

ETHNICITY AND CONSTITUTIONAL REFORM: THE CASE OF ETHIOPIA

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I. INTRODUCTION

Ethiopia has recently undertaken one of the most sweeping constitutional reforms in contemporary Africa. The foremost issue on the constitutional agenda, how to treat a patch-work of ethnic groups yet still maintain a viable central government, concerns most other African states that may one day soon

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have to rewrite their own constitutions in the post-Cold War reality. Unlike most of sub-Saharan Africa, Ethiopia has an ancient history which gives constitutional reform special meaning. Like most of Africa, the outcome has resulted more from the direct past than from ancient historical traditions. The Ethiopian Government has at least paid lip-service to federalism and federal structures. It has transplanted Western theories about federal structure in an attempt to solve its nationalities question—how to govern multi-ethnic societies. But these theories have yet to produce a completely satisfactory answer in the West. Even if they did produce a satisfactory answer, whether that answer would apply to Africa and to Ethiopia in particular remains still unclear.

The current regime in Ethiopia has introduced Western theories in order to define a modern state identity. In doing so, it has replaced the old indigenous Ethiopian identity with a new identity. The new identity does conform to Western ideas of the state; however, it is wholly artificial in Ethiopia. This article will explore some of the Western theories which have influenced constitutional debate in Ethiopia and will explore what lessons Ethiopia should take away from these theories.

II. ETHIOPIAN IDENTITY

A. *The End of Imperial Ethiopia*

Ethiopia has one of the most ancient civilizations in the world. Yet, like many ancient civilizations, Ethiopians never grew together in any homogeneous fashion, but rather fostered diversity over the millennia. The “Ethiopian” identity, for what it was, applied to a civilization, not to a tribe. In Ethiopia today, the various peoples speak nearly ninety languages, but they share millennia of interaction, common traditions, and a sense of civilization.¹ Despite their differences, they are all recognizably Ethiopian, not in the sense of sharing an ethnicity but in sharing a culture.² In the modern world, where ancient Ethiopia has had to interact with modern states, this hodge-podge has needed to come together into a coherent country: Ethiopia has had to forge an identity co-terminus with the state. This struggle has taken a good part of the last century.³

1. Teshome G. Wagaw, *Education and Language Policy in a Divided Ethiopia: Reversing the Quest of the Centuries and Pressing Toward the Uncharted Future*, in ETHIOPIA IN BROADER PERSPECTIVE: PAPERS OF THE XIIITH INTERNATIONAL CONFERENCE OF ETHIOPIAN STUDIES vol. III, 391 (Katsyoshi Fuku, Elisei Kurimoto, & Masayoshi Shigeta eds., 1997).

2. Menasse Haile, *The Ethiopian Constitution: Its Impact Upon Unity, Human Rights and Development*, 20 SUFFOLK TRANSNAT'L L. REV. 1, 22 (1996).

3. Seifudein Hussein Adam, *Systemic Factors and the Conflicts in the Horn of Africa*, in ETHIOPIA IN BROADER PERSPECTIVE: PAPERS OF THE XIIITH INTERNATIONAL CONFERENCE OF ETHIOPIAN STUDIES vol. II, 105 (Fukui et al. eds. 1997).

The ancient empire confronted colonial powers, brought in westernizing codes and theories, and finally met its death at the hands of a brutal communist dictatorship. Although there had been previous conflicts between the different tribes within Ethiopia, those conflicts never defined the groups as somehow parts of separate civilizations. Indeed, intermarriage and inter-settlement underscored the interdependence of the tribes and assured a fundamental Ethiopian identity. Contact with the West unleashed the nationalities question, and governments this century have tried to find different ways to suppress that question.

B. *A New Artificial Ethiopia*

The rebels who overthrew the communist regime came primarily from an ethnic group near the periphery; the Tigrayans. One of their primary concerns in taking over the state was granting the various ethnic regions autonomy. However, they, in effect, did not wish to relinquish the power they had newly won in the central state. The federal state they proposed did not match the one they put into practice. The issues which faced the new regime were much the same as those which faced previous regimes, with the difference being that the new regime professes to want to confront the issues in a more democratic manner, thereby enabling Ethiopia to develop into a functional and modern state in the global political system. The new regime must take into account ethnic differences, if only because these have surfaced as important to Ethiopians, but do so in a way that will preserve and strengthen the unity of Ethiopia, allowing for decentralization and ethnic tolerance while developing a distinct civil society for the entire state based in the central regime.⁴

The new regime, despite its announced intentions, has taken another fragmentative path, creating artificial regions and strengthening ethnic divisions while weakening the institution of the central government except to preserve the current government's own physical power. Ethnic groups do not necessarily constrict themselves to the regions proposed as the units into which the state has been sub-divided. Yet granting power to specific allied ethnic groups within each region furthers discrimination and leads to the ultimate breakdown of the human rights that the new Ethiopian regime proudly professes.

III. THE MEANINGLESSNESS OF BOUNDARIES

State boundaries rarely correspond with ethnic boundaries. This fact is especially true in Africa, where the boundaries reflect lines drawn almost arbitrarily by European colonial powers. The Europeans never envisioned that

4. James C. N. Paul, *Human Rights and the Structure of Security Forces in Constitutional Orders: The Case of Ethiopia*, 3 WM. & MARY L. REV. 235, 242 (1994).

these units would turn into viable independent states.⁵ For these states to become viable it is necessary for them to come to terms with their borders in one way or another. One solution, that the Africans redraw their boundaries, has been summarily discounted by virtually all outside academia. No matter how illogical the existing borders are, there is no theoretical reason that the states cannot find some way to work, given the right balance of constitutional structures. Finding the right balance is key: multi-ethnic states are commonplace in Europe as well, yet the nationalities' question persists there with no clear solution. Accounting for ethnicity and potential ethnic conflict remains the central issue in contemporary African constitution-writing.⁶

