

Ethiopia: Problems and Prospects for Democracy

Alemante G. Selassie

Repository Citation

Alemante G. Selassie, *Ethiopia: Problems and Prospects for Democracy*, 1 Wm. & Mary Bill of Rts. J. 205 (1992), <http://scholarship.law.wm.edu/wmborj/vol1/iss2/4>

ETHIOPIA: PROBLEMS AND PROSPECTS FOR DEMOCRACY

by Alemante G. Selassie*

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.¹

With the demise of the Derg and the apparent end of the civil war that ravaged the country for over two decades, the call for “peace, democracy, and the rule of law” is on everyone’s lips — at home and abroad. Not uncommonly, after two decades of a cruel civil war and a brutal dictatorship, these ideals have captured the imagination of large numbers of people.

Accordingly, on July 1, 1991, the EPRDF called a national conference that culminated in the adoption of a Transitional Period Charter to function as an interim constitution. Pursuant to the Charter, a Council of Representatives was set up to govern the nation until a permanent government could be elected. The following year, local and regional elections were held, ostensibly as part of the effort to lay down the basis for a constitutional government in the future. Seventeen months later, the EPRDF continues to struggle for control of the nation and faces severe criticism for its failure to institute democracy.

To be sure, the adoption of the Universal Declaration of Human Rights as part of the Charter by the national conference is a propitious step on the road to democracy. The affirmation of these rights, in a country whose immediate past has been characterized by the grossest abuses, is historic and should stir the heart. Similarly, the Charter’s affirmation of the right of ethnic groups to develop their languages, cultures, and history is an appropriate response to the ethnic question that has bedeviled the Ethiopian state in the last two decades.

Notwithstanding these positive developments, it is accurate and warranted to characterize the EPRDF’s efforts as a failure. The failure to shepherd Ethiopia into a democratic state is evident in the very process by which the institutions of the transitional government were created and the Charter was adopted. The EPRDF deliberately excluded opposition groups when developing the legal and institutional framework for the new government. The EPRDF has further undermined the prospects for democracy by employing violent and undemocratic tactics to upset election proceedings in order to maintain power. The upshot of these policies is the illegitimate concentration of political power in the hands of the EPRDF and the absence of any demarcation between it, as the dominant party, and the state — a situation that confirms the French saying: the more things change, the more they are the same.

* Associate Professor of Law, College of William and Mary, Marshall-Wythe School of Law. The author would like to thank Belinda Hatzenbuehler and Christine Renda for their valuable research assistance in preparing this article.

¹ *New Deal for Ethiopia*, THE TIMES, May 29, 1991, available in LEXIS, Nexis Library, TTimes File.

I. HISTORICAL PERSPECTIVE

The reasons for EPRDF's failure are tightly wound up in Ethiopia's history, a past from which the country may not escape in the near future. Unlike the American belief in the "self-evident" truth that government springs from the will of the people, nations like Ethiopia have long held beliefs that power is derived from and located in an independent source.² Claiming legitimacy as descendants of King Solomon and the Queen of Sheba, the Emperors that ruled Ethiopia for more than two thousand years were the source of all law, and were subject to no rule but their own.³ Indeed, the individual was treated in law as a subject, not a citizen. The militaristic Derg that assumed control in 1974 derived its power initially from possession of the instrument of oppression (the barrel of the gun), which it then sought to legitimize by the universality of its socialist theories. It deemed nonacceptance of its program illegitimate, and branded anyone who disagreed a counterrevolutionary.⁴

The autocratic and totalitarian regimes that ruled Ethiopia until 1991 instilled no democratic tradition in the people; rather, dictators rose to power quickly and easily in a political culture that glorified and rewarded military strongmen. Ethiopia has had only these governments of men. The democratic ideal of the rule of law was never nurtured nor allowed to flourish among the people, who, instead, have been steeped in the strict tradition of absolutism. Thus, in its transition to a constitutional government, Ethiopia has neophyte citizens, and the present struggle for democracy is proving doubly difficult.

