly convinced of the necessity of respect for the fundamental rights of individuals and of the nations and nationalities as well as the even development of the various cultures and religions for the attainment of these objectives;

future. These goals should first trickle down from the 105 specific articles of the Constitution into Ethiopia's statutory law, administrative regulations, codes and case law, and finally to the state and local governments. While no one disagrees with the goals of the Preamble,⁴⁴ commentators debate whether the cause of Ethiopia's problem is the Constitution or some other component of Ethiopian law, such as the codes, statutes, and administrative regulations.⁴⁵

The Preamble is not the most comprehensive list of Ethiopia's goals. It does, however, protect human rights and freedoms, promote economic development, equal treatment for all ethnic groups, and democracy. The question of Ethiopia's "true" goals is debatable, but it is enough to evaluate the Constitution to determine whether its execution furthers the goals listed therein.

Before delving into a discussion of the Constitution it is necessary to provide an overview of the structure of the Ethiopian State. Most people, including lawyers, know very little about this exotic African nation let alone its legal structure. With the legal structure, as designed by the Constitution, in mind, the constitutional discussion can more easily be grasped. Further, an overview provides an excellent picture of the Ethiopian government for its own sake.

Convinced that we, the nations, nationalities and people, with our own individual and admirable culture, territories and modes of life have, by virtue of the fact that our country Ethiopia has been and still is our common home in which we have formed a common bond of relationships in various fields and in varying degrees, developed a common interest and outlook;

Recognizing that our common destiny needs to be based upon the rectification of historically distorted relationships and promoting common interests;

Convinced of the necessity of building a single economic community so as to promote our common rights, freedoms and interests;

Determined to ensure the maintenance of the peace and democracy we have achieved through our struggle and sacrifice;

Now, therefore, in order to consolidate these aims and beliefs, do hereby adopt this Constitution through our representatives in the Constitutional Assembly on this December 9 of 1994.

44. The goals of the Preamble are goals that certainly any nation would concede as desirable, or certainly, not undesirable.

45. See generally *supra* note 39.

IV. THE STRUCTURE OF THE ETHIOPIAN STATE

A. *The Federal Government*

Ethiopia is a democracy organized as a federal system.⁴⁶ Accordingly, it is called the Federal Democratic Republic of Ethiopia.⁴⁷ The Ethiopian territory is determined by border state compromises and international agreements.⁴⁸ The Constitution is the supreme and primary source of law from which all subordinate law stems.⁴⁹ Hence, "law, customary practices, and decisions made by state organs or public officials inconsistent" with the Constitution are "null and void."⁵⁰ All "citizens, state organs, political organizations, other associations and their officials" must uphold the Constitution.⁵¹ As with the United States Constitution,⁵² international agreements or treaties are regarded as the supreme law of Ethiopia in equal regard to the Constitution itself.⁵³

This initial statement of constitutional structure is located at the forefront of Ethiopia's detailed Constitution. The governmental structure does not begin until almost the middle.⁵⁴ The first half of the Ethiopian Constitution addresses human rights, civil rights and various other similar protections against the government.⁵⁵ The rights extend equally to women, a current trend in African law.⁵⁶ This adds to the significance and importance of the Constitution's fundamental rights and freedoms.

The second half of the Constitution deals with governmental structure. The two primary organs of the federal system are the states and the Federal Government.⁵⁷ Both organs have

46. See ETH. CONST. art. 1.

47. See *id.*

48. See *id.* art. 2.

49. See *id.* art. 9, § 1.

50. *Id.*

51. *Id.* art. 9, § 2.

52. See U.S. CONST. art. VI.

53. See ETH. CONST. art. 9, § 4.

54. See *id.* art. 45 *et seq.*

55. See ETH. CONST. ch. 3, "Fundamental Rights and Freedoms."

56. See Eugene Cotran, *The Changing Nature of African Nature, FAMILY LAW IN ASIA AND AFRICA* 16 (J.N.D. Anderson ed., 1967).

57. See ETH. CONST. art. 50, § 1.

legislative, executive and judicial powers.⁵⁸ The "states"⁵⁹ are structured on the "basis of settlement patterns, language, identity and consent of the people."⁶⁰ Essentially, because of centuries of Amharic dominance, the Constitution recognizes ethnic groupings to the extent that the states are actually defined by the major ethnic groups.⁶¹ Each state is then named,⁶² and the large Southern People's State is defined in more detail.⁶³ Each State has equal powers and rights⁶⁴ as well as the power to secede and become an independent nation.⁶⁵ This fact concerns many legal scholars, who fear the division of the federation on ethnic parameters.⁶⁶ If there is a border dispute between the States, it must be settled between the states involved.⁶⁷ If this cannot be accomplished, the Council of the Federation⁶⁸ will make the decision based on "settlement patterns and interests of the people."⁶⁹ These Constitutional provisions evidence the effort to give each ethnic group a sense of identity and power in the new government. This is unlike some constitutions that force ethnic groups together in the name of nationalism.⁷⁰ Some

58. *See id.* § 2.

59. *See id.* art. 46, § 1.

60. *Id.* § 2.

61. For a full discussion on Ethnic groups and their history in Ethiopia, see DONALD H. LEVINE, *GREATER ETHIOPIA: THE EVOLUTION OF A MULTI-ETHNIC SOCIETY* (1977).

62. *See* ETH. CONST. art. 47, § 1 (listing the following states: Tirgrai State, Afar State, Amara State, Oromia State, Somali State, Benshangul/Gumaz State, Southern People's State, Gambela Peoples' State and Harari Peoples' State).

63. *See id.* The Nations, Nationalities and peoples of the Southern Peoples' State are the following: Hadiya Hamer, Melon Mursi Minit Male Surma Sidama Shekock Sheko Busa Basketo Burji Bencho Bodi Nao Gnangatamo Alaba Kembata Keficho Kore (Amaro) Konso Konta Arboro Aide Ori Wolaita Zeise Zelman Yem Dime Disenech Dawro Dizi Gaweda Gurage Gidicha Gidole Gamo Gedeo Gobeze Gofa Tenbara Chara Tsemay. *Id.*

64. *See id.* § 3.

65. *See id.* § 2.

66. *See infra* text accompanying notes 327-362.

67. *See* ETH. CONST. art. 48, § 1.

68. *See infra* text accompanying notes 74-116.

69. ETH. CONST. art. 48, § 1.

70. Although the Soviet Constitution provided for both the cessation of its republics and based the republics on ethnic guidelines not unlike the Ethiopian Constitution, its federalism "was a sham. The heads . . . of Moscow in effect ruled all jurisdictions as a de facto unitary republic." Haile, *supra* note 40, at 17, *citing* JORGEN S. RASMUSSEN & JOEL C. MOSES, *MAJOR EUROPEAN GOVERNMENTS* 489 (9th ed. 1955).

commentators assert that this is a crucial weakness in the Ethiopian Constitution.⁷¹ As discussed later, however, this may instead be a strength.⁷²

Addis Ababa is the capital city of Ethiopia and is an independent entity,⁷³ as Washington, D.C. is in the United States. Oromia, the state in which Addis Ababa lies, states that its interests should not be compromised by the presence of Addis Ababa and its autonomous qualities.⁷⁴ The people of Addis Ababa are represented by the Council of People's Representatives.⁷⁵

1. The Legislative Branch

All powers of the Federal Government are dictated by the Constitution, and it may delegate any of its powers under Article 51⁷⁶ to the state governments.⁷⁷ The Parliament of the Federal Government is composed of two chambers; the Council of People's Representatives and the Council of the Federation.⁷⁸ The "supreme" power of the Federal Government is instilled in the Council of People's Representatives.⁷⁹

The number of members on the Council of People's Representatives is based on the population in each electoral district. Minorities and others are endowed with special representation.⁸⁰ Members represent the people as a whole and are responsible to the Constitution, the People, and "their conscience."⁸¹ Members are also granted special protections from prosecution,⁸² some of which are designed to protect the members'

71. See Haile, *supra* note 40, at 20. "[F]ragmentation is envisaged, indeed encouraged, by providing for minorities within each of the 'states' to establish their own additional 'states.'" *Id.*

72. See *infra* text accompanying notes 339–362.

73. See ETH. CONST. art. 49, § 1.

74. See *id.* § 4.

75. See *id.* § 5.

76. See *infra* text accompanying notes 84–85, 105.

77. See ETH. CONST. art. 50, § 9. The States may delegate some of their powers to the Federal government as well. See *id.* See also *infra* text accompanying notes 155–81.

78. See ETH. CONST. art. 53.

79. See *id.* art. 50, § 3.

80. See *id.* art. 54, § 6.

81. *Id.* § 3.

82. See *id.* 54, § 5. "No member of the Council may be arrested or prosecuted without the permission of the Council except when caught in flagrante delicto for a serious

freedom of speech.⁸³ Elections take place “every five years in a direct, free and fair election by universal suffrage which shall be held by secret ballot.”⁸⁴ If, at any time, the people lose confidence in a member, legal structures may be implemented to remove that member.⁸⁵

While both the Council of People’s Representatives and Council of the Federation have certain powers and duties to implement,⁸⁶ the Council of People’s Representatives also has its own specific grant of powers and duties.⁸⁷

offence.” *Id.*

83. *See id.* § 4. “No action or charge may be brought or an administrative measure be taken against any member of the Council for a vote cast or statement made in the Council.” *Id.*

84. *Id.* § 1.

85. *See id.* § 7.

86. The powers of the Federal Government under Article 51 of the Ethiopian Constitution include the following: (1) Preparation and implementation of “general economic, social development policies, strategies and plans of the country;” (2) preparation and implementation of “fiscal and monetary as well as foreign investment policies and strategies;” (3) preparation and implementation of national standards and policies in the areas of “health, education, culture, historical, heritage and science and technology;” (4) the determination and implementation of foreign policy including the participation and ratification of international agreements; (5) organization and guidance of public safety, national defense and governance of Federal government police force; (6) the direction and control of inter-state commerce and foreign trade; (7) determination and control of immigration, passports, visas, refugees and political asylum; (8) granting nationality; (9) the levying and administration of taxes and duties on Federal Government revenue as well as the approval and administration the Federal Government’s budget; (10) the promotion, administration and control of “air, rail and sea transport; postal; telecommunication services as well as highways linking more than two states;” (11) the administration of the National Bank, issuance of currency, loans, foreign exchange, currency circulation and regulation of states borrowing from local sources; (12) regulation of intellectual property; (14) the declaration and lifting of state emergencies in Ethiopia as a whole or entirety; (15) deploying Federal armed forces when a State requests such or in instances where the situation is beyond the State’s control; (16) regulation of land, natural resources and historical issues; (17) regulation of rivers and lakes linking two or more states; (18) regulating political organizations and elections necessary for implementing Constitutional rights; (19) safeguarding and defending the Constitution; (20) regulation of “the carrying of arms”; and (21) the administration and promotion of service institutions created and funded by the budget of the federal government. *See id.* art. 51.

87. Without prejudice to the generality of the provisions under sub-Article (1) of this Article (limiting the following powers to those powers specifically falling within the powers of the Federal Government), the Council of Peoples’ Representatives shall enact laws with respect to the following matters:

- a) Nationality, immigration, passport, entry and exit visas, refugee and matters relating to political asylum.
- b) Utilization of land, natural resources, rivers and lakes crossing the border of

Additionally, the Constitution provides as follows: the

the country or linking two or more states.

c) Inter-state commerce and foreign trade.

d) Air, rail, sea transport, postal and telecommunication services and highways linking two or more states.

e) Artistic and intellectual property rights.

f) Uniform time and measurement standards.

g) Election and exercise of political rights in accordance with the provisions of this Constitution.

h) Carrying of arms.

3. Enact labour laws.

4. Enact commercial laws /codes.

5. Enact a Penal Code. Without prejudice to the foregoing, the States shall have the power to enact penal laws on matters not covered by the Penal Code of the Federal Government.

6. Enact laws on areas of private law where the interest of creating a single economic community requires that such laws be enacted on a federal level.

7. Decide upon the organization of public defense and police force of the Federal Government.

8. Declare state of emergency in accordance with the provisions of Article 95 of this Constitution. Approve the declaration of state of emergency made by the executive branch.

9. Declare war based on draft laws submitted to it by the Council of Ministers.

10. Approve general economic, social development policies and strategies, fiscal and monetary policies of the country, enacts laws on currency, administration of the National Bank, foreign exchange and circulation of money.

11. Levy taxes and duties on the sources of revenue reserved for the Federal Government. Approve the budget of the Federal Government.

12. Ratify international agreements signed by the executive branch.

13. Approve appointment of judges of the Federal Courts, members of the Council of Ministers, General Auditor, and other officials whose appointment shall be approved by the Council.

14. Establish a Human Rights Commission and determine its powers and duties.

15. Establish an Ombudsman, elect and appoint members that shall lead it; determine its powers and duties.

16. Request, on its own initiative and without the consent of the State concerned, a joint meeting of the Council of Peoples' Representatives and the Council of the Federation for the adoption of appropriate measures where human rights are violated in a state and the state persists in its violation, and give directives to the state for the implementation of the decisions that are adopted.

17. The Council shall have the power to call the Prime Minister and Ministers for questioning and inspect the activities of the executive branch.

18. Deliberate on any item within the powers of the executive where one third of the members of the Council so request. The Council shall have the power to deliberate and take any measure it deems appropriate.

19. Elect the Speaker of the Council and the deputy speaker of the Council; establish committees necessary to carry out its activities.

Id. art. 55, § 2.

specifics of voting⁸⁸ and adopting laws within the Council;⁸⁹ political parties;⁹⁰ the convening of the council;⁹¹ elections;⁹² terms of members;⁹³ procedural rules;⁹⁴ and the ability of the public to view the proceedings of the council.⁹⁵ Rules of procedure⁹⁶ and the voting required to render a decision⁹⁷ are also addressed. Finally, the Constitution outlines procedures related to dissolution of the Council.⁹⁸

The Council of the Federation, despite the Council of People's Representatives "supreme" power,⁹⁹ actually wields much of the ultimate power. The Council of Federation has the power of Constitutional interpretation,¹⁰⁰ including establishing the Constitutional Court.¹⁰¹ It can also order the Federal Government to intervene in state disputes,¹⁰² seek solutions to state disagreements,¹⁰³ decide issues on the secession of states,¹⁰⁴

88. *See id.* art. 58, § 1. "A simple majority of the members of the Council shall constitute a quorum." *Id.*

89. *See id.* art. 57. "Laws upon which the Council has deliberated and agreed shall be submitted to the President for signature. The President shall affix his signature within 15 days. The law shall come into force where the president fails to affix his signature within 15 days." *Id.*

90. *See id.* art. 56. "A Political party or a coalition of political parties obtaining the highest number of seats in the Council shall have the power to form and lead the executive branch of the Federal Government." *Id.*

91. *See id.* art. 58, § 2. "The Council shall convene on the Monday of the last week of Meskerem and shall continue to the 30th day of Sene. It shall have a one month recess at a time to be determined by the Council." *Id.*

92. *See id.* § 3. "Members of the Council of Peoples' Representatives shall be elected for a term of five years. New elections shall be held one month before the expiry of the term." *Id.*

93. *See id.*

94. *See id.* § 4. "The House speaker of the Council may call a meeting when the Council is on recess. The House speaker shall have an obligation to call a meeting where a majority of the members of the Council so request." *Id.*

95. *See id.* § 5. "No meeting of the Council shall be closed to public except upon a request by the members of the Council or the executive branch of the Federal Government supported by a majority of the members of the Council." *Id.*

96. *See id.* art. 59, § 2.

97. *See id.* § 1.