A. *Cross-claims with Somalis*

The main struggle between distinct groups within Ethiopia over the centuries has been religious rather than ethnic in nature. The bulk of Ethiopia's population is Christian, but there is also an important Moslem minority. For example, these religious issues defined the historic Amharic/Somali struggles more than the ethnic issues.⁷ The Somalis living in the Ogaden region present an additional problem to the Ethiopian state because they have more in common with Somalia than with Ethiopia proper, and are more inclined to seek justice in Somali tribal courts on both sides of the international boundary and trade with Somalia more than with the rest of Ethiopia. Their existence has largely remained peripheral to an Ethiopia content to let them get on with their own traditional existence, and they do not represent a challenge to the historic state, at least not until they get empowered to do so under an overly-decentralizing and destabilizing constitution.⁸

On achieving independence in 1960, Somalia staked a claim on the Somali-populated areas of Ethiopia. A claim that received some backing throughout Africa. In the context of decolonization and independence movements, the Organization of African Unity (OAU) responded with a resolution, still in place, calling for the inviolability of colonial boundaries. Despite the illogic of many of these boundaries, the OAU felt that such a resolution was needed in order to affirm the rule of international law and to reduce conflict between states. Ethiopia, however, had fixed its boundaries in conjunction with the colonial powers in the last century, and had an inherent interest in maintaining its own conquests, including those in the eastern Somali-

5. Jerome Wilson, *Ethnic Groups and the Right to Self-determination*, 11 CONN. J. INT'L L. 433, 440-42 (1996).

6. Haile, *supra* note 2, at 3.

7. Adam, *supra* note 3, at 107.

8. *Id.* at 109.

populated areas. Therefore, it exerted great influence over the proceedings of the OAU resolution.⁹ Nevertheless, Somalia continued to support a Somali separatist movement, one of the many ethnic or pseudo-ethnic separatist groups within Ethiopia which have grown in the last few decades.¹⁰

B. *The Fiction of Eritrea*

One part of Ethiopia did secede after the overthrow of the Communist regime was Eritrea, the former Italian colony along the Red Sea Coast. Islam has figured as an important element in the Eritrean issue as well. Historically, Eritrea has been as ethnically and culturally diverse as any other territory in Africa. Not only did diversity exist within Eritrea, but the tribal boundaries crossed the international ones. Two religions, Islam and Christianity, existed alongside each other as they did in neighboring areas. However, in the second half of the twentieth century the situation of Eritrea got recast as an ethnic one, with the Eritreans forming a supposed people. The impetus for this came from Moslem rebels who merely wanted independence from the Amharic – and Christian-dominated mother state.¹¹ Eritrea, however, exists as a historical fiction, created by the Italians in the late nineteenth century. The prior struggle between inhabitants of the region and the Ethiopian Imperial regime had never existed on ethnic grounds but rather on religious ones, and even then only in a portion of the population of Eritrea. With the creation of a fictitious Eritrea, however, some sort of regional identity could finally be used to counterpose against the Amharas. The struggle of the Eritrean people, then, is one of extremely recent creation.¹²

A well thought-out constitution would still accord the individual inhabitants of Eritrea their share of human rights, including the right to identify with their region as an integral part of the greater state. Indeed, if handled well, the creation of Eritrean identity could have been regional and non-ethnic in nature and a positive building-block for Ethiopian identity. In reality, an Eritrean people, historical fiction though it may be, was created this century and finally accorded recognition as a distinct people under the new constitution, because the Eritrean separatists had been the chief ally and supply conduit for the Tigrayan nationalists in overthrowing the Marxists.¹³ In return for their

9. *Id.* at 111.

10. Masahisa Kawabata, *Changing politics in the Horn of Africa*, in *ETHIOPIA IN BROADER PERSPECTIVE: PAPERS OF THE XIIITH INTERNATIONAL CONFERENCE OF ETHIOPIAN STUDIES* vol. II, 126 (Fukui et al eds. 1997).

11. Adam, *supra* note 3, at 108, 109.

12. *Id.* at 112.

13. Haile, *supra* note 2, at 7.

support of the victorious Tigrayan rebels, the Eritrean nationalists got what they wanted: secession from Ethiopia.

IV. SELF-DETERMINATION AND THE THREAT TO DEMOCRACY

A. *Ethiopia in Practice*

Although many Africans have cheerfully pointed to Eritrea's independence as a bloodless and amicable split (at least at the time of Eritrean independence — a bloody border war ultimately erupted in 1998), they have overlooked the meaning of the artificial ethnic struggle which underlies it, and indeed the threat that such a split poses to the future integrity of Ethiopia as a state. Furthermore, they ignore one other issue which undermines the democratic front put up by the governments of Ethiopia and Eritrea: that the separation was the product of an agreement between two unelected provisional governments, those of Ethiopia, dominated by the Tigrayan rebels, and of Eritrea, dominated by the Eritrean rebels, their close allies.¹⁴

The split with Eritrea actually underscores the undemocratic tendencies of the victors in Ethiopia's civil wars. The new Eritrean Government makes no secret that now that it has achieved independence through the sacred right of self-determination and democracy, it does not want to organize itself along the same lines. The regime in place in Eritrea has opted for a centralized and intolerant system of rule.¹⁵ Meanwhile, the new regime in Ethiopia has begun to impose itself upon the greater state, forcing its way while it still can. It has put up its own fronts within various ethnic groups when it does not feel it can sufficiently control the main ethno-political movements which dominate Ethiopian politics.¹⁶ And, of course, the primary way it has manifested its intentions is through the constitutional system it put in place.