A. *Limited Vision of the 1931 Constitution*

In 1931, as part of his drive to reform and modernize Ethiopia, Emperor Haile Selassie endowed his people with the country's first constitution. It was promulgated in the spirit of a contract between the Emperor, representing the Solomonian dynasty, and the people as a whole.⁵ Haile Selassie, however, regarded the constitution as a gift to his people, which he gave "unasked and of Our own free will."⁶

The 1931 Constitution institutionalized a government responsible to the Emperor. While it established a parliament of two houses, Article 34 reserved full confirmation powers for the Emperor and effectively stripped the putative lawmaking body of its legislative role. The broadest power bestowed upon the Senate was the right to ask permission to discuss their own subjects rather than being restricted to those the Emperor put before them.⁷

Haile Selassie personally appointed the members of the Senate, and delegated the authority for appointing the Chamber of Deputies to the nobility until such time as the people

² Many European nations share Ethiopia's notion of being given rights by elites representing the state. In Poland, for example, its constitutions have never been perceived by the citizens as social contracts, as grants of power given to the government by the free people. Instead, the constitution was seen at times as a grant of privileges given by the sovereign state power to the population. Some earlier Polish constitutions acted only as a limit imposed on the power of the King by the nobility. Yet, in no way was the constitution ever a product of Poland's popular will. Wiktor Osiatyński, *The Constitution-Making Process in Poland*, 13 LAW & POL'Y 125, 128 (1991).

³ Their omnipotence is illustrated in the Emperors' title: "Conquering Lion of the Tribe of Judah, Elect of God, King of the Kings of Ethiopia." MARGERY PERHAM, *THE GOVERNMENT OF ETHIOPIA* 71 (1969).

⁴ EDMOND J. KELLER, *REVOLUTIONARY ETHIOPIA* 198 (1988).

⁵ PERHAM, *supra* note 3, at 71.

⁶ *Id.* at 96.

⁷ *Id.*

were considered ready to assume the task for themselves.⁸ In handpicking the members of the senate, Haile Selassie chose both a young, new elite who would be necessarily sympathetic to him, and members of the old nobility who, upon relocation to the capital, Addis Ababa, were gracefully relieved of their local responsibilities and power.

Although the Emperor appeared to be establishing a basis for the rule of law, the parliament was in fact powerless and merely a vehicle for the continued consolidation of his authority. The genius of this new arrangement, from Haile Selassie's perspective, was that it created the illusion of a modern parliamentary system and placated would-be critics while destroying the old power bases and further concentrating absolute power into his own hands.⁹

B. *The Inadequacy of the 1955 Constitution*

Five short years after the 1931 Constitution was introduced, the Italian occupation forced Haile Selassie to flee the country. Italy did much in a very brief period to destroy the Ethiopian empire by introducing modern economic institutions. When Haile Selassie returned to power in 1941, he was compelled by the people's newly formed expectations to continue the modernizing trend with a host of political, economic, and social reforms.

Contributing to the modernizing trend were the themes of independence and self-governance, predominant in many other African countries during the years following World War II.¹⁰ Haile Selassie was swept along by this current of political progress. In 1955, he introduced a revised constitution which provided for the popular election of the Chamber of Deputies, an increase in parliamentary authority, and a modest, though still far from satisfactory, recognition of personal liberties.

Differing considerably from its 1931 counterpart, the new constitution embodied significant changes: the acknowledgment of separation of powers, the introduction of a popularly elected body with actual legislative ability,¹¹ and the inclusion of twenty-nine articles addressing the rights of the people. Sadly, as with the few rights that were granted by the first constitution, these new rights were subject to suspension for any perceived threat to national security.¹²

The Ethiopian people remained without any true democratic institutions, yet, they had the concept of the monarchy as a guiding social myth that served to maintain basic order. The legitimacy of the Emperor was unquestioned by most. This fact, though, did not give the emperor freedom to wield absolute power. His power was unlimited by law, but it was somewhat constrained by tenets of religion, widely adhered to among his people. A certain amount of benevolence was built-in to his rule by virtue of this religious influence. Segments of the population, however, continued to strive for greater freedom than was ever accorded by Haile Selassie. In 1974, their discontent erupted in a military coup.