98. *See id.* art. 60.

99. *See id.* art. 53.

100. *See id.* art. 62, § 1.

101. *See id.* § 2.

102. *See id.* § 8.

103. *See id.* § 6.

104. *See id.* § 3.

allocate federal revenues to states,¹⁰⁵ and even order the Federal Government to intervene when a state violates the Constitution or “endangers the constitutional order.”¹⁰⁶ Thus, although the list of powers afforded the government are more limited¹⁰⁷ in comparison to the Council of People’s Representatives,¹⁰⁸ the powers of the Council of the Federation are very broad. Some commentators claim that such power is a detriment to the proper functioning of a federal state because it is potentially more powerful than the People’s Council.¹⁰⁹ There are some procedural differences, such as Quorum requirements (two thirds instead of simple majority),¹¹⁰ and its budget must be approved by the People’s Council.¹¹¹ Protection of Federal Council members regarding speech, voting,¹¹² and other charges,¹¹³ is similar to that of the People’s Council.¹¹⁴ Federal Council members must vote in

105. *See id.* § 7.

106. *Id.* art. 67, § 8.

107. The powers and responsibilities of the Council of the Federation are as follows:

1. The power of interpretation of the Constitution shall be vested in the Council of the Federation.
2. The Council shall establish the Constitutional Court.
3. The Council shall decide upon questions arising with respect to the right of self determination up to secession of nations, nationalities and peoples, in accordance with the provisions of the constitution.
4. It shall promote and develop the equality of peoples and the unity, established by their free choice, provided for in this constitution.
5. It shall perform the functions assigned to it jointly with the Council of Peoples’ Representatives.
6. It shall seek solutions to disagreements arising between states.
7. It shall decide on the sharing of revenues that are common to the Federal and State governments and determine the grounds for allocating federal funds to the respective states.
8. It shall order the Federal Government to intervene where any state, by violating the provision of this Constitution, endangers the constitutional order.
9. It shall establish permanent and provisional committees of the Council.
10. It shall elect its house speaker and deputy house speaker and adopt its own rules of procedure.

Id. art. 62.

108. *See id.* art. 55.

109. “Although the FC [Federal Council] does not primarily function as a legislative chamber, the constitution makes it a repository of the most potent and decisive powers . . .” Haile, *supra* note 40, at 26.

110. *See* ETH. CONST. art. 64.

111. *See id.* art. 65.

112. *See id.* art. 63, § 2.

113. *See id.* § 1.

114. *See id.* art. 54, §§ 4–5.

person and they may not simultaneously serve on the People's Council.¹¹⁵ The Federal Council consists of representatives from the "nations, nationalities and peoples of the member States of the Federation,"¹¹⁶ and each group has at least one representative. Every additional million people requires one additional representative.¹¹⁷ These representatives may be elected by either the State parliaments or a general direct election by the people.¹¹⁸

2. The President of the Republic

The President is the figure head of Ethiopia, or Head of State, rather than the figure head of the individual legislative, judicial or executive branches. Nomination of the President is made by the People's Council.¹¹⁹ He must then be elected by a two-thirds majority vote of a joint meeting of the People's Council and the Federal Council.¹²⁰ His term lasts for six years and he can serve no more than two terms.¹²¹ The President must also swear an oath of loyalty to the Constitution before a joint meeting of the two councils of the Federal Government.¹²²

The President's powers and duties lie in those traditional roles of a national leader or Head of State. The President appoints ambassadors and other envoys that are first nominated by the Ethiopian Prime Minister.¹²³ The President meets foreign representatives and other envoys.¹²⁴ He awards military awards, convenes the annual joint sessions of the federal councils, grants amnesty, awards prizes and medals and promulgates treaties and international agreements which are ratified by the People's Council.¹²⁵ The primary executive authority resides in the Prime Minister and Council of Ministers in the executive branch who share joint responsibility for their official joint decisions.¹²⁶

115. *See id.* art. 68.

116. *Id.* art. 61, § 1.

117. *See id.* § 2.

118. *See id.* § 3.

119. *See id.* art. 70, § 1.

120. *See id.* § 2.

121. *See id.* § 4.

122. *See id.* § 5.

123. *See id.* art. 71, § 1.

124. *See id.* § 2.

125. *See id.* §§ 3-7.

126. *See id.* art. 72.

3. The Executive Branch

The Prime Minister has the same term of office as the People's Council.¹²⁷ He is elected from among the People's Council by the political party, or group of political parties, who have obtained a majority of seats in the People's Council.¹²⁸ This political party, or parties, then assumes the power of government.¹²⁹ The powers and duties of the Prime Minister are executive in nature; enforcing and implementing those laws already made by the People's council; nominating government officials; issuing state of the government reports; presenting awards and medals to be awarded (to the President); supervising the overall government and, of course, performing duties assigned to him by the Constitution and other laws while safeguarding and abiding by the Constitution.¹³⁰ The Constitution provides for a

127. *See id.* § 3.

128. *See id.* art. 73, § 1.

129. *See id.* § 2.

130. The powers and duties of the Prime Minister are the following:

1. The Prime Minister shall be the head of government, chairman of the Council of Ministers and the Commander-in-Chief of the Armed Forces.

2. The Prime Minister shall nominate the members of the Council of Ministers from among the two chambers of parliament or other persons found to be appropriate to the post and present them for approval to the Council of Representatives.

3. Supervise and ensure the implementation of laws, policies, directives and decisions issued by the Council of Peoples' Representatives.

4. Direct, coordinate and represent the Council of Ministers.

5. Supervise the implementation of policies, regulations, directives and decisions of the Council of Ministers.

6. Ensure, in a supervisory capacity, the implementation of the country's foreign policy.

7. Nominate Commissioners, the President and Vice President of the Federal Supreme Court, the Auditor General and present them to the Council of Peoples' Representatives for approval.

8. Supervise the activities of the government and take the necessary corrective measures.

9. Appoint all high government officials other than those enumerated under Sub-Articles (2) and (7) of this Article.

10. Present to the President for the award of medals and prizes in accordance with laws issued by the Council of Peoples' Representatives.

11. Submit periodic reports to the Council of Peoples' Representatives on the state of the country, the activities of the government and its future plans.

12. Perform other duties assigned to him by this Constitution and other laws.

13. Safeguard and abide by this Constitution.

Id. art. 74.

Deputy Prime Minister to assist the Prime Minister in his duties.¹³¹

The Council of Ministers primarily carries out the more specific duties of the enforcement, administration and implementation of duties delineated in the powers and duties of the People's Council. This includes "law and order" with an executive, rather than a legislative-type power.¹³² The Council is composed of the Prime Minister, Deputy Prime Minister and other members as law determines.¹³³ The Council is accountable to the Prime Minister¹³⁴ and the decisions it adopts are accountable to the People's Council.¹³⁵

4. The Judicial Branch

The judicial branch is intended as an independent judiciary.¹³⁶

131. *See id.* art. 75.

132. Note the powers of the Council of Ministers:

1. Ensure the implementation of laws enacted and decisions made by the Council of Peoples' Representatives, and issue directives.
2. Organize, direct and coordinate Ministries and other administrative organs directly accountable to it.
3. Prepare the annual budget of the Federal Government, submit it to the Council of Peoples' Representatives and ensure its implementation upon approval.
4. Ensure the implementation of fiscal and monetary policies, administer the National Bank, issue currencies, borrow money both locally and internationally and control foreign exchange and circulation of money.
5. Protect artistic and intellectual property rights.
6. Prepare and implement economic and social policies, and strategies.
7. Adopt uniform time and measurement standards.
8. Issue and implement the country's foreign relations policy.
9. Ensure respect for law and order.
10. Decide on the form of organizations of ministries and subordinate organs accountable to the Council of Ministers.
11. Declare state of emergency, submit the declaration of a state of emergency to the Council of Peoples' Representatives for its approval within the time determined by this Constitution.
12. Submit draft laws on all matters, including matters relating to war, to the Council of Peoples' Representatives.
13. Perform other duties assigned to it by the Council of Peoples' Representatives and the Prime Minister.
14. Issue regulations in accordance with the powers given to it by the Council of Peoples' Representatives.

Id. art. 77.

133. *See id.* art. 76, § 1.

134. *See id.* § 2.

135. *See id.* § 3.

136. *See id.* art. 78, § 1.

The Constitution mandates that judges, at all levels, be free from the influence of any other sources, particularly state organs;¹³⁷ only the law may guide judicial authority.¹³⁸ Nor are there extraordinary regulations for relinquishment of a judicial position are not extraordinary.¹³⁹ The Supreme Court has a President and Vice-President who must be nominated by the Prime Minister and appointed by the People's Council.¹⁴⁰

Judicial power is present at both the federal and state level.¹⁴¹ The highest judicial power of the Federal Government resides in the Federal Supreme Court.¹⁴² There may be courts of original jurisdiction ("First Instance courts") and courts of appellate jurisdiction ("Federal High courts"), but they must first be established by the People's Council.¹⁴³ Otherwise, the state courts retain this judicial authority.¹⁴⁴ Religious and customary courts may be established by the People's Council.¹⁴⁵ This recognition is a blessing for the majority of Ethiopians, which the current judicial system cannot accommodate. Currently, religious and customary judicial mechanisms, such as Shari'a courts, are helping the majority of Ethiopians who have little access to the court system.¹⁴⁶

Unlike the United States, where the Supreme Court is the

137. *See id.* art. 79, § 2.

138. *See id.* § 3.

139. *See id.* § 4.

140. *See id.* art. 81.

141. *See id.* art. 79, § 1.

142. *See id.* art. 78, § 2.

143. *See id.*

144. *See id.*

145. *See id.* art. 78, § 5.

146. *See* U.S. Dep't of State, *Ethiopia Country Report on Human Rights Practices for 1997*, at 5 (visited Jan. 30, 1998) <http://www.state.gov/www/global/human_rights/1997_hrp.report?ethiopia.html> [hereinafter 1997 State Dep't Report].

The Constitution provides legal standing to some preexisting religious and customary courts and gives federal and regional legislatures the authority to recognize other courts. By law both parties to a dispute must agree before a case may be heard by a customary or religious court. Shari'a (Islamic) courts may hear religious and family cases involving Muslims. In addition some traditional courts still function. Although not sanctioned by law, these courts resolve disputes for the majority of citizens who live in rural areas and who generally have little access to formal judicial systems.

final interpreter of the Constitution, the Ethiopian Constitution clearly sets forth that Constitutional interpretation is ultimately performed by the Council of the Federation.¹⁴⁷ The Constitutional Court, established under Article 82 of the Constitution, hears the first level of constitutional matters before submission to the Council of the Federation. This rather complex mechanism begins with the Constitutional Court, which is composed of eleven members, consisting of the President and Vice-President of the Federal Supreme Court, three legal professionals nominated by the People's Council and appointed by the President of Ethiopia, and six Council of the Federation members.¹⁴⁸

The Constitutional Court has judicial powers of constitutional interpretation, but its decisions must be approved by the Federal Council.¹⁴⁹ The Court serves as a filter for those cases adjudicated by the federal council; if the constitutionality of a federal or state law is at issue and is submitted by a "concerned party to the dispute or court," the Court hears the case and submits its final decision to the Federal Council.¹⁵⁰ In situations where the constitutional issue arises in other courts, the Court has the option of remanding the case if they determine no constitutional issue exists, or interpreting the case and submitting their decision to the Federal Council.¹⁵¹ The President and Vice President of the Supreme Court, as well as three legal professionals chosen by the People's Council, sit on the Constitutional Court. With six members on the Court from the Federal Council in the majority, the Constitutional Court is more of an administrative screen than a true check on the power of the Federal Council.

The Ethiopian judiciary is said to be "weak and overburdened."¹⁵² The U.S. State Department has noted, however, that the Ethiopian judiciary has continued to show "signs of independence."¹⁵³ The Report notes that the government has been acting consistently with the Constitution in seeking to

147. See ETH. CONST. art. 83, § 1.

148. See *id.* art. 82, § 2.

149. See *id.* art. 84, § 1.

150. *Id.*

151. See *id.* § 4.

152. 1997 State Dep't Report, *supra* note 146, at 1.

153. *Id.*

restructure and decentralize the federation, although it “lacks sufficient staff and funds”.¹⁵⁴

The Constitution provides for an independent judiciary, and the Federal and regional courts continued to show signs of judicial independence. In practice, however, severe shortages of adequately trained personnel in many regions, as well as serious financial constraints, combine to keep the judiciary weak and overburdened and to deny most citizens the full protections provided for in the Constitution.

Consistent with the Constitution, the Government continued to restructure and decentralize the judiciary along federal lines with the establishment of courts at the district and regional levels. The federal High Court and federal Supreme Court adjudicate cases involving federal law, trans-regional issues, and national security and hear both original and appeal cases. The regional judiciary is increasingly autonomous; district (Woreda), High and Supreme Courts mirror the structure of the federal judiciary. The Government delegated some of the war crimes trials to the supreme courts in the regions where the crimes were allegedly committed.

The Government continues its sweeping overhaul of the military justice system. Foreign assistance is being used to train officers and noncommissioned officers in topics including judicial and nonjudicial punishment, human rights, and the conduct of soldiers during military operations.

The Government’s goal is a decentralized judicial system that brings justice closer to the people.¹⁵⁵

B. The State Governments

Just as the supreme power of the Federal Government resides in the People’s Council, the supreme power in the states resides in the state parliament, which is accountable to the people or electorate of the state.¹⁵⁶ Organization, as is true of most federal systems, is at the state and local (“Woreda”) level.¹⁵⁷ Although states may create a more complex system for administrative

154. *Id.*

155. *Id.* at 4–5.

156. *See* ETH. CONST. art. 50, § 3.

157. *See id.* art. 50, § 4.

reasons, they must allow for direct popular participation.¹⁵⁸ As the Federal government has certain powers,¹⁵⁹ so to with the State Governments.¹⁶⁰ Both levels must respect each other's autonomy,¹⁶¹ but may also delegate powers and duties to the other under Article 51 of the Constitution.¹⁶²

At the state level, the legislature is the state parliament, and is directed by the Federal Constitution to adopt a state constitution.¹⁶³ The state government has the greatest executive capacity.¹⁶⁴ Judicial powers rest solely in the state courts.¹⁶⁵ States may also have their own flag¹⁶⁶ and determine their own official language.¹⁶⁷

Article 78 establishes judicial power at the state level.¹⁶⁸ Each state has three levels of judicial power: a State First Instance

158. *See id.*

159. *See id.* art. 51.

160. The powers and duties of the state governments are the following:

1. Powers not exclusively reserved to the Federal Government or concurrently given both to the Federal Government and State Governments by this Constitution, shall belong to the States.
2. Without prejudice to the provisions of Sub-Article (1) of this Article, powers of the State shall include the following:
 - (a) Prepare and implement economic and social development policies, plans and strategies.
 - (b) Enact and implement state constitution and other laws.
 - (c) Administer land and natural resources in accordance with laws enacted by the Federal Government.
 - (d) establish state administration aimed at self-administration; establish a democratic order where rule of law reigns. Safeguard and defend this Constitution.
 - (e) Levy taxes and duties on those sources of revenue reserved for the States; prepare and implement its own budget;
 - (f) Enact and implement laws regulating administration and working conditions of civil servants of the State. It shall however, have the responsibility to ensure that standards of education, training and experience for a given job category are comparable to the general standards adopted in the country.
 - (g) Organize and direct the police force of the state; ensure law and order within the state.

Id.

161. *See id.* art. 50, § 8.

162. *See id.* § 9.

163. *See id.* § 5.

164. *See id.* § 6.

165. *See id.* § 7.