The Tigrayans form a distinct, but small, ethnic group from the northern highlands. Tigray forms an integral part of Ethiopia, but the Tigrayans themselves have historically resisted domination by the Amhara majority. Through alliances with other ethnic groups and especially with the Eritreans, the Tigrayans finally had the opportunity to put their own vision of the state in place when they overthrew the dictatorship.¹⁷

14. Adam, *supra* note 3, at 115.

15. Kawabata, *supra* note 10, at 127.

16. Theodore M. Vestal, *Promises Unkept: Freedom of Association in the Federal Democratic Republic of Ethiopia*, in ETHIOPIA IN BROADER PERSPECTIVE: PAPERS OF THE XIIITH INTERNATIONAL CONFERENCE OF ETHIOPIAN STUDIES, vol. II, 178 (Fukui et. al. eds. 1997).

17. Alemante G. Selassie, *Ethiopia: Problems and Prospects for Democracy*, Institute of Bill of Rights, *Winds of Change: Perspectives on the World's Search for Stable Democracy*, INST. OF BILL OF RIGHTS LAW, 35 (1993).

Although constitutions exist in part to delineate and limit the powers of government, the new constitutional framework in Ethiopia fails to accomplish this. Despite its seeming constitutionalism, the new regime maintains power, which in turn means power remains in the hands of those ethnic groups, primarily Tigrayans, who occupy power because of their position in overthrowing the former Marxist regime. The presumed democracy now extant in the country merely represents a new form of dictatorship based on institutionalized tribalism rather than a civic society which can effectively promote democratic structures, human rights, ethnic harmony, and state unity.¹⁸

B. *Western Theory Transposed*

Due to settlement patterns over centuries of history when modern states formed without regard to ethnicity, state boundaries did not come to reflect ethnic demarcations in contemporary Europe either. However, as ethnic movements of various sorts became important in the age of nationalism, modern states had to consider how they would deal with the problem. Many countries had the opportunity to consider constitutional reform, either because their states were more recent creations or because of war and occupation. Many of these issues which political theorists grappled with remain present. Therefore, to properly consider current situations in any country — European, African, or other — it helps to assess the broader theory behind attempts to deal with similar problems.

Europe has had several multi-ethnic states and numerous constitutional regimes which have tried to deal with these issues. The Austrian Empire was perhaps the most notable due to its diversity and its ultimate spectacular failure. Spain has been more successful at keeping itself together, but nevertheless has found its question of nationalities to be the critical issue to dominate its constitutional debate for over a century. Its current constitutional arrangement — the *Estado de las Autonomías* — is much studied today as a successful mix of regionalism and federalism with state supremacy. However, although the Spanish Constitution has come to serve as a model for developing states, it has not fully addressed the concerns of its minorities to the extent that the issue continues to dominate Spanish constitutional debate. If the system is not right for Spain, for which it was designed, then it is less likely to be successful in culturally dissimilar African countries like Ethiopia or South Africa, which take it as a model. The Africans can, however, study the debate in other countries to learn lessons which might be applicable to them.

Spain is actually an apt example for Africa because it remained one of the last large states in the West to develop economically, and its constitutional

18. Haile, *supra* note 2, at 5. Selassie, *supra* note 17 at 29.

debates corresponded with its industrial development. Industrialization brought Marxist thought into the mix, something which has also influenced Africa and which mixes uneasily with the treatment of ethnicity thanks to Marxism's traditional dismissal of ethnic issues.

The modern "nation" emerged as an important concept in Post-Enlightenment Europe, yet the multiple and contradictory definitions that historians, politicians, and the general population gave the word rendered it practically meaningless. To some, the "nation" corresponded exactly to the sovereign state; to others, the "nation" represented something more tribal in nature. These latter tribalist groups also often felt that the "nation" should correspond to the sovereign state, and that the existing states should be dismantled to allow for this. Although African countries did not form in the same way as European ones, post-colonial realities usually left one ethnic group in a dominant position, facing opposition from movements dominated themselves by specific ethnic groups.

To clarify, any study of this debate requires laying out definitions. The most common, and therefore the most confusing, word was "nation."¹⁹ Some, particularly groups which formed the majority and viewed the identity of the central state as essentially that of their own group, considered "nation" as synonymous with "state." Other large nationalities, such as the Germans, considered themselves a nation even though they possessed no single state until very late. Still other groups considered themselves nations even though they had no independent state, while other members of their own community denied their nationhood simply because they had no state. Still further, Marxism, which came of age at the same time as nationalism, denied the importance of ethnic demarcation as a primary element of identity, stressing the horizontal cleavage of class over the vertical cleavage of ethnic group in human society.²⁰ Karl Marx's strict economic interpretation caused him to overlook the cultural and historical psyche of peoples. Therefore, he, too, confused the terms "nation" and "state," viewing this element as a purely economic unit.²¹ Certainly, Marx would have completely discounted the tribes of Africa as worthy of preservation, and would have argued heavily in favor of some greater state to modernize and civilize their society. Recognizing ethnic differences within a constitution would have undermined this commonality.

But ethnic consciousness did exist, and it needed some definition. When they wrought the "nation-states" of modern Europe, the relevant forces merely

19. On the difficulty in defining this messy term and why it is best left unused, see LOUIS SNYDER, *ENCYCLOPEDIA OF NATIONALISM* 230-34, (1990).

20. WALKER CONNOR, *THE NATIONAL QUESTION IN MARXIST-LENINIST THEORY AND STRATEGY* 5-6, (1984).

21. *Id.* at 8.

acted out human nature: the desires of men to associate with those who most closely resemble themselves, especially in the face of real or perceived threat. Ethnic identities, as demonstrated through language, culture, and custom, have proven most fundamental in shaping the general world-view of individuals. Despite modernization and democratization, nationalism persists and any effective constitution in the modern world must therefore deal with the concept — either through openly recognizing it or through organizing the state along some sort of regionalist or federalist model which allows the forces of nationalism to have an outlet other than against the stability of the state.