C. *Lost Chance in 1974*

The coup destroyed the ancient empire, completely and irrevocably. It has been said the revolution belonged to the people, who reacted to Haile Selassie's ineffective and

⁸ ETH. CONST. of 1931 arts. 31-32.

⁹ PETER SCHWAB, HAILE SELASSIE I: ETHIOPIA'S LION OF JUDAH 51-52 (1979).

¹⁰ KELLER, *supra* note 4, at 83.

¹¹ The only law ever enacted by this body was one to increase the salaries of its members. BABILE TOLA, TO KILL A GENERATION: THE RED TERROR IN ETHIOPIA 14 (1989).

¹² See ETH. CONST. of 1931 arts. 22-29, and ETH. CONST. of 1955 arts. 37-65.

corrupt feudo-imperial regime that had been in power for forty-four years. The military's cohesiveness and firepower, however, were the decisive factors in making the revolution successful. In fact, the Derg, as a "self-proclaimed vanguard, wanted to be the guardian of the revolution."¹³

Lacking the legitimacy that accompanied the monarchs of the previous two millennia, the Derg realized that the task of refashioning society on the underpinnings of entirely new institutions would be difficult without a social myth of its own.¹⁴ At this juncture, the opportunity to move toward democracy was rejected. With reverberations from the Vietnam War still resounding among the intelligentsia, the Derg gradually spurned United States' influence. Socialist ideas were in vogue. Thus, influenced by the mounting pressures for a revolutionary solution and a need for legitimacy, the Derg proclaimed Ethiopia a new socialist state with "national progressive unity" as its goal.¹⁵ With the benefit of hindsight, 1974 can be seen as a missed opportunity for Ethiopia to embark upon the road to democracy. Yet, at the time, the Derg was adamantly opposed to the importation of any foreign philosophies, wanting its form of communalism to be born of the population, inspired by ideals such as equality, justice, and cooperation.¹⁶

On December 20, 1974, the Derg began the formal embodiment of its ideals. First it claimed to believe in national unity above all by popularizing the slogan *Ethiopia Tikdem* (Ethiopia First). In the following months, the Derg implemented some of its economic policies by nationalizing all major enterprises and instituting a land reform program that ultimately ended up nationalizing all rural land,¹⁷ despite the contrary intentions of the original architects of the program. The land nationalization policy is an example of the Derg's misguided efforts. By nationalizing land, the Derg defeated the expectations of the peasantry, gradually destroyed the traditional farm system, and laid the groundwork for famines to recur with frequent regularity.

On the political plane, no sooner had the Derg assumed state power than it found itself facing a mounting civilian opposition. The opposition was divided along ethnic and ideological lines, but it was united by a common refusal to accept the military government's claim to rule. It was also united by a common demand for the respect of democratic rights, including the rights of ethnic groups to cultural self-determination. The military, rather than accommodating the opposition by sharing power, sought to stamp out opposition through a massive campaign of terror and repression.

In mid-1970 the Derg announced the Program for the National Democratic Revolution (PNDR), which incorporated the newly adopted principles of Soviet-style scientific socialism and established a body similar to the Soviet Politburo. The rise of Mengistu Haile-Mariam in 1977 accompanied this alignment with the Soviet bloc.¹⁸ Intolerance of any opposition, including peaceful protest, and a willingness to use force to stem opposition, soon revealed the Derg as a complete and brutal dictatorship.¹⁹ The modicum of democratic rights bestowed on the people by Haile Selassie quickly faded as this "Red Terror" period unfolded. This great oppression gradually led many opposition movements to take to the hills; others that were already there intensified their struggles in pursuit of their respective goals. For example, the ranks of the Eritrean movements swelled solely as a result of the Derg's repressive policies.