166. *See id.* art. 3, § 3.

167. *See id.* art. 5, § 3.

168. *See id.* art. 78.

Court (courts of original jurisdiction); a State High Court (court of appellate jurisdiction); and a State Supreme Court.¹⁶⁹ The State Supreme Court has appellate review over State High Court decisions.¹⁷⁰ As stated above, the states retain original and appellate jurisdiction unless the Federal Government has specifically designated that area as one of federal jurisdiction.¹⁷¹

State and federal areas of jurisdiction overlap. For instance, the State Supreme Court has the same jurisdiction as the Federal High Court,¹⁷² and the State High Court has the same jurisdiction as the Federal Courts of First Instance.¹⁷³ Decisions rendered by any of the aforementioned courts are reviewable by the State Supreme Court.¹⁷⁴ The Federal Supreme Court may then review State Supreme Court decisions on areas of federal jurisdiction.¹⁷⁵ There is the question, however, whether the Federal Supreme Court may review decisions by the State Supreme Court regarding state matters. To compare, the United States Constitution left the issue open to statutory regulation¹⁷⁶ and common law.¹⁷⁷ The Ethiopian Constitution, on the other hand, expressly provides that the Federal Supreme Court may only review matters of Federal jurisdiction. States reserve the ultimate power on state issues.

The selection of judges is based on a nomination and appointment process. Judges in state First Instance Courts are nominated by their state's Judicial Administration, and are then appointed by their respective state parliament.¹⁷⁸ State Judicial Administrators receive the nominations from the Federal Judicial

169. *See id.* § 3.

170. *See id.* art. 80, § 5.

171. *See id.* § 2.

172. *See id.* § 2.

173. *See id.* § 3.

174. *See id.*

175. *See id.* § 6.

176. *See* U.S. CONST. art. III, § 2, providing that "in all the other cases before mentioned, the supreme Court shall have appellate jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make."

177. The United States Supreme Court will hear a case from a state court only if the state court judgment turned on federal grounds. The Court will refuse jurisdiction if it finds adequate and independent nonfederal grounds to support the state decision. If it is unclear whether the state court decision turned on federal or state law, the Supreme Court may dismiss the case or remand it to the state court for clarification. The Court will usually assume that there is no adequate state ground unless the state court expressly states that its decision rests on state law. *See* *Michigan v. Long*, 463 U.S. 1032 (1983).

178. *See* ETH. CONST. art. 81, § 5.

Administration, who render an opinion and submit it to the State Parliament.¹⁷⁹ Judges for the State Supreme Court and State High Courts are nominated by their respective state Judicial Administration and are appointed by the state parliament.¹⁸⁰

The procedures for state and federal Supreme Court appointments vary slightly. Each State Supreme Court, like the Federal Supreme Court, has a President and Vice-President of the Court who, like other judges, are appointed by their state parliament. Their nomination, however, rests with their state head of government.¹⁸¹ Interestingly, the provision for federal opinion on the appointment of judges is linked only to the Courts of First Instance, not the more powerful and influential State High Court and Supreme Court. Budgets are determined by the respective state legislatures or parliaments.¹⁸² Judicial discipline for both state and federal judges is controlled by their respective judicial commissions.¹⁸³

The Constitution's focus is on the rights and freedoms of the Ethiopian people. The Constitution begins with these precepts. The issue is whether the structure that follows the exhaustive array of rights truly and adequately promotes and protects these rights. The rights themselves may retain flaws because of how they are articulated, which might severely limit their implementation.

C. The Protection of Human Rights and Individual Freedoms within the Legal and Governmental Structure

The prelude to the Ethiopian Constitution reflects the document's devotion to democracy and human rights. The Preamble,¹⁸⁴ the General Provisions,¹⁸⁵ and the Fundamental Constitutional Principles stress the importance of rights and freedoms in the Ethiopian Constitution. In the General Principles,¹⁸⁶ for example, the Constitution is said to express the

179. *See id.*

180. *See id.* § 4.

181. *See id.* § 3.

182. *See id.* art. 79, § 7.

183. *See id.* art. 81, § 6.

184. *See id.* preamble.

185. *See id.* art. 1.

186. *See id.* art. 8.

sovereignty¹⁸⁷ that exists in all of Ethiopia's "nations, nationalities and peoples . . ." ¹⁸⁸ This sovereignty is to be expressed through representation and direct participation.¹⁸⁹ Furthermore, all ethnic groups are provided equal protection under the laws. This is consistent with the requirement that the national emblem of the flag must "reflect the equality of nations, nationalities, peoples and religions in Ethiopia and their aspirations to live in unity."¹⁹⁰ The national anthem must also "reflect . . . the Ethiopian peoples' resolve to live in unity within a democratic system and their common future."¹⁹¹ Gender is specifically addressed in the Constitution; Article 7 states that whenever the masculine gender is used, it includes the female gender.¹⁹²

Although the official language is Amharic, "[a]ll Ethiopian languages shall enjoy equal state recognition."¹⁹³ Commentators argue that allowing each state to adopt its own official language undermines the national unity intended in designating Amharic as the official Ethiopian language. It must be noted that Amharic is not spoken by even a simple majority of Ethiopians—about sixty-seven percent within urban areas, and only approximately a third nation-wide. Thus, while its adoption as the official language encourages unity and facilitates economic transactions, forcing the states to abandon their own languages would alienate two-thirds of the population. As the use of Amharic spreads, and Ethiopia assumes a more modern democratic form with increased interaction between ethnic groups, it should gradually become the main language. Amharic is certainly more likely to become the primary language than any of the various state languages.

The General Principles also contain articles specifically addressing the protection of Human and Democratic Rights,¹⁹⁴ the Separation of State and Religion,¹⁹⁵ and the Accountability of Government.¹⁹⁶ Human rights are deemed to be inherent,

187. *See id.* art. 8, § 2.

188. *Id.* § 1.

189. *See id.* § 3.

190. *Id.* art. 3, § 2.

191. *Id.* art. 4.

192. *See id.* art. 7.

193. *Id.* art. 5, § 2.

194. *See id.* art. 10.

195. *See id.* art. 11.

196. *See id.* art. 12.

inalienable, and inviolable, and these and other democratic rights must be protected.¹⁹⁷ Ethiopia is a secular state,¹⁹⁸ and the General Principles denounce the establishment of a state religion.¹⁹⁹ There is a strict separation of church and state, and any interference by either is prohibited.²⁰⁰

Government accountability is a primary goal of the Ethiopian Constitution. Government activities must "be undertaken in a manner which is open and transparent to the public."²⁰¹ Representatives may be recalled if the public ever loses confidence in them,²⁰² and all public officials or elected individuals are held accountable when they fail to oblige their official capacities.²⁰³ These constitutional rights are difficult to protect at the local level and "local authorities have been unwilling or unable to do so."²⁰⁴ In addition, insufficient funding and staff for the judiciary has made enforcement problematic and "consequently, most citizens are denied the full protections provided for in the Constitution."²⁰⁵

Compounding this problem, there are specific violations of the Constitution by the Ethiopian government itself. The reported violations include extrajudicial killings,²⁰⁶ individual disappearances,²⁰⁷ mistreatment of prisoners,²⁰⁸ arbitrary arrest and detention,²⁰⁹ lack of fair public trials,²¹⁰ government prosecution of the press,²¹¹ lack of search warrants outside of Addis Ababa,²¹² violations of women's rights,²¹³ and occupational

197. See *id.* art. 10.

198. See *id.* art. 11, § 1.

199. See *id.* § 2.

200. See § 3.

201. *Id.* art. 12, § 1.

202. See *id.* § 2.

203. See *id.* § 3.

204. 1997 State Dep't Report, *supra* note 146, at 1.

205. *Id.* at 2.

206. See *id.* at 2-3.

207. See *id.* at 3.

208. See *id.* at 3-4.

209. See *id.* at 3-4.

210. See *id.* at 4-5.

211. See *id.* at 6-7. For a brief note on the lack of press freedom in Ethiopia, see Imru Zelleke, *The Sorry State of Press Freedom in Ethiopia*, THE WASH. TIMES, July 27, 1998, at A18. See also Meqdesetarik Mesfin, *Freedom of Expression: Right or Privilege?*, ETHIOPIAN REVIEW, Mar. 31, 1998, at 35, available in 1998 WL 17182658.

212. See 1997 State Dep't Report, *supra* note 146, at 10. "Societal abuse against young girls continues to be a problem," e.g., female genital mutilation ("FGM") or supposed

health standards.²¹⁴

The problems appear to be related to a shortage of resources, Ethiopia's culture, political history, and lack of education and training.²¹⁵ The 1997 State Report investigating these problems, however, failed to identify these factors.²¹⁶ Instead, the State Department states that lengthy detentions are often a result of the "severe shortage and limited training of judges, prosecutors, and attorneys."²¹⁷ The Inspection Department of the Ministry of Labor and Social Affairs has difficulty enforcing occupational health and safety standards because of a "lack of human and financial resources."²¹⁸ The American Bar Association commented on Ethiopia's attempts at democracy and its efforts to prosecute the previous regime with limited judicial personnel:

Ethiopian leaders may prosecute some of the cases, "if that happens, the Ethiopian prosecutions could become the most extensive human rights trials since Nuremberg. They might even overshadow the similar—and much more widely publicized—trials being planned for Bosnia-Herzegovina Prosecuting deposed officials is never as easy as it looks Consider that [1] Mengistu's overthrow left the legal system with only a handful of experienced judges; [2] Qualified defense lawyers are equally hard to come by, largely because Ethiopia has only one law school (which opened in 1962); and [3] Prosecutors are sifting evidence involving thousands of defendants and tens of thousands of crimes—all without a computerized database."²¹⁹

Ethiopia has made efforts to combat abuses of constitutional structure and individual protections, and has achieved moderate success. For example, to prevent prisoner mistreatment, the government provided additional training for police,²²⁰ and rape

female circumcision which harms both the psychological and physical health of women.
Id.

213. *See id.*

214. *See id.* at 12–13.

215. *See, e.g., id.* at 1, 4–5, 9–10, 13.

216. *See generally id.*

217. *Id.* at 4.

218. *Id.* at 13.

219. John D. McKinnon, *Traveling Human Rights Lawyer*, "Todd Howland helps struggling Ethiopia prosecute abuses of previous regime," 80 A.B.A. J. 40, 40–41 (1994).

220. *See* 1997 State Dep't Report, *supra* note 146, at 3.

among female prisoners no longer appears to be a problem.²²¹ To encourage improvements in prisoner treatment, the government permits independent monitoring of prisons, including granting visitation rights to international observers.²²² After visiting with the prisoners, there were no reports of mistreatment.²²³

Free speech is also protected.²²⁴ Ethiopians may now discuss any topic they choose without the threat of government persecution. Moreover, anti-government groups have "held press conferences and public meetings without retribution."²²⁵ Many anti-government newspapers are widely circulated outside of Addis Ababa, although not many are published outside of the capital.²²⁶ Academic freedom is also protected, and students may join in public demonstrations. While some students have been detained for lack of a permit,²²⁷ these permits are normally "routinely granted."²²⁸ According to State Department reports, all but one demonstration was granted a permit.²²⁹

Despite some inter-faith conflicts, religious freedom is generally protected.²³⁰ The State Department has noted, however, that some Pentecostals have complained of inadequate protection by the government during conflicts with Coptic Christians.²³¹ Other protected freedoms include the freedom of movement within Ethiopia, foreign travel, and emigration.²³²

Non-governmental organizations, such as the Peace and Development Committee, which has organized and conducted training workshops for persons from various segments of Ethiopian society, are helping to improve in the areas of human rights.²³³ These workshops focus on the "history and evolution of

221. *See id.*

222. *See id.*

223. *See id.*

224. *See id.* at 6 (stating that the "Constitution and the 1992 Press Law provide for the right to free speech and press"); *but see id.* at 1 (noting restrictions on freedom of the press).

225. *Id.* at 6.

226. *See id.* at 6-7.

227. *See id.* at 7-8.

228. *Id.*

229. *See id.* at 7.

230. *See id.* at 6.

231. *See id.* at 8.

232. *See id.*

233. *See id.* at 7.

human rights, civil and political rights, economic, social and cultural rights enshrined in the Ethiopian constitution, freedom of expression, basic women's rights, as well as the concepts and principles of democracy."²³⁴

Women's rights are protected, and the government includes them in its planning:

Women's concerns have been factored into the Government's development planning since 1993. There are women's affairs desks in each of the ministries. To enhance further the status of women, the government formally adopted a "National Program of Action" in June. The program seeks to expand women's access to health care, and educate women concerning maternal health.²³⁵

The government seems supportive of the National Committee on Traditional Practices in Ethiopia, which is dedicated to eradicating Female Genital Mutilation ("FGM"), and the government also works to discourage FGM through the public schools.²³⁶ Despite these efforts, however, the overall status of women in Ethiopia is horrendous.²³⁷ Children, mainly female, are bought and sold; "[t]he going price for a child is reportedly about \$36."²³⁸ There are also major problems with child labor.²³⁹ The

234. *Ethiopia: Seven Days Update*, AFRICA NEWS SERVICE, June 10, 1998, at 2 (Solomon Demrew, ed.), available in 1998 WL 13209611.

235. 1997 State Dep't Report, *supra* note 146, at 9.

236. *See id.* at 10.

237. *See id.* at 10.

Child prostitution is a problem. There were many press reports of the large-scale employment of children, especially underage girls, as hotel workers, barmaids, and sex workers in resort towns and truckstops south of Addis Ababa. According to the head of the Labor and Social Affairs Office of East Shoa zone, children are being bought or stolen from the countryside by 'child vendors' and sold to bar and liquor store owners in Shashemene and Nazareth. The going price for a child is reportedly about \$36. More than 3,000 young girls are working as dancers, barmaids, and prostitutes in the town of Shashemene. There are also credible reports that poor rural families sell their young teenage daughters to hotel and bar owners on the main truck routes. Social workers note that these girls are prized because their clients believe that they are free of sexually transmitted diseases. Some families send their unemployed, out-of-school, underage daughters to work in Middle Eastern countries as house servants and nannies, some of whom are kept in sexual bondage.

Id.

238. *Id.*

239. *See id.* at 12.

problem lies mainly in agriculture, the principal sector of the Ethiopian economy, and one which the government has difficulty regulating.²⁴⁰

While democracy seems to be protected, there are those who choose not to practice it.²⁴¹ Some, such as Professor Haile, condemn the new Constitution and government because a "true" democratic election did not take place.²⁴² The groups that did not participate, however, did so by their own choice.²⁴³ Many groups do not participate today, not because of government deterrents, but rather because they choose not to, citing that the current government was not empowered by a free election.²⁴⁴ Contrary to their assertion, "observers organized by foreign donor governments, the Organization of African Unity, and a coalition of domestic NGO's judged the elections to be generally free and fair, although they cited numerous irregularities."²⁴⁵

Worker rights and collective bargaining are adequately protected.²⁴⁶ While there are no accounts of slavery in Ethiopia, there are some accounts of young people, particularly girls, being sold by their "families into involuntary servitude in Saudi Arabia and other Arabian Peninsula states to work as house servants and nannies, some of whom are kept in sexual bondage."²⁴⁷ To curb this phenomenon, the government has indicted many travel agents and operators who have been linked to these illicit activities that involve "soliciting potential clients, recruiting young girls, arranging travel, and fabricating counterfeit work permits, travel documents, and birth certificates."²⁴⁸

Women, although their participation remains disproportionately low, do not seem to be politically restrained by the Constitution.²⁴⁹ In other respects, such as the female children mentioned above, women are still not adequately protected. This appears, however, to be rooted more in culture rather than

240. *See id.* at 12.