In Africa, as in Europe, ethnic groups channeled their efforts into four distinct possibilities. Separatism and minority dominance of the state form the two possibilities on either end of the spectrum, and the bulk of minority ethnic movements have tried to take one of these two routes.²² In between those possibilities exist seeking protection within a multi-ethnic framework for the greater state and mere access to a non-ethnic state apparatus.²³ These last two are more difficult to accomplish, even in the European countries where these theories developed. Furthermore, a regime like the current one in Ethiopia can pay lip-service to one of these last possibilities, even within a written constitution, while effectively operating under one of the first two paradigms.

V. REGIONALISM

A. *Regionalist Theory from Spain*

The term “regionalism,” currently in vogue in several constitutional structures, emerged from nineteenth-century Spain. The concept became the cornerstone of a Catalan political party which acted on the general Spanish political scene and sought to govern all of Spain from Madrid at the same time as it wished to govern an autonomous Catalonia from Barcelona. The theorist behind the party was Lluís Duran i Ventosa, who supplied the term “regionalism” in order to distinguish clearly between types of “nationalist” objectives: the mere promotion of culture and regional autonomy on one hand and the micro-nationalist demand for ethnic self-determination on the other. The only drawback, Duran admitted, was that its root implied geography, not ethnicity, which he correctly feared would allow micro-nationalists a means to question regionalism as a movement of ethnic identity.²⁴ Indeed, in its contemporary guise in the late twentieth-century, regionalism has taken on the overtones of a mere administrative reform rather than a recognition of the

22. Adam, *supra* note 3.

23. *Id.* at 110.

24. LLUÍS DURAN I VENTOSA, *Regionalisme i Federalisme*, 10F (1905).

inherent rights of whatever ethnic group forms the majority of the population within a given autonomous or semi-autonomous region.

Respecting historical accidents that established modern states, historic regionalists stressed cooperation between all groups for the benefit of all groups. When ethnic affiliation alone becomes the determining factor of a state or region, then citizens of different groups are necessarily, by definition, excluded. When dividing states into their respective historical regions, the cultures of the groups which formed the majorities within the regions better be promoted, but not at the expense of that region's minorities. In Duran's terms, the importance of the greater state served as a "guarantee and union based on mutual respect of the rights of every [group]."²⁵ These regions must, according to this concept, remain federated within the state. Duran's federalism was the "regime of convenience of political organisms bound in permanent union without the loss of their respective personalities."²⁶ Once the groups within a federation learn to trust each other and to cease thinking of others by ethnic classification, then a firm federation could acquire unity and loyalty to a greater state without abandoning particularism, such as in the United States, which had the advantage of not being settled in the traditional tribal manner, but rather found itself mixed from its outset as a haven for many peoples.

Another crucial distinction, realized early by the United States, is that between "federation" and "confederation."²⁷ As Duran explained, federalism is the "union of nations [nationalities] for a common end," while confederation consists of "separate states, that work together for common interests."²⁸ The federation remains one state, and thus represents a more effective way to accomplish common government and establish true equality of nationalities within one entity. Since confederate states are nominally independent, the entire unit can function less effectively, and the former regional character becomes synonymous with the state's. Regionalists, therefore, have rejected this confederal solution as well. They have argued, as with completely independent states, when the identity of a tribe or people equals that of a state, then the citizens lose loyalty to any greater concept of state, and thus to any concept of multi-ethnic government.

25. *Id.* at 102.

26. *Id.* at 13.

27. The thirteen original American states initially banded themselves together with the "Articles of Confederation" in which each state maintained a large degree of independence. This became unworkable if these states wished to operate effectively as a single unit, and thus the United States Constitution established a federal structure. Duran, like many conservative thinkers, greatly admired the United States Constitution.

28. 28 Duran, *supra* note 24, at 96.

B. *Regionalism Applied in Ethiopia*

The contrast with how the term “regionalism” is now being employed in Ethiopia bears this out to some degree. The regions which the current Ethiopian regime has created are somewhat artificial, but are meant to represent dominance by particular ethnic groups. In Ethiopia, this has fostered confusion because the structure of Ethiopian society was one in which regional divisions did not have accompanying ethnic demarcations of any great importance, but which, through their existence, are fostering tension where it did not exist before. This is not Duran’s regionalism: the regional boundaries do not have any historic basis and are being used to create ethnic conflict by a governing regime that sees the division of Ethiopia as one means of dividing the country’s society to make it more governable by those who currently control the reins of government.

The new Constitution in Ethiopia divided the country into fourteen regions based on presumed ethnic demarcations, not on historic boundaries. Every citizen, therefore, must assume some sort of ethnic identification — either the majority one of the region or a minority within a region dominated by another group. Regions themselves have ethnically-divided sub-divisions to account for this. The regions and sub-regions have broad cultural and linguistic powers, and ultimately the right to secede.²⁹ Rather than producing a more loyal Ethiopian citizenry, this results in greater fragmentation. The so-called “federal” government is nothing more than a collection of near-sovereign, tribally-defined units which effectively undermine the unity of the Ethiopian state.³⁰

Such a situation renders Ethiopia’s federal government virtually extinct. No real power remains in the center, but rather has passed fully to the ethnic regions, and can pass still further to any other ethnic claimant which seeks to fulfill the right to ethnic self-determination in the constitution. Constitutional sovereignty rests not in the Ethiopian people, but in the nationalities.³¹ For the concept of self-determination to work as a centripetal rather than centrifugal force within a multi-ethnic state intent on preserving itself, the emphasis must remain in individual rather than group rights.³² So many powers have been devolved in the constitutional framework that virtually nothing remains in the hands of the federal government. The powers that do remain with the federal government can be scrutinized by the Federal Council, a body composed of

29. Wagaw, *supra* note 1, at 397.

30. Haile, *supra* note 2, at 4-5.

31. *Id.* at 20-22.