¹³ TOLA, *supra* note 11, at 25.

¹⁴ KELLER, *supra* note 4, at 191.

¹⁵ *Id.* at 193.

¹⁶ *Id.*

¹⁷ *Id.* at 193-94.

¹⁸ *Id.* at 200.

¹⁹ TOLA, *supra* note 11, at 54.

Mengistu Haile-Mariam fled the country on May 21, 1991, after seventeen years of civil and ethnic strife. The Derg finally attempted what appeared to be true conciliatory efforts with the EPRDF and the EPLF, whose forces were closing in on Addis Ababa in the center and Asmara to the north. The EPRDF, speaking to the masses, derided these overtures: "The people are telling [the Derg] today like before: changing the stove will not make the soup taste better."²⁰ The Derg finally fell on May 28, 1991.

While the rest of the world was celebrating the end of totalitarianism, the Ethiopian people were wary and suspicious of the new rulers pretending to take power in the people's name. The overnight renunciation of Marxist-Leninist ideology and the formal adoption of democratic ideals by the new rulers was not convincing to the Ethiopian who had grown up amid the same authoritarian atmosphere that, until recently, had been the sustenance of the EPRDF. Arguably, the population of Ethiopia was not ready for the transition even if it believed the propaganda. A society steeped in authoritarianism has generally fewer expectations and is less schooled in the ways of democracy than a constituency traditionally given a say in its governance.

II. ANALYSIS OF THE TRANSITION

A prognosis for the democratic transition presently taking place in Ethiopia requires both an analysis of the general process of transition and an analysis of the transition within the Ethiopian framework. The two major ways to transform a government are discussed below. This discussion is followed by an introduction to the party responsible for the transition in Ethiopia and the particular process it has employed thus far.

A. Two Different Methods of Transition

1. The Negotiated Transition

The term 'negotiated transition' implies a peaceful transition. It is non-violent, and negotiated in the sense that the existing government agrees to meet with the opposition elements to discuss and implement the goals of the transition. All political parties are involved in the process to ensure that the new system represents the will of all the people.

While the purpose of the negotiation is to arrange a new political order, the parties agree that the institutions of the existing government will remain in place and be refashioned only to the extent necessary to carry out the country's new objectives. They envision, therefore, a political reorganization with as little administrative disruption as possible. This approach avoids the necessity of building a new government from the ground up and is especially useful when the existing institutions are readily adaptable to the form of the new government.

Once the parties agree that the existing institutions can be manipulated to accommodate the transitional government, the next step is to write the new constitution. The decision to amend a pre-existing constitution or adopt a new one could profoundly affect the dynamics of the new state. It is a choice that implicates the relationship between the old ruling party and the new government, the allocation of power within the new

²⁰ *Commentary on Denying Dergues 'Breathing Space,'* F.B.I.S., May 23, 1991, at 4.

government itself, or between the center and the component units of the state. This decision was faced by the Czech and Slovak republics in December 1990.²¹

An additional issue the new government must address is the extent to which it will allow the existing institutions to dictate the character of the new system. When the old regime's constitution is merely amended to reflect the changes of the new political system, the tendency is for institutions to change only "in ways which those institutions themselves permitted."²² This fact "may throw the revolutionary character of the changes into doubt" if we accept the proposition that "political revolutions aim to change political institutions in ways which those institutions prohibit."²³ Consequently, the approach the new government takes in reforming the system foreshadows the extent to which it will be committed to revolutionary reform.²⁴ The more the new regime is willing to mold the existing institutions to meet the needs of the modern political system, the greater are its chances for prolonged legitimacy.

A willingness to meet the needs of the modern political system encompasses a certain amount of self-effacement. Rather than displacing the old regime for a new and improved (but essentially the same) regime, the transitional parties must regard themselves as conduits for the creation of a new brand of politics altogether.²⁵ Implicit in this arrangement is the agreement among all participants that they submit to the will of the people, and that the new institutions will become the law of the land, constraining all, including those who negotiated the settlement.²⁶ A negotiated transition and the resulting constitution, as products of an all-inclusive agreement, are thereby legitimized as integral components of a democracy.