241. *See id.* at 8.

242. *See* Haile, *supra* note 40, at 8-9.

243. *See* 1997 State Dep't Report, *supra* note 146, at 8.

244. *See id.*

245. *Id.*

246. *See id.* at 11-12.

247. *Id.* at 12.

248. 1997 State Dep't Report, *supra* note 146, at 12.

249. *See id.* at 9.

politics.²⁵⁰

V. DISCUSSION

As with the post-ratification onset of many bodies of law, most discussion stems from outside observers taking a critical look at the new legislation. The Ethiopian Constitution certainly has its detractors.²⁵¹ The few scholars who have written on the subject within the Constitution's short new life have criticized it rather severely.²⁵² These scholars tend to have close links to the country.²⁵³ Most of their criticism, while raising some interesting points, is fundamentally flawed. Specifically, Professor Haile criticizes virtually every aspect of the Ethiopian Constitution, including human rights protections. While Haile would seem to be qualified to comment on the Constitution soon after it was ratified,²⁵⁴ his experience with the Ethiopian government was under Sellasie's monarchal regime.²⁵⁵

Many of the critical articles on the subject²⁵⁶ were written barely after the Constitution was ratified.²⁵⁷ Now that some time has passed, the supposed fears of the Constitution's critics can be more clearly seen, and their true causes better correlated.

250. *See id.*

251. *See, e.g.,* Haile and Mattei, *supra* note 40.

252. *See id.*

253. Professor Haile is a professor of law at Cardozo School of Law and was Minister of Foreign Affairs of Ethiopia (1971–74), Ambassador of Ethiopia to the United States (1968–71), Minister of Information and Tourism (1965–68), Chairman of the Emperor's Cabinet (1962–68), Civil Service Commissioner (1961–62), and Legal Advisor for the Government of Ethiopia (1961). Ugo Mattei has published many works on African law, *see, e.g.,* Ugo Mattei, *Verso una tripartizione non etnocentrica dei sistemi giuridici*; Ugo Mattei, *Socialist and Non Socialist Approaches to Land Law: Continuity and Change in Somalia and Other African States*; Mattei, *supra* note 40, at 18–19.

254. *See* Haile, *supra* note 40, at 3.

255. *See id.* (noting the deficiencies of a regime under a constitution which did not stand for democracy and human rights); *see also* Mattei, *supra* note 40, at 3–4.

Both the 1931 and the 1955 Haile Selassie's Constitutions were almost 'cynical' in their realism. The emperor was recognized full political religious and legal power. Religion as well as force was the source of legitimization of the negus. This was probably the strongest antidote to political fragmentation in the hands of the Amhara ruling class.

Id.

256. *See* Makau Wa Mutuna, *The Politics of Human Rights: Beyond the Abolitionist Paradigm in Africa*, 17 MICH. J. INT'L L. 591, 1158–59 (1996).

257. *See supra* note 40.

Jon Abbink's analysis of the Constitution is the most accurate and objective. Abbink maintains that ethnicity must be considered when analyzing the Constitution.²⁵⁸ Moreover, other authors, such as Professor Bereket Selassie,²⁵⁹ Jerome Wilson,²⁶⁰ and Derege Demissie,²⁶¹ view Ethiopia's implementation of ethnic federalism in a much more positive light.

The critics say that the Ethiopian Constitution's content is excellent in many ways.²⁶² The criticism mainly revolves around the issue of ethnicity in the Constitution, and that any reflection of ethnicity in its provisions creates a shroud of failure.²⁶³ In the years since the passage of the Constitution, however, despite some cultural road blocks, the fears of secession and ethnic quarrels have not been realized. Yet, as these authors have speculated, the humans rights violations and workings of democracy have failed.²⁶⁴ The actual causes, however, are not rooted in the Constitution itself.²⁶⁵ Moreover, a proper evaluation of the history

258. See Jon Abbink, *Ethnicity and Constitutionalism in Contemporary Ethiopia*, 41 J. AFRICAN L. 159 (1997).

259. See Bereket Habte Selassie, *Self-Determination in Principle and Practice: The Ethiopian-Eritrean Experience*, 29 COLUM. HUM. RTS. L. REV. 91, 141 (1997).

260. See Jerome Wilson, *Ethnic Groups and the Right to Self-Determination*, 11 CONN. J. INT'L L. 433, 485 (1996).

261. See Derege Demissie, Note, *Self-Determination Including Secession vs. The Territorial Integrity of Nation-States: A Prima Facie Case for Secession*, 20 SUFFOLK TRANSNAT'L L. REV. 165 (1996).

262. See, e.g., Mattei, *supra* note 40, at 14-15.

263. See generally *infra* text accompanying notes 290 and 318.

264. For textual discussion of human rights in Africa, see RONALD COHEN, *HUMAN RIGHTS AND GOVERNANCE IN AFRICA* (1994); AFRICA, *HUMAN RIGHTS AND THE GLOBAL SYSTEM: THE POLITICAL ECONOMY OF HUMAN RIGHTS IN A CHANGING WORLD* (Eileen McCarthy-Arnolds, David R. Penna & Debra Joy Cruz Sobrepena, eds., 1995). For a discussion on a world-wide report on the similar rights violations, see Amnesty International: Annual Report Summaries, *Amnesty International Report 1998*, M2 PRESSWIRE, June 19, 1998, available in 1998 WL 12975764.

265. See Mattei, *supra* note 40, at 10-11. Ugo Mattei compares the United States Constitution to the Ethiopian Constitution in the following excerpt:

A cursory look to the constitution will give you the flavor of what I am talking about: Art. 9 tells us that the Constitution is 'The supreme law of the land.' Art. 14 assumes the necessity of a trio of fundamental values: 'life liberty and property' becomes 'Life liberty and the security of the person.' Art. 19 introduces the Miranda warning made famous in the American movies: the Ethiopian person arrested has 'A right to remain silent and to be notified that any statement that they make or evidence they give may be used against them in court.' The 'right to privacy' is not only generally guaranteed (art. 26) but also specifically to the accuse (art. 20). 'Double Jeopardy' is prohibited (art. 23). Of

and characteristics of Ethiopia demonstrate that they support the ideals and workings of the Constitution; they do not work against it.

A. Western Characteristics of The Ethiopian Constitution

The United States' and Ethiopian Constitutions are similar.²⁶⁶ The Ethiopian Constitution is essentially Western.²⁶⁷ This quality, in and of itself, has been viewed as a detraction.²⁶⁸ Not only does

course 'the equal protection of the law (art. 25) Many other examples of American constitutional language can be found.

Talking about fashionable provisions (within the American academia) we will find that the press should not only be free but 'diverse' (art. 29,4); women are entitled to 'affirmative' action in order to 'compete on the basis of equality with men in political economic and social life' (art. 35,3).

Id.

266. Perhaps the "western" connotation is fading and becoming the norm. Virtually all constitutions nowadays, particularly in Africa, the Middle East, Russia and other regions have similar provisions protecting rights with wording and/or concepts akin to the United States Constitution and its Bill of Rights. Even countries where individual rights are known to be routinely infringed or unexercised have these rights in their respective constitutions. In some of these countries, restrictive provisions are present to give the government legal leverage to excuse right infringement. The restrictive clause may use such wording as "determined by law" or "unless it threatens the public health or safety." It must be noted that although these Constitutions have loopholes, in countries such as the United States the government can routinely limit rights on these very same grounds whether it is mentioned or not. It is perhaps the political culture and social self-concept of the nation that is most determinative of the rights' implementation. Note the applicable provisions in the following constitutions which protect such private virtues of freedom of the press, freedom of association, freedom of expression and equal treatment. See CONGO CONST. arts. 10-65; EGYPT CONST. arts. 40-63. "No person may be arrested, inspected, detained or have his freedom restricted in any way or be prevented from free movement except by an order necessitated by investigations and the preservation of public safety.") *Id.* art. 41; ERI. CONST. arts. 14-29, (there are no restrictions within each right until Article 28 which states that the rights can be restricted in certain instances), *id.*; IRAN CONST. arts. 19-42. Contrary to most preconceptions of individual rights in Iran, there is an exhaustive list of rights from personal beliefs to rights of assembly. The stumbling block is if the exercise of the right violates public order or principles of Islam which can be vague and always arguable. Again, essentially, it's the political culture and social self-concept that defines the right. See *id.* Note Article 23 "Freedom of Belief": "The investigation of individuals' beliefs is forbidden, and no one may be molested or taken to task simply for holding a certain belief." *Id.* art. 23; LIBYA CONST. arts 12, 13, 14 (The rights in the Libyan Constitution really are almost non-existent, but the Constitution itself is very short.); RUSS. CONST. arts 17-64 (listing an exhaustive array of rights); RWANDA CONST. arts. 12-33; ZAMBIA CONST. arts 11-26.

267. See Mattei, *supra* note 40, at 9-10. "Indeed the impact of American constitutional rhetoric is staggering." *Id.*

268. See *Id.*

the Ethiopian Constitution have content similar to the United States Constitution, such as a federalist design and protection of liberties, but United States common law interpreting the Constitution is actually implemented in the Ethiopian Constitution itself. For example, a provision mimicking Miranda rights, which is only a small part of United States Constitutional case law, is included directly in the text of the Ethiopian Constitution.²⁶⁹

Professor Haile's assertion that Ethiopia is still experiencing economic strife and no actual enforcement of individual or democratic liberties is correct.²⁷⁰ The problems, however, are not rooted in the Constitution or its demarcation with ethnicity.²⁷¹ Neither is the problem rooted in the failure to properly follow the western federalism recipe.²⁷² Such conclusions are difficult to support when an article is published barely a year after the Constitution was officially ratified. The United States Department of State on January 30, 1997, and on January 30, 1998 issued reports on human rights practices.²⁷³ These reports, along with some news reports, shed light on how Ethiopia and its Constitution are adapting to the first democracy in Ethiopia's history. Although Haile relied on a 1996 U.S. State Department Report, it was published a year earlier, and the information was presumably gathered months before it was actually issued.²⁷⁴ As Mattei points out,²⁷⁵ laws in Ethiopia cannot be analogized to laws applied in Western societies such as the United States. Almost all critics warn that the federal nature of the Constitution is weak and that

269. See ETH. CONST. art 19; see also *id.*

270. For a discussion on the abuses of the past regimes and how the current regime is struggling with problems, but remains the best alternative thus far, see Jonathan Dimbleby, *Feeding on Ethiopia's Famine: "If we are guilty of genocide, Dimbleby, you should be here with us."* He wasn't joking, THE INDEPENDENT, Dec. 8, 1998, at 5.

271. See generally Haile, *supra* note 40.

272. See generally Mattei, *supra* note 40.

273. See 1997 State Dep't Report, *supra* note 146; Bureau of Democracy, Human Rights and Labor, U.S. Department of State, *Ethiopia Country Report on Human Rights Practices for 1996* (January 30, 1997) (visited Nov. 1, 1998) <<http://www.usis.usemb.se/human/ethiopia.htm>> [hereinafter "1996 State Dep't Report"].

274. See, e.g., Haile, *supra* note 40, at 8, n.25; U.S. Department of State, *Country Reports of Human Rights Practices for 1995*, 78-79 (U.S. Government Printing Office 1996).

275. For a discussion of Mattei's evaluation of the Ethiopian Constitution in a larger context, see MODELLI AUTOCTONI E MODELLI D'IMPORTAZIONE NEI SISTEMI GIURIDICI DEL CORNO D'AFRICA (Elisabetha Grande, ed., 1995).

the Constitution dangerous relies on ethnicity as the standard for many of its determinations.²⁷⁶ Although a reliance on ethnicity is perhaps not the best method for making determinations, it does serve some useful purposes for the time being. Specifically, it such reliance minimizes the dangers due to Ethiopia's unitarial nature. Furthermore, it allows for the release of tensions that would otherwise build up if Ethiopia became too centralized or nationalistic after hundreds of years of monarchical rule, and a decade of dictatorial rule, during which one ethnic culture was dominant.

One weakness of the Ethiopian Constitution is that it does not follow some of the better aspects of the United States Constitution. The problem is not that the vague western principles are not being properly followed,²⁷⁷ or that the United States' Constitution is not followed exactly.²⁷⁸ Rather, the Ethiopian Constitution is too complex. Ethiopia, like many African and Middle Eastern countries, has borrowed heavily from civil law countries such as France.²⁷⁹ Civil law, unlike common law countries, which have more complex, detailed law, tends to be more simple.²⁸⁰ Although it would seem that laws from civil law countries would tend to be more simple, that is not the case here.

Mattei is correct in asserting that culture is an important consideration to the application of the Ethiopian Constitution.²⁸¹ Although cultural considerations are a significant factor, Mattei's analysis is not on point. The use of the term "western" alone does not make the application difficult. Rather, the underlying principles distinguish the different cultures. For example, principles of individuality and freedom, instead of Ethiopia's tradition of monarchical rule,²⁸² should not be viewed as "western"

276. See generally Haile, *supra* note 40; Mattei, *supra* note 40; Abbink, *supra* note 40.

277. See Mattei, *supra* note 40, at 1-3, 17-19.

278. See, e.g., Haile, *supra* note 40, at 10, 50.

279. See, e.g., Mattei, *supra* note 40, at 10. "After all, the U.S. Constitution has always been the most influential constitutional document in the world." *Id.*

280. The analogy taken by the author from a guest lecture given by the Dean of Beijing Law School in China at the University of Missouri-Kansas City School of Law in International Business Transactions (Fall 1997).

281. See generally Mattei, *supra* note 40.

282. Mattei provides the following statement that to a western thinker who has experienced western freedom, the fundamental flaw of his proposition; he believes Ethiopians cannot "handle" the rights granted to them by their "Western" Constitution:

just because they originated in strong western legal roots. Even the western origins began in cultures with a strong history of oppressive monarchical rule.²⁸³

The strength of the United States Constitution is that it is simple, yet its structure allows it to grow and adapt to the evolving social and political processes. The United States Constitution remains the longest surviving constitution, and many countries have replicated its effect. Its effectiveness, however, is not simply because it is a product of a "western" culture. Rather, it is the underlying principles of a free and open society that establishes the constitution's effectiveness. Thus, its principles have been adapted to very diverse cultures with great success. For example, after the Allied Occupation of Japan,²⁸⁴ a very "un-Western" culture, and Germany,²⁸⁵ both countries adopted constitutions strongly influenced by the United States' Constitution. Furthermore, they continue to thrive while retaining their unique cultural characteristics. Due to technological advances in association with freer political movements and governmental structures, societies around the globe are gaining freedom.

Contrary to Mattei and Haile's cultural reasoning, the ethnicity aspect of the Constitution will be a relief of ethnic tension, rather than a problem.²⁸⁶ Moreover, you can apply principles of United States constitutional law to Ethiopia and Africa. In the ethnic considerations, however, the Constitution

"A strong and ideological assertiveness of rights can have a very destabilizing impact on the Ethiopian society." Mattei, *supra* note 40, at 15.

283. See *id.* at 5. "It is likely that the result of this constitutional evolution, inherently foreign to the African structure of power and decision making, will simply result in another piece of unapplied written legislation." *Id.*

284. After Japan's defeat and the Allied occupation, Japan's Constitution took on many attributes of the United States' Constitution:

The new Constitution was an alien import. It spoke of the individual's goals as 'life, liberty, and the pursuit of happiness' (article 13) and had to inform the Japanese public that the 'fundamental human rights by this Constitution guaranteed to the people of Japan are fruits of the age-old struggle by man to be free' (article 97).

ROGER BUCKLEY, JAPAN TODAY 10 (2d ed., 1990).