32. Paul H. Brietzke, *Self-determination, or Jurisprudential Confusion: Exacerbating Political Conflict*, 14 WIS. INT’L L.J. 69, 72-89 (1995).

representatives of the ethnic regions which has final interpretive constitutional scrutiny.³³ One of the tenets of American federalism — checks on power by the various elements of government — does not exist in Ethiopia since the federal government has no means to restrain the regions.³⁴ The regions themselves, acting through the Federal Council, determine their own powers, up to and including secession.³⁵ That the country has not already ruptured (beyond the splitting off of Eritrea) represents not restraint on the part of tribal groups still loyal to the concept of Ethiopian citizenship, but rather the immense power the Tigrayan-dominated government maintains over all areas of Ethiopian society for the benefit of the government and its cronies in particular, and not for the benefit of Ethiopians in general.

The right to secede produces an open-ended chain of events, which can lead to the dismantling from within the state as ethnic groups feel no need to preserve a state they are not bound to, thus further fueling ethnic conflict.³⁶ A constitution which cedes powers and even territory without outside pressure merely to satisfy a component group's claims to self-determination is fundamentally suicidal.³⁷ The state-structure enshrined in the Ethiopian Constitution falls into this category in the long term since it has left no real power in the center other than that held by the brute force of the current government.

Furthermore, the federal government of Ethiopia has become associated with a single tribe in particular. When a specific tribe lends its identity to a federal regime, expressions of opposition naturally take the form of ethnic conflict against the regime. Ethnic opposition, now with its own territorial base in a federal system, manifests itself by expressing the interests of its own constituents, regardless of what is in the best interests of the state as a whole.³⁸ Each region sees itself for what it is: a distinct political entity. Ethnic federalism foments rival nationalisms which are by definition incompatible.³⁹ This fragmented political system, rather than promoting harmony and compromise between distinct groups, causes increasing conflict.

33. Haile, *supra* note 2, at 24-27.

34. *Id.* at 52.

35. *Id.* at 28-30.

36. INSTITUTE OF THE BILL OF RIGHTS, *supra* note 17, at 39-40.

37. Brietzke, *supra* note 32, at 77.

38. Haile, *supra* note 2, at 12.

39. INSTITUTE OF THE BILL OF RIGHTS, *supra* note 17, at 49.

C. *The Language Issue*

No where is this fragmentation more apparent than in the issue of language. The new constitutional framework in Ethiopia downplays Amharic, the most widely-spoken language in Ethiopia and the one in which the country has traditionally been governed. Because the main force within the current regime originated as a Tigrayan rebel group, the desire to undermine Amharic is, perhaps, not surprising. But preserving Amharic as the main language of the country would not necessarily mean sanctioning domination by Amharas, rather, it would provide stability to the entire state and make it governable.⁴⁰ Amharic could become the common language of government without infringing on the rights of non-Amharic speakers.⁴¹ But, since non-Amharas will now receive an increasingly diminished amount of formal education in Amharic, they will effectively lose access to the state apparatus. This will in turn further disconnect them from a sense of Ethiopian identity. The increasing use of English in the schools, justified as an international language, also will not help the situation.

Nationalist groups in the West at least admit to these tactics. In Catalonia, the Catalan nationalist government has gone against the Spanish constitution to decrease the amount of Spanish used in schools, and has even promoted English in its place so that Catalan students can learn to function in the global community. Between the world and Catalonia, Spain becomes irrelevant, with language the most tangible symbol of this trend. Just as the Catalan Government has tightened Catalan-language requirements in public services in Catalonia, so groups in Ethiopia have enough latitude to exclude other groups from active roles in what is, in reality, an extremely inter-mixed population. The difference is in the constitutions of the two countries: Spain's does not allow these actions but the Catalans succeed through political power plays; Ethiopia's specifically provides for this sort of fragmentation.⁴²

VI. REGIONAL STRUCTURES AND CIVIL SOCIETY

A. *The Tigrayan Regime versus Civil Society*

Some have questioned the motives behind writing the constitution in this manner. One belief suggests that the Tigrayans who dominate the current Ethiopian regime wrote the constitution in this way in order to give themselves some sort of an escape should they not succeed in dominating Ethiopia over the more numerous Amharas in the future. Their current political dominance

40. Wagaw, *supra* note 1, at 397-98.

41. Haile, *supra* note 2, at 36.

42. Wagaw, *supra* note 1, at 398.

serves as a means to undermine the Amharas even if the Amharas return to power.⁴³ In the very least, others suggest, the Tigrayans could only hope to continue to dominate Ethiopia if they adopted a “divide-and-rule” tactic. More sympathetic opinions have simply argued that any new government in 1991 had to undo the damage of the previous Marxist regime and that only an ethnic-liberative platform could inspire enough diverse people under the same banner. Once successful at overthrowing the regime, however, it would have become too difficult to turn back on promises of ethnic self-determination, lest the new regime fall in turn before it could establish a democratic framework for society.⁴⁴

The true test of the new regime will come when its ability to promote a democratic society can receive a full evaluation: how it uses the decentralizing process to put democratic principles into place and to bind Ethiopians to civil society in such a way that they can continue to regard themselves as members of an ethnic group and as adherents to a religion and as citizens of Ethiopia.⁴⁵ However, the structure of civil society under the current regime does anything but this. Instead, all civic activity takes place within the context of ethnic organizations. Although these organizations are themselves further organized within an Ethiopia-wide umbrella, they nonetheless effectively promote ethnic division instead of state cohesion.⁴⁶

B. *Regional Structures which Support Civil Society*

The South African example, under consideration simultaneously with the Ethiopian Constitution, provides the opposite use in that it shows how regional boundaries can be set up to mollify certain ethnic groups. It also shows that when the state itself is fundamentally unitarist in concept, conflicts will arise that will stir up unnecessary tension between tribes with distinct historical identities. Specific tribes may have territorial dominance over specific regions, but the regions themselves should have economic and historic viability for individuals’ loyalty to pass to both the region and the state. Failing this, the regions become the source, not the solution, for ethnic conflict.⁴⁷

43. *Id.* at 399-400.