2. *The Non-Peaceful Transition*

A non-peaceful, or forced transition is an expression of revolutionary forces unaccustomed to democratic ideology. The usurpers of state power divest the existing government of its authority and embody their political agenda in a constitution that perpetuates their power.²⁷

²¹ The Czecho-Slovak debate over power allocation in the post-revolution federation centered on the distinction between a "from the top" devolution of power and a "from below" creation of power. "The real issue [was] the nature and extent of the powers conferred on the central authority that determine the viability of the common state in given historic conditions." The Slovaks questioned the legitimacy of the devolution of power from the central authority to the component units and pointed out that in the more successful federations, the individual components created a common constitution. Eric Stein, *Devolution or Deconstruction Czecho-Slovak Style*, 13 MICH. J. INT'L L. 786, 795 (1992).

²² Ulrich K. Preuss, *The Politics of Constitution Making: Transforming Politics into Constitutions*, 13 LAW & POL'Y 107, 112 (1991).

²³ *Id.*

²⁴ The people of central and eastern Europe responded to this challenge by radically changing the existing political systems in their respective countries. They embraced the challenges of constitutionalism and used it as a unifying power in the elimination of communism. It cannot be claimed, however, that the constitution expressed the unified will of the people. In the post-communist countries the people do not know what their will is, or what it will be, because "they have not yet had the opportunity to mold it in deliberative democratic processes." Therefore, constitution making is regarded as the outcome of a deliberative process in which the will of the people is determined and from which the whole exercise is legitimized. *Id.* at 113.

²⁵ Borrowing another example from the eastern and central European countries illustrates this idea. The political forces involved in the Round Table Talks decided that they all would be subjected to the constitutional rules they had created; the existing government would have to relinquish its monopoly on power, and at the same time, the power of the opposition forces would be determined by the will of the people. *Id.* at 115.

²⁶ *Id.* at 107.

²⁷ *Id.*

The absence of a consensual decision-making process is glaring. The new leaders, having stepped into the shoes of their predecessors, assume state power and unilaterally lay the groundwork for the new system.

The resulting relationship is one in which the rulers proclaim their right to govern, disregarding that the ruled have neither consented nor recognized a duty to obey.²⁸ The constitution thereby becomes "a peaceful surrogate for a permanent revolution,"²⁹ albeit one that is "only as durable as the conditions that generated the last political victory."³⁰ The government that employs this transitional process is inherently unstable. This government is not legitimized by the popular will of the people, but rather by wielding enough power to keep its opposition elements in submission.

Ethiopia's situation essentially fits this description. To appreciate this, it is necessary to identify the major actors in the Ethiopian "transition," the role they have played in the process, and the political objectives they seek to attain.

B. *The Actors*

Repression of ideological adversaries under the Derg spawned many ethnic-based rebel groups. The largest of these have been the Tigrayan People's Liberation Front (TPLF), the Oromo Liberation Front (OLF), and the Eritrean People's Liberation Front (EPLF). Collectively these would form the major ethnic movements "responsible" for the overthrow of the military regime in 1991.

The TPLF developed in the Tigray region of Ethiopia. An ethnically coherent highland territory and a fundamental part of the country since its ancient origins, the Tigray region has historically resisted rule by the national government, which it perceived to be dominated by Shoan-Amharas. This perception ultimately led the TPLF to call for a restructuring of the Ethiopian political system to allow for democratic equality among ethnic groups and to achieve a meaningful regional autonomy that was not attainable under the Derg.³¹ Due to the relatively small population of Tigray, however, the TPLF was forced to seek alliances with other ethnic groups.³² The need to mobilize ethnic groups led to "an incongruous Stalinism . . . and to an admiration for Albania as a state which combined rigid Marxism-Leninism with the exclusion from the international socialist community which was imposed on the TPLF by the Mengistu regime's alliance with the Soviet Union."³³

On the other hand, the driving force of the EPLF, and at times the more radical wing of the OLF, has been independence for their respective regions.³⁴ The EPLF dominates the highland coastal region of Eritrea. The OLF, perhaps representing the largest ethnic group in the nation, is based in the most fertile and economically stable regions to the south.