285. The German Constitution, after the Allied occupation, took on many characteristics of the American Constitution. See HENRY ASHBY TURNER, JR., GERMANY FROM POLITICS TO REUNIFICATION 33-43 (1992).

286. Abbink seems to agree with this proposition. "The formula of ethnicization (although in a different, more effective, federal form) should perhaps be encouraged . . ." Abbink, *supra* note 40, at 174.

must protect democracy and individual rights in the process, as Abbink concludes. Specifically, Abbink states that ethnicity should be encouraged if:

[F]irst, it is generally interpreted and implemented as liberation and democratization; secondly, it is sustained also in the domain of respecting *individual* human rights *within* the ethno-regions; thirdly, it works in the economic domain: and finally, it is a tendency and frame of mind accepted by the “rural masses,” the majority.²⁸⁷

Ethiopia, while struggling to better human and individual rights, is also battling to improve in many other ways.

1. Cultural Strongholds and Physical Limitations in Implementing Ethiopia's Constitution

At first glance, the Ethiopian Constitution appears to take some admirable lessons from the United States Constitution. In fact, it goes even further in defining particular human rights.²⁸⁸ For example, while the United States has a well-developed body of constitutional law, particularly defining individual rights, most of its interpretation is of the Bill of Rights. In contrast, the Ethiopian Constitution goes further by placing them at the constitutional, rather than common law, level. Thus, Miranda rights, determined by the United States Supreme Court as necessary under the Fifth Amendment, could later be found to fall outside of constitutional protection. This would never be the case in Ethiopia absent a Constitutional Amendment.²⁸⁹

In the United States Constitution, part of the Framers' design of the Constitution was simplicity. This simplicity, however, can also lend itself to much danger; government-sanctioned segregation in public schools was constitutionally permissible in one moment in time,²⁹⁰ and then constitutionally incompatible the

287. *Id.*

288. This proposition stems from the fact that while in reality the Constitutional freedoms in the United States are stronger than in Ethiopia, the rights in Ethiopia are in the Constitution itself rather than in case law interpreting the Constitution as in the United States.

289. Fundamental rights change over time in the United States, as noted by the “Separate but Equal” doctrine which was eventually overturned, by slave emancipation, and by the Thirteenth Amendment to the United States Constitution prohibiting slavery.

290. See *Plessy v. Ferguson*, 163 U.S. 537 (1896).

next.²⁹¹

There is also a danger in being too detailed. The Ethiopian Constitution may go to this extreme. One must assume a certain level of social control of the government. Change in societal attitude is a factor to consider—the government does not simply make a decision. A common law system reflects society's morals, politics and attitudes. This common law in turn affects the legislative output.²⁹² If the constitutional structure is too rigid, however, the rights may be limited to only what is precisely delineated. Those rights then become the only rights, and even their current limited interpretation could be further narrowed. In such a case, the listed rights become ineffective, and certainly less effective than a Constitution that contains simple rights with wide interpretation.²⁹³

2. "Fashionable" Human Rights Provisions Too Complex for Proper Implementation

Individual rights, personal liberties, and democratic rights, while listed exhaustively and protected throughout the Ethiopian Constitution,²⁹⁴ fail to be implemented. Human rights in the Constitution certainly do not reflect the actual existence of such rights in Ethiopia, but the government has been attempting to make the Constitutional prerogatives a reality:

The government took a number of steps to improve its human rights practices, but serious problems remain. Security forces sometimes beat or mistreated detainees, and arbitrarily arrested and detained citizens. Prolonged pretrial detention is a problem. The judiciary lacks sufficient staff and funds, and consequently most citizens are denied the full protections provided in the Constitution. The government restricts freedom of the press and detained or imprisoned 14 journalists. At year's end, most were accused or convicted of inciting ethnic

291. See *Brown v. Board of Educ.*, 347 U.S. 483 (1954).

292. These changes are evident in United States constitutional law generally. Changes in the United States Supreme Court compound this effect. See, e.g. GERALD GUNTHER, *CONSTITUTIONAL LAW* xxi (12th ed. 1991). "Constitutional law today is in a state of flux, prompted in large part by the changes in the composition of the Court . . ." *Id.*

293. Compare the United States Constitution, and the commonly understood freedoms in the United States, to the Ethiopian Constitution, its listed rights and its present human rights record. See *supra* text accompanying notes 182–91, and *infra* notes 296–97.

294. See ETH. CONST. arts. 13–44.

hatred or publishing false information in violation of 1992 Press Law. The government limits freedom of association and refused to register several nongovernmental organizations (NGOs), but otherwise did not prevent them from operating. Societal discrimination and violence against women and abuse of children remain problems; female genital mutilation is nearly universal. Societal discrimination against disabled persons is a problem.²⁹⁵

Since these rights take up over half the Constitution,²⁹⁶ it is evident that the failure of these rights does not lie in the Constitution's construction, or in the division between state and federal power.²⁹⁷

295. 1996 State Dep't Report, *supra* note 273, at 1-2.

296. To be tedious, between "half" and a "third," the "half" approximation comprises not only the text of the Constitution, but the significance of the Preamble and General Provisions. Some authors state that individual rights comprise one-third of the Constitution. *See, e.g.,* Haile, *supra* note 40, at 53. Whether a "third" or "half," the importance the Constitution places on human and democratic rights is enormous.

297. Haile's analysis of the Ethiopian Constitution goes too far to be objective. He even criticized the Constitution for putting international environmental concerns ahead of Ethiopia's own! *See id.* at 69-77. Certainly Professor Haile does not consider Ethiopia's long term future nor would one want to put Professor Haile on a committee developing regulations for third-world countries as they implement advanced industrialization. Almost every provision is criticized without providing any alternative analysis (as is the norm in legal analysis). For example, he expands at length that the only reason for the "Ethiopian ethnic federation" is some sort of power control of the government and efforts to divide and weaken Ethiopia. *See id.* at 43-45. He provides no alternative explanation, such as the need for consideration of ethnic groups oppressed under Selassie's regime for decades under the dominant Amhara ruling class and then under a communist dictatorship. Oppressed for so long in Ethiopia's monarchical legacy; these ethnic groups can now have more equal status. *See* ETH. CONST., preamble paras. 1-4 (referring to "nationalities," "nations," and cultures of Ethiopia and that "our common destiny needs to be based upon the rectification of historically distorted relationships.") For a discussion on the motives of the drafters of the new Ethiopian Constitution, see James C. N. Paul, *Human Rights and the Structure of Security Forces in Constitutional Orders: The Case of Ethiopia*, 3 WM & MARY BILL OF RTS J. 236 (1994). James C. N. Paul is a professor of law at Rutgers University School of Law in Newark, Trustee and Secretary of the International Development Center for Law in New York. He was also the founding Dean of the Law School of Addis Ababa. He has returned to Ethiopia on several occasions to join the Constitutional Commission of the Transitional Government of Ethiopia charged with preparing a draft constitution. *See id.* at n.1. Professor Paul states that "[i]he Constitutional Commission of Ethiopia is explicitly charged with the task of producing a draft constitution to establish democracy and human rights and a rule of law to secure those conditions." *Id.* at 236-37 (emphasis added). Furthermore, after stating several human rights goals, Professor Paul states that "[c]ertainly, these goals are professed by all political factions now operating within and without Ethiopia, and probably also by the majority of Ethiopians, most of who live in the countryside and derive their livelihood from

Although the rights look impressive on paper, their complexity is one of the Constitution's downfalls. Workers' rights, for example, are explicitly protected.²⁹⁸ Clearly, the protection of each of these rights is very desirable, so how is this a negative? When one drafts a constitution such as Ethiopia's, listing every category of democratic²⁹⁹ and human rights,³⁰⁰ that Constitution is doomed to fail. This failure is based on the Constitution's attempt to develop a permanent policy for Ethiopia on issues that may or may not need attention, or are even ripe, in comparison with more urgent needs.

The Ethiopian Constitution contains a list of every objective the government should implement, from the need to "care for and rehabilitate the physically and mentally handicapped, the aged, the

agriculture." *Id.* at 237. It is these rural groups in agricultural areas who were never represented; dominant group such as the Amhara, tend to live in urban areas. See Wube Kumsa, *Ethiopia the Beautiful* (visited Nov. 1, 1998) <<http://www.wube.net/history.html>>, at 2. "The Amhara (who founded the nation), a highland people . . . [who] occupy the Ethiopian highlands . . . and the former province of Shoa and as far S as Addis Ababa . . . [whereas, for example, the] Golla, a pastoral and agricultural people living . . . constituted about one-third of the population." *Id.* Professor Haile, instead of presenting the obvious arguments as to why Ethiopia chose to protect ethnic groups or create an "ethnic federation," presents only arguments of speculation to the hidden alternatives without looking at the facts in open view.

298. See ETH. CONST. art. 42.

299. "Democratic Rights" as they are termed and listed in the Ethiopian Constitution with their title and respective article number are as follows: Right to Hold Opinions, Thoughts and Free Expressions (art. 29), Freedom of Assembly, Public Demonstration and the Right to Petition (art. 30), Right to Association (art. 31), Freedom of Movement (art. 32), Rights of Citizenship (art. 33), Rights Relating to Marriage, the Individual and the Family (art. 34), the Rights of Women (art. 35), the Rights of the Child (art. 36), the Right to Justice (art. 37), the Right to Vote and be Elected (art. 38), the Right of Nations, Nationalities and Peoples (art. 39), the Right to Property (art. 40), Economic, Social and Cultural Rights (art. 41), Workers' Rights (art. 42), the Right to Development (art. 43), and the Right to the Protection of the Environment (art. 44). See ETH. CONST. arts. 29-44.

300. "Human Rights" as they are termed and listed in the Ethiopian Constitution with their title and respective article number are as follows: The Right to Life, Liberty and Security of Person (art. 14), The Right to Life (art. 15), The Right to Security of Person (art. 16), Liberty (art. 17), Prohibition of Inhuman Treatment (art. 18), Rights of Persons Under Arrest (art. 19); Rights of the Accused (art. 20), Right of Persons in Custody and Convicted Prisoners (art. 21), Non-retroactivity of Criminal Laws (art. 22), Prohibition of Double Jeopardy (art. 23), Right to Human Dignity and Good Reputation (art. 24), The Right to Equality (art. 25), the Right to Privacy (art. 26), Freedom of Religion, Conscience and Thought (art. 27), and Crimes Against Humanity (art. 28). See ETH. CONST. arts. 14-28.

children deprived of their parents or guardians,”³⁰¹ to the vague “policies designed to create employment of the poor and unemployed; issue programmes designed to open up work opportunities in the public sector and undertake projects.”³⁰² Many of these rights are extremely vague on what exactly the right is and how the state should be implemented. For example, Article 40(3): “[t]he State may, in the public interest and in particular, to ensure that Ethiopian citizens shall have an equal opportunity to gain a living and an equal access to housing, determine the size of ownership of both rural and urban land.”³⁰³ Each of these areas are so ambitious and complex that if someone first brings it to the attention of the State, or tries to litigate against the government for its failure to implement a policy, the State can easily argue that it has implemented the right to some remote degree. Thus, any degree of government activity in the area could be viewed as complying with the Constitution.

As another example, note the problematic provisions of Article 41: “[e]very Ethiopian shall have the right to engage in any economic activity and gain his living by work which he freely chooses.”³⁰⁴ How would this right be protected? How is it determined if one has in fact “freely” chosen his economic activity? The causes of action against the government for violations to citizens claiming they were not afforded the opportunity to freely choose their own economic activity are *ad infinitum*. Also note Article 41(2): “Every Ethiopian shall have the right to choose his vocation, work and profession.”³⁰⁵ There are so many factors that affect a person “choosing” his career that it is impossible to determine what degree of influence would be acceptable.

The end result is that the government will basically not have to abide by these provisions. The provisions are too specific on a particular right, yet too vague and general to serve as a proper measuring guide for implementation. A general right of pursuing happiness or having economic freedom and the right to “equal” housing, although seemingly more “broad” or “vague,” would

301. ETH. CONST. art. 41(5).

302. *Id.* art. 41(6).

303. ETH. CONST. art. 40 (alternative supported by the minority of the council) 3.

304. ETH. CONST. art. 41.

305. ETH. CONST. art. 41(2).

have a specific standard for measure.

Instead of a list of rights, the Constitution's list is more akin to mere resolutions.³⁰⁶ It can be argued that the Constitution merely requires more definitive legislation, and that when such a governmental prerogative is rooted in the Constitution it must be broad. These rights, however, are simply too broad and vague to form the basis for more detailed legislation.

With the implementation of the Constitution, do the policies outlined in the Constitution then become the sole objective of the government? The primary ones? The secondary ones? Which policies should be implemented before other ones? What about pressing needs, such as individual rights being hampered because of the war with Eritrea, that are not specifically enumerated? What is the fate of these policies that are barely implemented now, and may continue to fail to be implemented for the next five to twenty years? It would probably take a strong social or political movement to bring life to these rights. By failing to implement these rights now, the result will be a weak list of rights which are too detailed and vague to ever be used. They are too specific to a particular class of people, with no measuring aspect to determine whether the government is doing its job of protecting the rights. A right should not be, for an extreme example, "the government should do everything to help X." Individual rights and freedoms are riddled in a similar fashion throughout the Constitution,³⁰⁷ so that it reads as if it protects an elaborate list of rights, but no definitive semantics are used to establish whether the right is being violated.

The truth is, when a country starts out with a "laundry list" of policies to implement, it will fail. Instead, there should be a short simple list of rights that can be measured as to whether the government is protecting them. These rights should be immortal, not policies that may become more or less important over time.

Societies, governments, and individuals must function on an "as needed" basis. Certain issues are ripe and a priority depending on the circumstances. A nation such as Ethiopia, which lacks the

306. Some of the best examples of these "resolutions" in the Ethiopian Constitution are found in Article 41, "Economic, Social and Cultural Rights."

307. See ETH. CONST. arts. 14-28.

infrastructure for strong industry, and even education,³⁰⁸ will not prioritize equal access for the handicapped.³⁰⁹ Note Mattei's description of this dilemma and his analogy similar to the proposition:

Talking about fashionable provisions (within the American Academia) we will find that the press should not only be free but 'diverse' (art 29,4); women are entitled to 'affirmative' action in order to be able to compete on the basis of equality with men in political and social life' (art. 35,3). The problems that may arise from the competition between men and women should be resolved 'in the best interest of the child' (art. 36,2). Ethiopians should have a 'Right of Access to justice' which, of course, can be effective only with the introduction of class actions (art 37,2). A right to a 'clean and healthy environment' (art. 44) completes the list of the rights formulated with academic rhetoric. Other non-American fashionable ideas find their way into the Constitution: between the Scandinavian idea of the 'ombudsman' (art 55,15) which in the eighties became a 'must' for any proposal claiming to be progressive. The right to 'sustainable development,' whatever it may mean, found its way into the Constitution as well. A very progressive section on social rights is added. *It would be difficult for a Scandinavian country to afford its implementation.*³¹⁰

One right at issue in Ethiopia is the protection of the disabled. There are many disabled persons as a result of the war in Ethiopia. Although some mechanisms have been established, such as those put in place by the Amhara Development Association and the Tigray Development Association which are designed to help disabled war veterans, the government has been able to enforce neither the Constitutional provisions nor a 1994 law which provides additional rights for the disabled.³¹¹ "The Government does not have sufficient resources to mandate access to buildings

308. Mengistu began to implement a mixed economy before he left power, however, industry in Ethiopia, productivity decreased heavily in the 1980's and observers expect the trend to continue throughout the 1990s. ETHIOPIA: A COUNTRY STUDY, *supra* note 1, at 187. "In the early 1990s, the problems Ethiopians faced in making their educational system responsive to national needs remained formidable." *Id.* at 126. "[In 1961 t]he Ethiopian education system was ranked at the bottom among African nations." *Id.* at 127.