44. Siegfried Pausewang, *Democratic Dialogue and Local Tradition*, in ETHIOPIA IN BROADER PERSPECTIVE: PAPERS OF THE XIIITH INTERNATIONAL CONFERENCE OF ETHIOPIAN STUDIES vol. II, 196 (Fukui et al. eds 1997).

45. *Id.* at 202-03.

46. Vestal, *supra* note 16, at 176.

47. See David Welsh., *The Provincial Boundary Demarcation Process*, in BIRTH OF A CONSTITUTION 223-30 (Bertus de Villiers ed. 1994) and Lawrence Schlemmer, *Regionalism in South Africa: Opportunities Missed*, in BIRTH OF A CONSTITUTION 242-255 (Bertus de Villiers ed. 1994).

Regionalist parties in Europe have generally been conservative, and as such willing, in the name of order, to compromise on many issues in order to allow for the greater functioning of the state. This has included compromise on language issues, which have often produced the most divisive debates in multi-ethnic states. As conservatives, they sought stability and honored the language of the central government as a means of preserving the state: the introduction of other (minority) languages by the political center would only have resulted in mass confusion. They also rejected the notion of redrawing regional boundaries in order to reflect language boundaries because of the mix of different ethnic groups within the regions. Historically-determined regions could allow for government in the predominant language of the region, but must also recognize the *Staatssprache* (the “language of state”). Thus, the Czech regionalists within the old Austrian Empire accepted German as this *Staatssprache*, but in doing so in no way implied a “German character” but, rather, an Austrian one, with German as the language of convenience.⁴⁸

The Austrian Empire spent its last half-century of existence trying to quench this situation. Germans formed the dominant group for historical reasons despite making up less than a quarter of the population. Slavs were the single largest racial group, but they were subdivided into several ethnic divisions so that Germans and Magyars formed the largest two ethnic groups within the Empire. Among the Empire’s defenders were many important Slav figures who argued for the preservation of Austria with a more federal structure. This would allow different groups to express their identities while maintaining a greater state structure, which would ensure prosperity and equal rights.⁴⁹ Conservatives and regionalists saw ethnic origin as only a part of an individual’s identity. More important was the unity of the state, which itself should have no specific ethnicity, only freedom of identity for all groups and individuals. Regionalists then saw themselves as regionalists of the state (e.g. “Austro-slavs”), not separate “nations” entitled to self-government either inside or outside their state.

Meanwhile, the rise of Czech industry produced anxiety in the Germans — especially within Bohemia, where the German population had traditionally controlled the only industries — but, the conservative government tried to harmonize the interests of the two groups for Austria’s maximum benefit. With the failure in the economic sphere, all solutions had to take into account the aspirations of nationalists in order to calm their intransigence, and here Austria was bound to come to grief. The continued failure to reconcile the desires of nationalists from German-speaking and other ethnic camps led to the break-up

48. František Palack, *Österreichs Staatsidee* 31F (1866).

49. František Palack, *Gedenkbätter* 152 (1874).

of the Empire a quarter of a century later. This happened especially as the common link for all of Austria's regions — the institution of the monarchy — was itself delegitimized by the growth of left-wing politics.⁵⁰

C. *Variations on Marxism*

An environment such as Austria produced some of the most cogent attempts to rectify nationalist theory with the Marxism which was also salient in Central Europe. The experiences of the Austro-Marxists made them believe that ethnic identity was more important than Marx had believed. The Austrian Socialist Otto Bauer described the natural conflict of interests between multi-ethnic states (*Natiohnalitätenstaaten*) and nation-states (*Nationalstaaten*) as the central struggle of Europe's entire question of nationalities.⁵¹ While Austria retained its central monarchy and Imperial institutions, the *Nationalitätenstaat* could survive, as radical groups pressed for their ethnic identities and the overthrow of the Habsburg Monarchy, they sought to give the resultant creation in Central Europe the character of one (for the Germans) or more (for the other nationalists) *Nationalstaaten*.⁵²

This clashed with standard Marxist theory, which, when confronted with nationalism, tends to group it into two classes: progressive (liberative) and counter-revolutionary (*bourgeois* capitalist means of defining state). Therefore, Marxists have often felt that some nationalisms deserved to be aided as a means to accomplish socialism, while others deserved to be fought.⁵³ Yet Marx himself showed scorn for the "*geschichtlose*" ("history-less") peoples which he saw as backwards and in need of being attached to more progressive "nations."⁵⁴ Marx's associate Friedrich Engels argued further that the mix of populations over geographic areas (and over history) made it impossible to (re)create ethnically homogenous states. Gradually, ethnic identity would cease to matter.⁵⁵ In practice, the Soviet Union worked — despite its apparent federal constitution — because the communist ideology, in reality, admitted no divergence from the party line. Ethnic groups found themselves channeled into manifesting support for the Soviet system, which remained federal in name and propaganda only.⁵⁶

50. The best overview of the period, focusing on a Conservative/Slavic coalition government, is WILLIAM A. JENKS, *AUSTRIA UNDER THE IRON RING, 1879-93* (1965).

51. Otto Bauer, *Die Nationalitätenfrage und die Sozialdemokratie* 187 (2nd ed. 1924).

52. HANS KOHN, *THE IDEA OF NATIONALISM: A STUDY OF ITS ORIGINS AND BACKGROUND* 18 (1949).

53. Conner, *supra* note 20, at 7.

54. *Id.* at 9.