²⁸ Harold J. Berman, *The Rule of Law and the Law-Based State*, 4 THE HARRIMAN INST. F. 1, 5 (1991).

²⁹ Preuss, *supra* note 22, at 107.

³⁰ *Id.* at 108.

³¹ Christopher Clapham, *Ethiopia: The Politics of Deconstruction*, in DEVELOPMENT OPTIONS FOR ETHIOPIA AND ERITREA IN THE 1990S 3 (Lancaster, 1991).

³² *Id.*

³³ *Id.*

³⁴ Although Eritrea constituted Ethiopia's Red Sea province in historical times, it became an Italian colony during the late nineteenth century until 1941, when Britain administered it as a U.N. trusteeship. In 1952, the United Nations decided to join Eritrea with Ethiopia in a federal arrangement. Ten years later, Haile Selassie dissolved the federation, thereby igniting a 30-year struggle for independence. Eritrea was granted independence in the first draft of the transitional charter. Although this provision was not adopted in the final draft, the EPRDF recognizes Eritrean independence pending a referendum by the Eritrean people. The more radical wing of the OLF demands an independent state of Oromia.

The EPRDF was created in 1989 by the joinder of the TPLF and the Ethiopian People's Democratic Movement (EPDM).³⁵ Eventually it would become an umbrella organization for myriad groups joined in opposition to the brutality of the Derg.³⁶ Although the EPRDF embraces various organizations, the TPLF dominates the EPRDF to such an extent that EPRDF has been considered a deceptive euphemism for the TPLF. In turn, many regard the TPLF as a trojan horse for the EPLF.

In 1990, the EPRDF announced its rejection of the Marxist-Leninist ideology formerly espoused by the TPLF in a "lightning shift to democratic ideals and free-market policies,"³⁷ and asserted that it had supported a multi-party transitional government since 1988.³⁸ Meles Zenawi, then chairman of the EPRDF and now president of Ethiopia, stated, disingenuously and unconvincingly, that the movement "has never been a Marxist organization," reiterating his commitment to a "consistently democratic political system."³⁹

In March 1990, then Ethiopian President Mengistu Haile-Mariam also announced his view that the country was abandoning Marxism and going over to a mixed economy.⁴⁰ This policy reform came too late, however, to have its intended effect. The rebel groups continued their struggle to achieve their objectives. Realizing that it could not win by military strength, the Derg government was eventually forced to submit to peaceful means for resolution of the conflict. Purporting to accept the claims of rebel groups, the government established a peace commission on May 8, 1991. The plan was to open dialogue among all groups to find a lasting solution for the country and its future political situation.⁴¹

Yet, it was not until the rebels were closing in on the capital that Mr. Herman Cohen, United States Assistant Secretary of State for African Affairs, initiated the so-called London peace talks on May 27, 1991. The talks included the EPRDF, the EPLF, and the OLF.⁴² The EPRDF demanded that Mengistu Haile-Mariam step down and that

³⁵ *Ethiopia: From Rebels to Rulers*, AFRICA CONFIDENTIAL, May 31, 1991, at 1.