309. See ETH. CONST. art. 41(5).

310. See Mattei, *supra* note 40, at 10-11 (emphasis added).

311. See 1997 State Dep't Report, *supra* note 146, at 10.

or government services for persons with disabilities, and people with minor disabilities sometimes complain of job discrimination.”³¹² Thus, this is an example of a specific, detailed right that has failed to be implemented.

The Constitution attempts to list out every aspect of an ideal society. In the meantime, however, Ethiopia must address problems such as its war with Eritrea, and providing food and education for its population.³¹³ It must develop its industrial and agricultural infrastructure. These are the needs that must be addressed, whether or not listed in the Constitution. Huge sections of the Constitution will potentially be ignored for a time. What will be their value later? While the country struggles to survive and rise in Africa,³¹⁴ it has a Constitution with policies it cannot now implement, with the effect of ignoring rights guaranteed by the Constitution.

Haile states that, despite the exhaustive array of rights in the Ethiopian Constitution, they are rendered meaningless because the government can restrict these rights in a time of emergency.³¹⁵ Virtually all governments, however, have this capability.³¹⁶ In the United States, for example, if martial law was declared, the Bill of Rights and the Fourteenth Amendment could certainly be suspended as well. On the other hand, an American's reaction to this proposition would be strong, despite its legitimacy, because the American culture views such a possibility as abhorrent to the political system. Perhaps Haile means to say that Ethiopian history and political culture make Ethiopia more susceptible to such a possibility than other democracies. Rights are being ignored because Ethiopia is preoccupied with its adjustment to a new system free from monarchical rule. Ignoring rights is not really a complex legal problem; it may just be that Ethiopia lacks many resources³¹⁷ due to its underdeveloped industrial and educational

312. *Id.*

313. These are among the biggest host of issues with Ethiopia currently.

314. “Ethiopia is one of the poorest countries in the world.” Haile, *supra* note 40, at 66.

315. *Id.* at 46.

316. *See, e.g., supra* note 266.

317. The problems as outlined by the U.S. State Department Report are not necessarily constitutionally related, but are rather problems related to the of lack of resources. The State Department Report discusses a right, its violation, and why the author thinks it has been violated—most often from lack of resources and a viable

infrastructure.³¹⁸

A Constitution, being the “DNA” of a nation, should set forth the basic structure of government so that the political “organism” can grow and adapt to the environment it encounters. The United States Constitution envisioned growth, such as the opening of the West and New Frontier, from its first drafting. Imagine a provision in the United States in 1789 providing for equal access for the handicapped? While Ethiopia is not in the same technological or industrial state as the early United States, it shares enough of a lack of infrastructure for education and industry that the analogy serves its purpose; in 1990, Ethiopia had “one of the lowest per capita incomes in the world.”³¹⁹ What would happen to such a provision if in the original United States Constitution? What if the Constitution had more of such provisions? The economic, social and cultural rights included in Article 41 may become mere surplusage.

Unlike the early United States, the Ethiopian government was already functioning when the Ethiopian Constitution was adopted. Must the Government, faced with the laundry list of policies in the Constitution, redirect its energy to following those

judiciary or legal enforcement structure.

The Government’s goals is a decentralized system that brings justice closer to the people; in practice, however, severe shortages of adequately trained personnel in many regions, as well as serious financial constraints, combine to keep the judiciary weak and overburdened and to deny most citizens the full protections provided for in the Constitution. Hundreds of individuals were detained, especially in the Oromo and Somali regions, without charge. Many were ultimately released without explanation or appearance before a judge. Such cases at times may reflect arbitrary actions on the part of heavy-handed local officials, but also result from a shortage of trained and competent prosecutors and judges. The Government established regional offices of the Ministry of Justice to monitor local judicial developments, but the federal presence in the regions remained limited. Anecdotal evidence suggests that some local officials interpret decentralization to mean they are no longer accountable to any higher authority, even within their own regions.

1996 State Dep’t Report, *supra* note 273, at 4.

318. Culture is having a significant impact on the implementation of the Constitution. The United States Department of State has stated that “[a] history of highly centralized authority, great poverty, the recent civil conflict and unfamiliarity with democratic culture all combine to complicate the implementation of federalism.” *Id.* at 1. Also, “[t]he federal government cannot yet protect constitutional rights at the regional level especially when local authorities are unwilling or unable to do so. Local administrative, police, and judicial systems remain weak in many regions.” *Id.*

319. ETHIOPIA: A COUNTRY STUDY, *supra* note 1, at 145.

policies? Are they prioritized? The reality is that the Government will continue implementing its current policies; the policies in the Constitution will be looked to as an ideal, and policies to be dealt with when the Government can afford to implement them. For example, looking at Article 41(6), to what degree is the right violated? Would it ever reach the Constitutional Court or Federal Council? The result is that sections of the Constitution that sound very good at first reading will never be implemented or have any "bite." Additionally, policies that may or may not be consistent with the times are forever locked into Ethiopian Constitutional law.

Until Ethiopia's standard of living improves to a level where Ethiopia can redirect its resources beyond the simple necessities of living, many of the policies may lie dormant. They will, however, continue to exist and perhaps one day soon will be implemented—it may only take one action to start a trend in Ethiopia's Constitutional law that reinvigorates its array of rights.

B. The Complex Method of Constitutional Interpretation

The Ethiopian Constitution promotes its dangerous nature even further because its formula for constitutional interpretation is much too complex. Contrary to Haile's assertion,³²⁰ judicial review by the United States Supreme Court is not provided for by the United States Constitution.³²¹ It has simply been interpreted that way.³²² Though it makes a great deal of sense and has been held consistent with the Constitution, there is an argument that the Framers intent was for all branches of government to have a significant role in constitutional interpretation.³²³ For example, perhaps the United States President's role in implementing what he believes to be unconstitutional would be different under this

320. "In the United States, '[t]hrough judicial review, the Supreme Court most dramatically exerts its authority to determine what the Constitution means . . . the Court has routinely exercised the power of judicial review to determine the constitutionality of acts of Congress, the executive branch, and the states.'" Haile, *supra* note 40, at 55-56 citing KAREN O'CONNOR & LARRY J. SABATO, AMERICAN GOVERNMENT 357 (1995).

321. Judicial review of acts or law of the executive and Congress are not explicitly provided for in the U.S. Constitution. See U.S. CONST. art. III, § 1.

322. See, e.g., GUNTHER, *supra* note 292, at 2-37 (discussing issues related to judicial review and Marbury v. Madison, 1 Cranch (5 U.S.) 137 (1803)).

323. See, e.g., NORMAN RELICH & BENARD SCHWARTZ, 1 CONSTITUTIONAL LAW 1, 7-8 (1983).

approach.³²⁴ The fact that the Ethiopian Constitution requires that a particular governmental body determine whether an act or law is unconstitutional is not in itself abhorrent to United States constitutional principles. Judicial review of legislative actions for constitutionality even at the state level, has indeed proven itself successful, it is so ingrained that some forget that the United States Constitution may not have intended that consequence.

Where the Ethiopian Constitution fails is in the complexity of the system it sets out for constitutional interpretation. One may even be a little suspicious that a provision about who picks what seat, and the majority of seats being granted to essentially a non-legislative body, should be in the Constitution at all. To Haile's credit, he is correct that the formation of the Ethiopian Constitution does come from suspiciously biased circumstances.³²⁵ The judicial section of the United States Constitution is quite brief and, has remained remarkably stable, efficient, and trusted. The judicial system in Ethiopia, on the other hand, has some serious problems.³²⁶

The Federal Council is not per se evil to the Ethiopian system, at least not to the extent Professor Haile states. One question, however, is why it exists less democratically than the more legislative People's Council. The Federal Council seems to be an "elevated" or more prestigious body, just as the Senate is in the United States, possessing strong characteristics of the power to

324. See, e.g., WILLIAM B. LOCKHART, YALE KAMISAR, JESSE H. CHOPER & STEVEN H. SHIFFRIN, CONSTITUTIONAL LAW 13 (7th ed., 1991), citing THOMAS JEFFERSON, 8 THE WRITINGS OF THOMAS JEFFERSON 310 (1897).

325. See Haile, *supra* note 40, at 8-10 (describing the influence of the Tigre People's Liberation Front over the transitional government of Ethiopia and the reports by international bodies that the election was "rigged."). This situation was verified by the U.S. Department of State in its report which states in its opening paragraph:

Ethiopia continued its transition from a unitary to a federal system of government. Prime Minister Meles Zenawi leads the government of the Federal Democratic Republic of Ethiopia, which was elected in 1995 to replace a transitional government that was established following a long and brutal civil war. Most opposition groups boycotted the elections, and candidates affiliated with the dominant party within the transitional government, the Ethiopian People's Revolutionary Democratic Front (EPRDF) won a landslide victory in national and regional contests. The EPRDF is in turn dominated by the Tigray People's Liberation Front (TPLF).

1996 State Dep't Report, *supra* note 273, at 1.

326. See 1996 State Dep't Report, *supra* note 273, at 1. "The judiciary is weak and overburdened, but showed signs of independence." *Id.*

make constitutional interpretation. Its detachment from popular votes could be good for constitutional review, just as the arguably non-political nature by which Justices of the United States Supreme Court are nominated, free from the politics of campaigning and political favors.³²⁷ It is also true, however, that the Federal Council is larger in number, and controlled by the populace to a greater degree³²⁸ than the United States Supreme Court, theoretically subjecting it to more popular control and making it less of an oligarchy than the United States Supreme Court.³²⁹ In practice, however, the reverse is true. The body of the Federal Council, indirectly elected by the populace, has resulted in more politics, dilution, and influencing of Constitutional issues than the nine members of the United States Supreme Court who are nominated by the President and confirmed by the Senate. This is especially true when there is not only the Federal Council deciding issues of Constitutional interpretation, but the Constitutional Court as well.

Although the Constitutional Court is not the final decision-maker, it has the potential to block Ethiopian Constitutional interpretation. This complexity poses serious danger with two levels of decision-making for what supposedly is one decision. On one hand, the Ethiopian Constitution attempts to throw everything into the Constitution. On the other hand, this complex system of constitutional interpretation is incorporated into two bodies of indirectly elected decision-makers. The United States model of judicial review would be more ideal for Ethiopia. Africa already has enough corruption in government, and the last thing it, or any country for that matter, needs is another temptation of government complexity.

What makes the United States system ideal is that there are nine justices in the spotlight.³³⁰ Each one renders a vote or opinion in the matter. These opinions are then published in newspapers across the United States, and discussed in hundreds of United States law schools. Each opinion also becomes the law,

327. See *supra* text accompanying notes 137-57.

328. See *supra* text accompanying notes 100-19.

329. See U.S. CONST. art III, § 1.

330. Congress determines the number of Justices on the Supreme Court. See U.S. CONST. art. III, § 1.

albeit, to varying degrees.³³¹ In the Ethiopian system, however, the Constitutional Court is a sort of certiorari-granting mechanism with no final power to decide the case.³³² Eventually, the granting and denying of certiorari will pattern Ethiopian Constitutional law as it does United States Constitutional law.

One ponders whether the drafters of the Ethiopian Constitution anticipated major issues arising in Constitutional interpretation. This seems uncanny considering that the Constitution contains so much detail in defining individual rights and freedoms. Presently, the problems seem to lie with whether issues of Constitutionality will ever reach the Constitutional Court as violations occur.³³³

1. Ethnicity as a Consideration in the Ethiopian Federal System

The issue of ethnicity is not discussed as an internal constitutional issue, as were the previous issues, but rather as a policy underlying the design of the Constitution. Because Ethiopia's Constitution divides its states based on concentrations of ethnic population, many commentators have feared that this "ethnic federation" gives ethnic groups too much autonomy, placing the integrity of the federal system at risk.³³⁴

Several African nations, and even the former Soviet Republics, are experiencing severe problems and war because of ethnic clashes. The power the Ethiopian Constitution gives to ethnic groups is feared to spur ethnic clashes within Ethiopia, or at the very least, create an inefficient government. Although this ethnic consideration is a potential problem, it has not become one to date. When one considers the homogeneity of Ethiopia throughout history, despite its wide array of languages and ethnic groups,³³⁵ Ethiopia will always be one unified nation.³³⁶ Even the

331. A strong majority opinion will carry more weight than the persuasive power of a weak majority opinion, concurring opinions or dissenting opinions.

332. See *supra* text accompanying notes 145-49.

333. See *supra* text accompanying notes 150-54.

334. This forms the basis of many of Professor Haile's propositions. See Haile, *supra* note 40, at 19-22, 31, 52.

335. See *supra* text accompanying notes 16-26

336. MARCUS, *supra* note 14, at 218-19.

What can new rulers learn from Ethiopia's long history? They can take heart that, notwithstanding the most extreme cases of secession and governmental weakness, the country reunited. There is no-escaping the essential wholeness of

borderlands remain linked to Ethiopia despite the long history of diversity. This history, and Ethiopia's ability to adopt to it, may in fact stabilize the country.³³⁷

Much of this dilemma is cultural. Contrary to many critics, who see potential trouble for Ethiopia because the Constitution does not adequately rely on a Western model, much of the problems rest on Africa's current political and cultural environment. One cannot compare the ethnic dilemmas of Ethiopia to those of Canada, the United States, or Australia.³³⁸ All have good federal systems of government, but all are young countries, only created in the last 200 years, the original populations were homogenous, and the native population was suppressed and/or absorbed into their culture. Moreover, these

Ethiopia's highlands and environs. The two have functioned as an economic unit historically, and there seems little reason to think that modern politics can disrupt the long-standing pattern.

Id.

337. Pankhurst discusses the link of the borderlands of Ethiopia to the core of Ethiopia throughout history:

The people's of the periphery were involved moreover in most, if not all, of the great migrations, as well as the major political and religious conflicts of the time. Many inhabitants of the borderlands as of the central core traveled widely, in peace or war, as soldiers on campaign or garrison duty, itinerant merchants, officers of the state, tax collectors, refugees, petitioners, prisoners, priests, monks, wandering students, pilgrims or slaves.

Innumerable social, linguistic, and cultural differences between the various peoples of the region of course remained, but there were also important points of contact, both peaceful and warlike. These resulted in a vast amount of assimilation of populations, both slave and free, very considerable adoption of languages, innumerable conversions from one faith to another (and often back again!), and extensive intermarriage, often, but by no means only for dynastic reasons.

PANKHURST, *supra* note 23, at 443 (emphasis added).

338. Ethnic issues often lurk below the surface of many countries in the news today, including Canada.

[T]he greatest risks of starting future wars will likely be those associated with ethnic disputes and the new nationalism that seems to be increasing in many areas The former Soviet Union and Yugoslavia are being torn by ethnic desires for self-government; ethnic-like religious demands are fueling new nationalism in Israel and the Islamic nations; ethnic pressures are reasserting themselves again in Canadian politics; and throughout the Pacific Basin . . . ethnic issues often lurk just beneath the surface.

Aaron P. Micheau, *The 1991 Transitional Charter of Ethiopia: A New Application of the Self-Determination Principle?*, 28 CASE W. RES. J. INT'L L. 367 (1996) (citing John H. Barton & Barry E. Carter, *International Law and Institutions for a New Age*, 81 GEO. L.J. 535, 555-56 (1993)).