55. *Id.* at 12.

56. Haile, *supra* note 2, at 16-17.

The Soviet Constitution admitted secession in theory, but the regime imposed centralized order in practice. Ethiopia's current regime wavers. If it wanted to leave secession in as a possible last resort to make ethnic groups feel more secure within Ethiopia, it could have accomplished this through other mechanisms. Instead, it copied Soviet constitutionalism without the intent to force the preservation of the central state at all costs.⁵⁷ In any respect, though, the Soviet system worked only for a time — nationalism outlasted even so repressive a regime as the Soviet one. Before they became ostensibly democratic, however, the Tigrayan rebels, who now dominate the Ethiopian regime, were avowed Marxists and extolled the virtues of such a system. Some of that optimism remains as a residual component of their thought.⁵⁸ However, should the Soviet-style federal system not work in Ethiopia as it has failed everywhere else, then the Tigrayans, themselves a distinct minority, do indeed have their own escape clause.

Classical Marxism tried to explain all history through economics, partially because Marx himself failed to grasp the complexity of human nature. Nationalism has proven more durable than he gave it credit for. Lenin accused many socialists of taking it too seriously, arguing that it was the mere by-product of — and discontent with — the human condition, and that therefore, it really existed as a socio-revolutionary force. The ethnic group, Lenin reasoned, was a false identity crafted by history and useful only if it furthered the international revolution.⁵⁹ The Austrian Bauer, while continuing socialist rhetoric, has nevertheless admitted a connection between micro-nationalism and oppression. Micro-nationalism grew out of the same concern socialism had: oppression by a certain conservative group. Even so, the existence of macro-nationalism gave him empathy for the minorities struggling to combat it.⁶⁰

Marxism has, of course, poisoned the debate in Africa as well. Classic European Marxists would have had less time for what they would have considered the primitive tribes of Africa than they did for Europe's *geschichtlose* peoples. However, this did not prevent the rise of African socialism. The military regime in Ethiopia which replaced the Empire, based its power on a Marxist-Leninist single-party state, which proved incapable of satisfying its utopian promises or even of maintaining order in society.⁶¹ It adopted a Marxist approach to the nationalities question, asserting on one hand the "right to self-determination" and on the other a non-nationalist state. The dictatorship released a quasi-constitution, the "Program of National Democratic

57. *Id.* at 32-35.

58. *Id.* at 43-44.

59. DOV RONEN, THE QUEST FOR SELF-DETERMINATION, 10 (1979).

60. Bauer, *supra* note 51, at 165.

61. Kawabata, *supra* note 10, at 126.

Revolution of Ethiopia,” in 1976, which declared that “no nationality will dominate another one since the history, culture, language, and religion of each nationality will have equal recognition in accordance with the spirit of socialism. The unity of Ethiopia’s nationalities will be based on the common struggle against feudalism, imperialism, bureaucratic capitalism, and all reactionary forces.” The document also guaranteed regional autonomy.⁶²

This typically Marxist approach failed to see the staying power of nationalism once that force was released. Indeed, none other than ethnic-based movements overthrew the regime. Chief among these were the liberation fronts from Tigray and Eritrea who both professed support for greater recognition of minority rights.⁶³ Both groups themselves had liberative Marxist backgrounds, which they conveniently downplayed to gain Western support against the Soviet-backed dictatorship.

D. *The Inapplicability of the American Model*

An American approach, though, would also not apply. To transplants, like the entire population of the United States, a just state easily assumes precedence in loyalty. Regions become mere administrative units designed to increase liberty by removing centralized control. Most importantly, ethnic settlement becomes secondary. In such a framework, dual-loyalty becomes practical and possible, but only for those who accept the framework. Such a system as American federalism could not work in Europe, nor will it work in Africa without taking local needs into account. Successful federations such as the United States and Canada did not form based on ethnicity. Therefore, states which have natural ethnic divisions cannot expect to adopt North American federalism wholesale. While ethnicity cannot be the guiding determinant of a federal structure, it cannot be ignored either.⁶⁴

Not least among the differences between the United States and African states are the founding principles. American colonists looked to establish a system to protect individual rights and to functionally federate states. These states despite their differences, were essentially similar and homogenous in population. Recent attempts at constitutions in Africa have sought instead to stress group rights, even to the point of assigning groups’ predominance within regional administrative structures. Rather than seeking to federate a bunch of colonies, African states are already extant within their boundaries — federation in Africa and following the American model would require breaking the state apart into components which would re-federate. Quite understandably, African

62. Wagaw, *supra* note 1, at 395.

63. Kawabata, *supra* note 10, at 126. *See also* Wagaw, *supra* note 1, at 396.

64. Haile, *supra* note 2, at 10.

leaders are generally loathe to do this. As a result, African attempts at federalism are bound to appear more unitarist.

E. *The Application of the Spanish Model*

It is here that the model of Spain becomes apt. Spain attempted administrative reform at the beginning of the twentieth century. This reform was thwarted by the liberal oligarchy that wished to preserve its hegemony. The Republic in the 1930s formed along a left-wing and in some ways socialist model which left little room for devolution in theory, but which in practice needed the support of the peripheral ethnic groups — especially the Catalans — and so had to grant autonomy within an otherwise unitarist state. The authoritarian regime of General Francisco Franco re-centralized power, and a newly-democratic Spain had to rethink the issue in the 1978 Constitution. The result was the “*Estado de las Autonomías*,” in which seventeen traditional regions were formed and were permitted to seek varying degrees of autonomy from the central government. Most of the regions concerned have no history of self-government, which has angered the so-called “historic” regions of Spain — Catalans have derided the system as “coffee for everyone,” and have declared that they did not want to see Catalonia become “another North Dakota.”⁶⁵ Without taxation powers, though, Catalonia in many ways has less sovereignty than North Dakota.

Within the context of the Spanish state-structure today, self-government does not necessarily mean independence. The Constitution of 1978 divided Spain into seventeen autonomous communities, based roughly on historic regions mostly to mollify the Catalan nationalists.⁶⁶ The Constitution technically “recognized” the regions rather than “constitute” them, thus, acknowledging their right to autonomy. However, the Constitution also spoke of the unity of the Spanish State, in the process denying any right to self-determination in the traditional sense of sovereignty.⁶⁷ The arrangement was meant to allow each region or “nationality” autonomy and local self-government within the Spanish state. As a trade-off, the principle of “self-determination” was applied to the Spanish state in its entirety, — as a democratic country, Spain was providing self-determination to all of its peoples, especially in as far as it allowed regional self-government. Within the

65. LLUÍS ARMET, ET AL., *FEDERALISMO Y ESTADO DE LAS AUTONOMÍAS* 115 (1998), quoting Jordi Pujol i Soley.

66. GREGORIO PECES-BARBA MARTÍNEZ, *LA ELABORACIÓN DE LA CONSTITUCIÓN DE 1978* 22-23 (1988).

67. Luis Sánchez Agesta, *Sistema Político de la Constitución Española de 1978* 397-399 (1993). See also González Casanova, *Notas Sobre Política Autonomista en las Nuevas Cortes in LA IZQUIERDA Y LA CONSTITUCIÓN* 66-68 (Peces Barba, et al. 1978).

Spanish Constitution of 1978, the State was paramount and controlled the distribution of power to the regions. According to the legal terms of the Constitution, as explained by its framers, the “nationalities” of Spain form components of the unitary Spanish “nation” and act as expressions of its “variety.”⁶⁸

F. Other Models

In many ways the system in South Africa resembles Spain more than the United States. In Spain, as in South Africa, the central state constituted the regions and gave the regions wide latitude to act — but only within the structures of the central constitution.⁶⁹ Although the constitution establishes regions and gives them powers to act locally, much of the real power remains in the center, where the constitution is enforced and interpreted, not to mention the power of taxation.⁷⁰ The Spanish Constitution of 1978 inspired the South Africans in another way as well, because it marked a transition from dictatorship to democracy, which had predicated the nationalities question as its primary concern. Even with this insistence that it would take its regional groups into account, Spain’s constitution avoided slipping into federation, something that enamored it to the forces dominant in the South African transition.⁷¹

The concerns of the Zulus — arguably South Africa’s most historic ethnic group — parallel Catalan concerns about their historic identity. The regions in the new South Africa are somewhat historic (not exactly, but the regions in Spain do not exactly correspond with history either) and delineate ethnic groups. But South African regions also have a far greater ethnic base by definition — in some ways, the unitarist tendencies of the main constitutional framers sought to include these regions in order to control and contain ethnic identity. As in Spain, however, there is a fundamental power-play between one important ethnic group which sees itself as more historically self-governing, and the central state. Reaction to Catalan demands in Spain has produced anti-catalanism on the part of many. This has also led to other regions, that might not think of gaining broad autonomic powers and might not otherwise have

68. Herrero Rodríguez de Miñón, SPEECH IN CONGRESS, FROM THE *DIARIO DE SESIONES DEL CONGRESO* (May 5, 1978), reprinted in *CONSTITUCIÓN ESPAÑOLA: TRABAJOS PARLAMENTARIOS* 639 (Fernando Sainz Moreno ed. 1980).

69. Villiers, *The Constitutional Principles: Content and Significance*, in *BIRTH OF A CONSTITUTION* 45 (Bertus deVilliers ed. 1945).

70. Ronald L. Watts, *Is the New Constitution Federal or Unitary?*, in *BIRTH OF A CONSTITUTION* 75-78 (Bertus deVilliers ed. 1945).

71. Daniel J. Elazar, *Form of State: Federal, Unitary, or ...*, in *BIRTH OF A CONSTITUTION* 30-35 (Bertus deVilliers ed. 1945).

supported such a provision, demanding broader powers to counter-act what is seen as a special treatment for Catalonia. The Zulus risk producing similar back-lash in South Africa. Yet, like the Catalans, the Zulus — or at least their leaders — do not want to risk losing their privileged position at the bargaining table with a central state with unitarist tendencies.⁷²

Some have suggested that the Indian Constitution could serve as an example for Ethiopia instead. Yet India has a more homogeneous identity manifested in the Hindu religion to which over eighty per cent of the population subscribes and which is uniquely Indian. India itself faces perceived external threats which outweigh the internal threats to its statehood — from China and Pakistan in particular, which represent another more formidable threat than Somalia or Sudan do to Ethiopia. And the Indian Constitution safeguards the central government in ways that the Ethiopian one — intent as it is on the issue of self-determination — fails to do. Fundamentally, therefore, the Indian Constitution, like the South African one, is not as federal as it professes to be.⁷³

VII. CONCLUSION

Ethiopia makes a stark contrast to all traditional state theories. The regions in the new constitution have no historic justification and purport to an even greater extent to correspond to ethnic subdivisions within society. However, those ethnic lines are often not clearly defined and so the new constitution there is virtually attempting to create ethnic groups. This a recipe for disaster. Ethiopia may not really require pseudo-ethnic regions to protect the rights of its citizens, on the other hand, Ethiopia may not be properly set up to allow a federal system along United States lines. The destruction of its ages-old monarchy meant the loss of the one main unifying force. Nevertheless, Ethiopia can continue to exist as a viable state if it finds the right degree of administrative decentralization and stable central institutions. Ethiopia has much to learn from Western — European and American — thought; Ethiopia need not copy Western models.

72. For a case study on the Zulus see Wilson, *supra* note 5, at 442-45.

73. Haile, *supra* note 2, at 17-19.