“transplanted” populations already had a heritage of what is today described as the “Anglo-American” system of government. Thus, you have a homogenous population transplanted to a great expanse of land, the Americas and Australia, which required a governmental structure suitable for growth in these great land areas. If it was not suited for such growth, the inevitable growth would make the legal structure conform to it, as perhaps the Constitutional law has developed. There were also populations that were more or less homogenous by religion; they were almost entirely Christian. They were also populations that fled persecution, and thus desired to instill religious and personal freedom in their legal framework. Furthermore, they had a desire to be free from monarchical governments.

Professor Haile’s analogies to systems of government other than that of Ethiopia, therefore, are misplaced. Russia and India make good comparisons as they are large federations with histories of strong ethnic division and their systems of federalism maintain stable forms of government amidst potential conflict. Haile also points to more western styles of federalism that Ethiopia should follow. Although he states that the homogeneous nature of nations such as the United States, Canada, and Australia results in inaccurate analogies, he still refers to their styles of government. Governments such as Australia and the United States have managed to repress ethnic minorities in the guise of a “non-ethnic” constitution. As seen with the Thirteenth Amendment to the United States Constitution, an amendment was needed to make the Constitution truly “non-ethnic.” Australia horrifically repressed the Aborigines in a fashion similar to the United States’ near eradication of its Native American population. Thus, an “ethnically blind” Ethiopian Constitution could be dangerous because history has shown that constitutions can ignore ethnic groups and oppress them at the same time. With Ethiopia’s history of Amharic domination, if the new Constitution ignored ethnic considerations a single group could dominate and oppress minority rural groups.

With respect to Russia and India, their histories are not analogous. First, India has a tradition of unified religion and isolation from the rest of the world. Its geographic location as a “sub-continent” adds to this fact. The separation of Pakistan from India demonstrates that extreme religious differences can create

secession. Ethiopia is not a sub-continent, but is in the middle of the largest continent in the world. Nations experiencing war, and a host of other societal problems, surround Ethiopia and inevitably bleed into its inner workings. India has a unique historical unification and stabilization. While it is true that India's Constitution has more unitary mechanisms such as those respecting language, a point that Haile criticizes the Ethiopian Constitution for failing to address, British rule unified India and spread English throughout the land. In fact, English almost supersedes Hindi. In Ethiopia, only sixty percent of the population knows Amharic. It is not therefore a matter of difference over constitutional rhetoric on language, but a difference in fact; the fact that most Indians already know English is a unifying factor irrespective of their Constitution's text. If there had been similar conditions in Ethiopia, surely the framers of the Constitution would have considered the possibility of a national language. For the framers to do as Haile suggests, however, would have created a volatile situation where one national language would have to be chosen over all others. The way the Ethiopian Constitution was drafted, Amharic is given precedence, but other languages are provided their due respect. Thus, conflict is diffused.

With respect to Russia the language is already spoken by the majority of the population, as English is in India. The extent of ethnic diversity is also different from Ethiopia. Additionally, Russian culture dominated the former Soviet Union, and is a powerful unifying force in the now independent nation. Thus, Haile failed to look at these Constitutions beyond their wording. Granted, these are excellent considerations and it is indeed important for Ethiopia to be unified for its most efficient functioning, but it is overly simplistic to say that the Ethiopian Constitution should borrow provisions from Russia and India. These provisions in Russia and India function because they reflect what is already a cultural fact. In Ethiopia, a decision would have to be made on what the national language should be. Such a decision would be difficult considering Ethiopia has been ruled, without democratic freedom, for so long by the Amharic. Additionally, it would result in a national language that all Ethiopians did not know; Amharic is a very complicated language, and may not be the best choice for Ethiopia. If, on the other hand,

eighty to ninety percent of Ethiopians were fluent in Amharic, this decision would be much easier.

Professor John Van Doren has discussed some issues concerning Ethiopia that go beyond the mere applications of positive law.³³⁹ He states that Ethiopia, like many African nations, has relied on customary law to such a high degree that approaching the Ethiopian Constitution in terms of the proper application of “positive law” may be flawed.³⁴⁰ According to some positivist standards, Ethiopia’s legal system fails because of the absence of rules of recognition, that is, legal sources commonly accepted by officials and judges as “authoritative for determining primary rules.”³⁴¹ Van Doren believes that a legal system that merely rests on its written guidelines is a myth.³⁴² Rather, it is the culture behind such writings that actually determine the rules of the government.³⁴³ He concludes that instead of emphasizing a written code, these underlying principles must themselves be instilled into Ethiopia.³⁴⁴

With this in mind, it becomes difficult to compare Ethiopia with the United States, Canada and Australia (three nations that developed almost “out of nowhere” relatively recently), and argue that all of Ethiopia’s problems will disappear if it follows the blue print of these Western models. Ethiopia is the cradle of all of humanity, the nation from which Lucy came. Its ethnic groups form a deep-rooted tradition for all of humanity. Their religions are not just different versions of Christianity, but are composed of Christianity, Islam and Judaism. Moreover, all three of these religions are strongly influenced by their pagan roots.

A Constitution must take into consideration the culture in which it is implemented. The Ethiopian culture is one that, like many African nations, puts a great deal of concern on human relationships, often elevating them above economic or social progress in various areas. At the same time, however, concern for the dignity of diverse ethnic groups will greatly benefit the nation as a whole. Thus, the emphasis the Ethiopian Constitution places

339. See Van Doren, *supra* note 39.

340. See *id.* at 165, 187, 201–04.

341. *Id.* at 165.

342. See *id.* at 194–96.

343. See *id.*

344. See Van Doren, *supra* note 39, at 203–04.

on human rights and democracy can be seen as the result of Ethiopian culture implementing what it believes to be important into a western "format."³⁴⁵

To say, as Mattei and Haile suggest, that a constitution must ignore the ethnic element, is not correct. The non-ethnic element of western systems simply fails to compare with Ethiopia. With time, Ethiopia can shift emphasis away from this issue. But, as it grows economically and develops its infrastructure, and in turn, its identity as a single unified nation, ethnic groups must be satisfied with their political participation and know that they are respected and empowered by their Constitution. Marcus strongly believes such recognition is necessary for Ethiopia to maintain unity:

More recently, the Oromo and other groups have strongly asserted their national rights. If Ethiopia is to survive as a corporate body, its peoples must feel that their cultures and languages are being safeguarded by the government. Cultural and political autonomy must be respected as a matter of right. Otherwise, the state will split apart as the minorities compete for power.³⁴⁶

Haile fears the secession of Eritrea as an example of things to come for the other states.³⁴⁷ Eritrea, however, is unique in that its secession is partly due to influences whose roots go back over a hundred years.³⁴⁸ Besides its separation from Italy³⁴⁹ as a colony over a century ago,³⁵⁰ this difference was compounded by the Arab world making more substantial efforts to "Arabize" Eritrea,

345. For a recent discussion on the failure of western principles applied to Africa and Ethiopia, see Dave Peterson, *Finding African Solutions to African Problems*, THE WASH. Q., June 22, 1998, available in 1998 WL 12303558.

346. MARCUS, *supra* note 14, at 219.

347. See HAILE, *supra* note 40, at 4, 32-35, 45.

348. Erlich suggests that Eritrea's secession resulted from factors over a century ago: A series of dramatic events at the end of the nineteenth century in Ethiopia would shape much of its twentieth-century history. First, Ethiopia collided with Western imperialism and emerged victorious. *The confrontation with the Italians in Massawa led not only to the loss of Eritrea (establish as an Italian colony in January 1890).*

ERLICH, *supra* note 25, at 65 (emphasis added).

349. For a full discussion on the relationship between Italy and Ethiopia, see ALBERTO SBACCHI, LEGACY OF BITTERNESS: ETHIOPIA AND FASCIST ITALY, 1935-1941 (1997).

350. See SPENCER *supra* note 15.

making it culturally distinct from the rest of Ethiopia.³⁵¹ Eritrea possesses the largest concentrations of Arabic speakers.³⁵² Eritrea was also utilized by Italy to police Ethiopia, and it was Menelik II who made the historic secession of Eritrea.³⁵³

Ethiopia as a whole is already experiencing the strife of the Eritrea secession. The states understand the result if they secede. Thus, the circumstances surrounding the secession of Eritrea do not compare to the potential secession of other Ethiopian states. Secession is more complicated than a mere bargaining tool which the states can use whenever a political conflict develops. Perhaps Haile's analysis of the secession of Eritrea stems from his unwillingness to note Eritrea's historical context, and his failure to substantially and legally equate such differentiation to the extent of its right to secede. Thus, because Haile so strongly believes that Eritrea belongs united with Ethiopia, this belief results in its right to secession being no greater than any other Ethiopian state.³⁵⁴ While it is not argued here that Eritrea belongs united with Ethiopia, the point is that it differs historically and culturally enough that forecasting analogous future secessions by other Ethiopian states is flawed.

Moreover, there is no alternative to division of the Ethiopian federal system. Abbink confirms "[t]here is no going back to a unitary state structure in Ethiopia which denies ethno-regional differences and rights, or which lets one group dominate the state."³⁵⁵ The United States, Canadian and Australian models may *seem* to have a blind eye to ethnicity, but Anglo-Saxon Protestant groups dominate in all of these systems, although other ethnic influences are changing it as time goes on. Thus, scholars such as Mattei and Haile have two major flawed suppositions: (1) you cannot compare the cultures of Ethiopia to the United States, Canada or Australia and argue that the problem is purely legal; and (2) arguing that you must have a more unified federal system

351. See ERLICH, *supra* note 25, at 151 *et seq.* Chapter 12, "The Arabs, Ethiopia, and the Arabism of Eritrea."

352. REDDEN, *supra* note 9, at 18.

353. See MARCUS, *supra* note 14, at 91-92.

354. Haile's article, explicitly discussing this issue with Eritrea, brings a strong argument to this proposition. See generally Minasse Haile, *Legality of Secessions: The Case of Eritrea*, 8 EMORY INT'L L. REV. 479 (1994).

355. See Abbink, *supra* note 40, at 174.

with little emphasis on ethnic consideration is wrong. To say otherwise means that one ethnicity must dominate, a fact that is true of the western systems.

Abbink may have forgotten the United States suppression of the Native American and African-American populations. Certainly, if the United States Constitution took into consideration ethnic groups, slaves would not have been regarded as "chattel," nor would slavery have been condoned.³⁵⁶ The history of what the United States Constitution has allowed against various ethnic groups must be considered before one can put forth the proposition that Ethiopia's Constitution should not consider ethnicity, and use the United States Constitution as a model. In Ethiopia, the Amhara has dominated for hundreds of years and Ethiopia needs time to develop a more integrated dominant culture before the ethnic considerations can be set on the back burner. It needs time for the groups to let out steam and cool. Only then can it grow.

Ethnic groups today are experiencing the seeds of equality after centuries of disharmony. For example, out of the eighty ethnic groups in Ethiopia, some, such as the Oromo, who were subjugated during the nineteenth century, are now experiencing a greater say over their own affairs. The U.S. State Department notes this: "With federalism . . . citizens of the Oromiya now have a greater say over their own affairs and resources. Primary school students are taught in their local languages, consistent with the

356. James MacGregor Burns and Stewart Burns are an example of the primary discussion on this issue:

Slavery was no where explicitly mentioned in the Constitution and thus was at the very least condoned. Madison in 1787 had said that it would be 'wrong to admit in the Constitution that there could be property in men,' but he had also assured the Virginia ratifying convention that 'no power is given to the general government to interpose with respect to the property now held by states.' Slaves appeared in the document only by implication, as the 'such Persons' with whose importation Congress was barred from interfering before 1808, as the 'other Persons' valued at three-fifths of 'free Persons' in the apportionment of representatives and taxes, and as those 'held to Service or Labour' who, if they succeeded in fleeing to 'free' states, had to be returned to their owners. Despite Madison, the American Constitution indeed regarded slaves not as citizens or as beings endowed with unalienable rights but as articles of commerce, as property.

JAMES MACGREGOR BURNS & STEWART BURNS, *A PEOPLE'S CHARTER, THE PURSUIT OF RIGHTS IN AMERICA* 60 (1991).

new Constitution.”³⁵⁷

The federal regions divided along ethnic guidelines have a great deal of independence and they are increasingly autonomous, particularly regarding fiscal and political issues.³⁵⁸ The relationship, however, as the State Department observes, has not “yet been finalized.”³⁵⁹ The Report notes that much of the trouble with the implementation of federalism has been due, not to the Constitution and the choice of ethnic federalism, but rather, “a history of highly centralized authority, great poverty, the civil conflict, and unfamiliarity with democratic culture.”³⁶⁰

Some student commentators, such as Derege Demisse, believe that the world-wide trend in secession is the result of governments failing to recognize their ethnic groups as they should, although he believes that the Ethiopian model may go too far:

Maintaining territorial integrity may no longer remain as the best means of maintaining world stability. The lessons of recent developments around the globe resound the calamity that awaits the world if nations continue to deny their own people the right to self-determination. Troubled nations currently face two options: They can either make serious substantive and structural changes in the way they organize society, or perpetuate the old ways and let the trend of secession dictate the future.³⁶¹

The Ethiopian Constitution’s grant of secession to ethnic groups is indeed the result of former Ethiopian governmental failure to recognize equality among the nation’s ethnic groups. Other commentators have recognized a similar problem today in international conflict as a “blind spot” in international law. Jerome Wilson concludes:

The present approach of international law to groups and group rights is statist, historically outdated, and politically naïve. As a result, it is unable to comprehend, and therefore, to address the

357. 1997 State Dep’t Report, *supra* note 146, at 11.

358. *See id.* at 1.

359. *Id.*

360. *Id.* For a view with no mention of the problems with implementing democratic and human rights, see All African News Agency, *Ethiopia Admits to Human Rights Violations*, AFR. NEWS SERVICE, June 1, 1998, available in 1998 WL 11856927.

361. Demissie, *supra* note 261, at 191.

phenomenon of ethnic conflict, which is one of the major threats to human rights in the world today. Only by taking account of current developments in international politics and evaluating the need for group rights from a human rights (as opposed to statist) perspective will international law be able to perform its intended role of promoting freedom, justice and peace in the world.³⁶²

Wilson also states that the dangers of ethnic rights to self-determination are noted, but ethnic rights should be balanced with rights for self-determination on a case-by-case basis.³⁶³

The view from Professor Bereket Habte Selassie on self-determination for ethnic groups is stronger, although he does await the final outcome with a positive hopeful concern, labeling Ethiopia's "ethnic-based federal arrangement" as a "bold and imaginative type of national engineering."³⁶⁴ Selassie states that in order for the Ethiopian system to succeed, "mutual trust among the component parts and strong federal institutions are critical prerequisites."³⁶⁵ Selassie notes that despite the criticism of many about ethnic federalism in Ethiopia's Constitution, the secession mechanism may relieve ethnic tension:

The EPRDF³⁶⁶ view is that, rather than stimulated nationalism (which has been stimulated enough already), the right to secede would defuse ethnic discontent. Even opponents admit that the availability of this constitutional right would so color Ethiopian politics as to make its exercise less likely and less violent. In any event, the exercise of the right is governed by intricate procedures that place many hurdles to be passed, thereby

362. Wilson, *supra* note 260.

363. *See id.* at 484.

364. Habte Selassie, *supra* note 259.

365. *Id.*

366. Ethiopian People's Revolutionary Democratic Front was the government in power who implemented the 1994 Ethiopian Constitution.

In May 1991, the much hated and brutal military-Marxist dictatorship that traumatized Ethiopians for seventeen years was finally overthrown. The major military, if not the political, forces responsible for the demise of the dictatorship (known as the "Derg" in Amharic) were the Ethiopian People's Revolutionary Democratic Front (EPRDF) and the Eritrean People's Liberation Front (EPLF). Upon the fall of the Derg, the EPRDF quickly proceeded to assume 'state responsibility' pending the formation of a transitional government.

Alemante G. Selassie, *Ethiopia: Problems and Prospects for Democracy*, 1 WM. & MARY BILL RTS. J. 205 (1992). *See also* JOHN H. SPENCER, *ETHIOPIA AT BAY: A PERSONAL ACCOUNT OF THE HAILE SELASSIE YEARS* (1985).

providing all those concerned the time and motive to reconsider the last resort of secession.³⁶⁷

Haile is correct regarding the Constitution creating an “ethnic federation” as a federal system that develops states from ethnic guidelines.³⁶⁸ He suggests the Ethiopian states present a problem because each state has a dominant ethnic group that subverts the influence of minority groups. Such a system will inevitably develop parties based on ethnic guidelines. His assertion, however, is also incorrect because there is no other system applicable to Ethiopia. Any other approach will inevitably create even more problems. Would a system based on a more random or ethnically-blind guideline, such as the United States be superior? Some states were developed out of just such a pragmatic division of land. Most states, however, have their own cultural identity.

The problems inherent in divisions involving ethnic groups can be seen in Canada where the French-Canadian province of Montreal is threatening secession. The division of states in the United States seems less “ethnic” because the population as a whole was homogenous in race and religion. To develop a system that divides the Ethiopian State into other divisions will face obstacles far greater than the current ones. Imagine the conflict when one state is granted more of its original territory than another state. Even if all states are rearranged in a mathematically equal fashion, who determines which method to use? Some states would certainly be affected more than others. The system of ethnic dominance will likely prevail because some group will come to dominate. It is not the legal system in Ethiopia, nor the issue of ethnicity within the Constitution, that creates problems, but rather the existence of the great ethnic diversity in Ethiopia and centuries of ignoring minority ethnic groups.

The fear that “[t]he tribal homelands will have other extensive and dangerous powers conferred upon them and their individual capacity by the Constitution,”³⁶⁹ is misplaced, for Ethiopia has always been one single unified nation and will remain that way. The only relevant worry is that minority groups within each state will require protection of their rights and

367. Selassie, *supra* note 259, at 128.

368. See Haile, *supra* note 40, at 10.

369. *Id.* at 82–83.

mechanisms for equal representation at the state level, and whether the Constitution provides for this popular control.

The United States Constitution can be commended for its ability to be organic and instill the ideals that become increasingly apparent as American society progresses economically, politically and culturally. The Ethiopian Constitution seeks to instill rights at the level of a highly-developed industrial society. This is commendable, but the mechanism must also be instilled for the country to prosper economically.

2. Ethiopia's Continued Economic Failure

Ethiopia has recently shown signs of a growing economy capable of becoming an agricultural giant. The economy, however, is in danger due to an abundance of democratic and humanitarian failures.³⁷⁰ The many failures can fairly be attributed to a system ill prepared to meet the demanding investment and economic growth of a rapidly developing country. The root of Ethiopia's many problems can be found not only in the country itself, but in Africa as a whole.³⁷¹

Many factors contribute to Africa's poor capacity for economic development, such as a high level of corruption and uncertainty in business and other transaction.³⁷² Although Ethiopia is reportedly superior to many African nations in regards to corruption,³⁷³ it nevertheless displays symptoms.³⁷⁴ Proper

370. For a full discussion on the Ethiopian Economy, although older discussion immediately after the Marxist overthrow, see *THE ECONOMY OF ETHIOPIA* (Keith Griffin ed., 1992); JAMES PICKETT, *ECONOMIC DEVELOPMENT IN ETHIOPIA: AGRICULTURE, THE MARKET AND THE STATE* (1991).

371. See Wa Mutuna, *supra* note 256.

372. This is not to say, however, that the legal structure of many African nations stifles foreign investment. To the contrary, legislation is pushed to promote it. See, e.g., T.O. ELIAS, *AFRICA AND THE DEVELOPMENT OF INTERNATIONAL LAW* 233 et seq. (1972) (Chapter 12, "The Law of Foreign Investments in Africa: An Outline" discussing *inter alia* Nigeria). But see United States Department of State, Bureau of Consular Affairs, *Tips for Business Travelers to Nigeria* (July 1993). "A major development affecting business travelers to Nigeria is commercial fraud or scams." *Id.*

373. Some Middle Eastern nations are not immune from corruption and in analyzing Ethiopia, one must not forget the ties of Ethiopia, not only to Africa, but the Middle East. See, e.g., ERLICH, *supra* note 25, at 159.

374. See 1996 State Dep't Report, *supra* note 273, at 2, reporting that, some of Ethiopia's actions are helping fight against corruption:

[The Ethiopian Government] sought to strengthen the judiciary; additional civil and criminal judges were trained and assigned to regional courts, while efforts to

economic development requires certainty. Investors should not have to worry whether their money is going in the right hands. They should not have to worry about how many bribes it will take to complete a particular transaction or order of business. They should not have to worry about whether those they are turning their money over to are really who they claim to be. When the economists of a country are forced to deal with these concerns, the economy of that country will be severely hurt by the stigmatization. Ultimately, everyone in the country will suffer. True prosperity for Ethiopia can only lie in a system whose Constitution commands no corruption.

Corruption is evidenced by the abundance of democratic and human rights failures. Despite the Ethiopian Constitution's demand of those rights, they have reportedly been violated almost immediately after the Constitution's implementation. The problem can be attributed to the fact that the Constitution focuses on the nuances of those rights while failing to adequately address Ethiopia's infrastructure. The best foundation for human rights and democracy is one made of economic prosperity and a high standard of living. The moral and political culture of the nation must set the proper stage for development and growth. This includes agriculture, industry, intellectual property rights and a stable political structure. Both political and ethnic stability, regardless of the potential autonomy the Constitution grants ethnic minorities, will only surface in an Ethiopian state that

eliminate judicial malfeasance resulted in the dismissal of many others. The Government sought to enhance transparency and accountability by publishing in state media several detailed reports of officials who were jailed or dismissed for abuse of authority, corruption, and violations of human rights. Governmental transparency, however, remains a problem. In October, the Deputy Prime Minister and Minister of Defense was dismissed from all official posts for corruption.

Id.

The Government is making concerted efforts to identify and train replacements for many lower court judges. Many judges were hastily appointed in 1991 and were subsequently dismissed for corruption, incompetence, or abuse of authority. The Government, aware of the severe lack of trained staff in the judicial system, began in 1995 to place greater emphasis on training new judges and prosecutors. Senior government officials charged with judicial oversight estimate that the creation of a truly independent and skilled judicial apparatus will take several decades. The Government has welcomed foreign financial and technical assistance.

Id. at 4-5.

minimizes corruption and maximizes its structural development.

The improvements to Ethiopia's infrastructure are increasing. With the new government since 1994, corruption is vanishing in many areas:

Although the government had to import almost 500,000 tons of relief grain this year to stave off an emergency (a larger tonnage by far than anywhere else in the world, the regime works.

With a sophisticated "early warning" system and, crucially, far more trust between the government and the international agencies, distribution of relief is efficient and virtually free of corruption. As a result, UN Officials now believe that a repeat of the 1973 or 1984 famines is almost inconceivable.³⁷⁵

Relief from famine is now crucial for Ethiopia because the country is heavily based on agriculture; "85 percent of the population of 58.5 million liv[e] in rural areas under very poor conditions."³⁷⁶ "Coffee accounts for about 60 percent of export revenues."³⁷⁷

Some observers claim that Ethiopia is among the worst of African nations in promoting a free market economy,³⁷⁸ while other observers have noted that the present Ethiopian Administration supports "not only elections, but decentralization, civil service reform and constitutional drafting."³⁷⁹ Ethiopia has "continued to implement an internationally supported economic reform program designed to liberalize the economy, attract foreign investment, and bring state expenditures into balance with revenues."³⁸⁰ The United States has advanced millions of dollars promoting recent legislative and executive elections in Ethiopia.³⁸¹

375. Jonathan Dimpleby, *After 25 Years of Famine and Disaster Returned to Find a Glimmer of Hope at Last*, Daily Mail, Dec. 8, 1998, at 6, available in 1998 WL 21418213.

376. 1997 State Dep't Report, *supra* note 146, at 1.

377. *Id.*

378. See Andrew Selsky, *World Press Column*, ST. LOUIS POST DISPATCH, Mar. 25, 1998, at 3, available in 1998 WL 3326776.

379. Susan E. Rice, *New Generation of African Leaders*, *Statement of Susan E. Rice*, Assistant Secretary of State for African Affairs Before the Senate Foreign Relations Committee, Subcommittee on Africa, U.S. Senate, CONGRESSIONAL TESTIMONY BY FEDERAL DOCUMENT CLEARING HOUSE, Mar. 12, 1998, at 3, available in 1998 WL 8993212.

380. *Id.*

381. *Clinton Will Extend Hand to "New Generation of Africans"*, Remarks by Susan E. Rice, Assistant Secretary of State for African Affairs, Thursday Luncheon Group, Blacks

Thus, there are some positive signs that Ethiopia's corruption is lessening, it is this author's belief that the development of Ethiopia's economy will be the key factor in determining whether this progress continues. This opinion is based in part on the United States State Department finding that it is the lack of resources that is causing the mandates of the Ethiopian Constitution to remain unfulfilled, not the Constitution itself.³⁸²

VI. CONCLUSIONS

After exploring the Ethiopian Constitution, the structure of the Ethiopian government, articles discussing the Constitution, and reports on the realities within Ethiopia in areas governed by the Constitution, several conclusions can be reached.

The problems of Ethiopia today are not necessarily based on weaknesses or structural flaws within its Constitution. While it is true that some structural flaws exist, such as its method for Constitutional interpretation, its broad and vague use of semantics in delineating rights and democracy, it is basically a sound constitution. Hopefully, the development of case law can help clarify its vagueness. Constitutional interpretation is more difficult to predict in the Ethiopian experimental version. Much of the outcome will rest on how the operation of the various governmental systems will affect the personality of the system, and the interpretation mechanism correspondingly.

The method of constitutional interpretation and the Federal Council are probably the simple result of Ethiopia's monarchical cultural history; its fingerprint on her "western" style Constitution. The Ethiopian Constitution may be idealistically and semantically similar to the United States' Constitution. Individual liberties, human rights and democracy, however, are not "western." They are just as "African" as they were "American" in the original thirteen American colonies under British monarchical rule, and as "British" as the British were under their weakening monarchical rule.

It is agreed, even by those such as Mattei, that the Constitution in Ethiopia has many cultural restraints. But that

in Government, Washington, AFRICAN NEWS SERVICE, Feb. 11, 1998, at 7, available in 1998 WL 6608634.

382. 1996 State Dep't Report, *supra* note 273, at 1, 4, 5, 9-11.

does not and should not prevent it from working. Professor Van Doren states that one can be caught up in "positivist" thought.³⁸³ That is, caught up in what is "written." An American writing just after the time of the ratification of the United States Constitution, however, could make a similar assertion about cultural road blocks. Women's rights in the United States, despite what the Constitution states, had cultural strongholds against them; during almost half of the Constitution's history, women in the United States could not vote. The United States Constitution also condoned African slavery.

Over time, the United States economy developed, and its economy has now become one of the world's strongest. Its citizens enjoy a high standard of living. The United States can now afford to care for the disabled. Women have gained more equal status in the wake of the industrial revolution. Only in the past few decades, however, has state-sanctioned segregation of African-Americans come to an end. Looking at the United States Constitution, understanding its meaning requires looking at more than the written document itself. Potential problems within a Constitution are dominated by the culture in which it is implemented. It is not the document that makes the law, but the people and culture that implement it. The positive law, however, can change to reflect the peoples' will, as clearly evidenced by the progress in the United States. Ethiopia may also take a long time to fully develop its constitutional law.

As written, the United States Constitution has allowed many unfortunate and tragic things. Although slavery and other inhumane acts were allowed, the Constitution provided positive written standards that would eventually become a tool in the elimination of the ills it was originally intended to abolish. The Ethiopian Constitution provides the same type of tools. After only four years, with a struggling economy, Ethiopia is striving to implement the Constitutional goals, such as judicial independence and promoting human rights, despite cultural roadblocks and lack of financial resources.

The theoretical "ethnically blind" Constitution is not what it seems. The United States Constitution mentions no ethnic group in its demarcation of states, yet the systematic eradication of one

383. See Van Doren, *supra* note 39, at 204.

of the United States' largest ethnic groups, the American Indian, was allowed. Haile overlooks this critical fact: "The 'classic federations' which have been historic successes, such as those of the United States, Australia, and Canada (except for Quebec), have not been primarily based on ethnicity."³⁸⁴ Professor Haile is correct in one thing: those countries are successes. Their constitutions were also ethnically blind, at least semantically. The cultures, however, were not ethnically blind, nor was the effect of their constitutions in the minds of the eradicated American Indians and Australian Aborigines. The Ethiopian Constitution is very young. Ethiopians, in all likelihood, do not want to go experience today, under an ethnically blind constitution, what the American Indian and Australian Aborigine went through over a century ago.

Ethiopia has many more ethnic groups that are a proportionately larger percentage of the population than the American Indians. After hundreds of years of Amharic dominance they simply want to be autonomous. Their presence is so pronounced that to divide Ethiopia into a federation by any other terms would create more problems than it would solve. Those, such as Haile, who adamantly criticize the Ethiopian system, offer no alternatives. Ethiopia's "ethnic" federation and the state right to secede will promote, at least psychologically, a feeling of ethnic equality. The history and realities in Ethiopia today should prevent another "Eritrea" from ever being realized. Eritrea's history and characteristics are unique. The right to secede and the constitutional road blocks should prevent any further secession. In light of the interdependence between Ethiopia and Eritrea, the current war will eventually be resolved, and hopefully they will enter into a new, more constructive relationship.³⁸⁵

384. Haile, *supra* note 40, at 10.

385. See MARCUS, *supra* note 14, at 218.

A sovereign Eritrea has to retain economic access to the Ethiopian hinterland, especially if Asmera builds a light manufacturing economy. Eritrea has always been a net exporter of people to Ethiopia, from where much of its food has been imported. This truth manifested itself during Axumite times and has been a fact throughout history. The economic symbiosis has not necessarily been reflected in the area's political allegiances. Although the coastal strip was for long periods not under its sovereignty, Ethiopia always used Mitsiwa and especially Aseb would wither as commercial centers. There is therefore a clear need for a

In sum, the Ethiopian Constitution has the makings of a grand tool that will promote democracy, human rights and individual liberties, despite some structural flaws. The key to Ethiopia's success will be its ability to promote economic development, which will be seen as time progresses. Hopefully, as the economy develops, so will the other rights so closely linked to the nation's economic prosperity.

If each tribe in Ethiopia claimed to be a separate nation within Ethiopia, surely it would result in Ethiopia's demise. Ethiopia as a nation of tribes would be disheartening. By recognizing Ethiopia's constituent parts, this situation can be averted. A Constitution that ignored Ethiopia's ethnic groups under the false veil of one culture, presumably the Amharic culture, before allowing Ethiopia a chance to develop a unique culture of its own, would blind the Ethiopian people to a strong ethnic reality and reduce their voice to the meaningless semantics of the Ethiopian Constitution. As Gibran also said, "Woe to the nation, whose sage is voiceless, whose champion is blind, whose advocate is a prattler."

relationship between Ethiopia and Eritrea that goes beyond the normal bilateral relations of neighbors. Over time, the two nations will have to forge a new political relationship reflecting economic realities.

Id.