³⁶ Clapham, *supra* note 31, at 5. In 1980, the TPLF assisted in creating the EPDM, initially comprised of ex-members of the EPRP, to garner support in the central, largely Amharic-speaking areas of the country. The EPDM, in turn, begat the Ethiopian Marxist-Leninist Force (EMLF), which supported Albanian style Marxism. The EMLF closely associated itself with the Marxist-Leninist League of Tigray (MLLT), the controlling and ideological element of the TPLF, and the two groups jointly set up the Ethiopian Workers' Revolutionary Party to serve a similar role of control and ideological guidance for the EPRDF. *Ethiopia: From Rebels to Rulers*, *supra* note 35, at 1. The Oromo People's Democratic Organisation was put together in May 1990 by the TPLF, who needed an Oromo group in their coalition. It was created using former prisoners of war from Mengistu's army. Scott Peterson, *Ethiopians Head for Electoral Crossroads to Civil War or Peace*, THE DAILY TELEGRAPH, May 28, 1992, Int'l at 10. The EPRDF started spreading to the center, west, and south in the spring of 1991 and had not, by that time, finished establishing itself, according to Meles Zenawi. *Meles Zenawi on Composition of EPRDF*, F.B.I.S., June 5, 1991, at 7.

³⁷ *EPRDF's Meles Zenawi Arrives in Addis Ababa*, F.B.I.S., June 3, 1991, at 6.

³⁸ *EPRDF Spokesman on Addis Ababa Onslaught*, F.B.I.S., May 29, 1991, at 3.

³⁹ David Chazan, *Ethiopia's Acting President Promises Broad Based Government*, AFP, June 10, 1991, available in LEXIS, Nexis Library, AFP File. Meles Zenawi had previously served as secretary-general of the MLLT, which controlled the Marxian ideology of the TPLF. *Ethiopia: From Rebels to Rulers*, *supra* note 35, at 1.

⁴⁰ *Further on Resignation*, F.B.I.S., May 21, 1991, at 6.

⁴¹ *'Peace Commission' Set Up to Contact Opposition*, F.B.I.S., May 9, 1991, at 10.

⁴² Significantly, the Coalition of Ethiopian Democratic Forces (COEDF) was excluded. The COEDF is an umbrella organization comprising various parties including the Ethiopian People's Revolutionary Party (EPRP), which had waged armed struggle against the Derg for 17 years. There is no adequate justification for this other than the fact that the COEDF, unlike the participants of the London Conference, is a multi-ethnic movement of opposition forces. Initially, the Derg was involved, but its members walked out when they discovered the pre-existing plan of the United States to remove them from power. The OLF, although it maintained its presence at the peace talks in London, also left with the feeling that the U.S. and the EPRDF

a broad based government be set up that would represent all the country's ethnic groups. The EPLF, whose primary aim was self-determination for Eritrea,⁴³ insisted that Eritrea be given autonomy until such time as the Eritrean people could vote for independence. The plan devised during the peace talks was to organize a conference before July 1 to create a transitional government that would govern Ethiopia for two years, pending democratic elections, and to grant the EPLF's demands for an independent state.⁴⁴

C. *The Process of Transition*

What many hailed as the end of a thirty year civil war⁴⁵ can more accurately be described as a shift in power. The old perception of Amhara domination of the state has given way to a new perception of Tigrayan domination. In place of the democratic equality of ethnic groups that the TPLF once advocated, there is a noticeable ascendancy of Tigrayan domination of the chief instruments of state power, especially the army, the security, and the top echelons of the bureaucracy. Consequently, many ethnic and multi-ethnic rebel groups have refused to accept the ascendancy of the EPRDF as the controlling element in the new, supposedly democratic government and have expressed their antagonism in continued fighting. Thus, even after May 1991, the EPRDF could not rest as the undisputed victor, but has been forced to continue battling for control.⁴⁶

Notwithstanding this resistance, the EPRDF has sought to establish a firm stronghold in Ethiopia, institutionalizing and attempting to legitimize its power by forming a transitional government, drafting a constitution, and holding elections. Some of these changes might well represent the foundations upon which a democracy must be built. The means employed to achieve these ends, however, signify that the EPRDF remains bound by its authoritarian past and is unable and unwilling to accommodate, much less nurture, any progress in democratic governance.

1. *The Procedure for Transition*

a. *Institutionalization of Power*

In accordance with the agreement reached at the London peace talks, a "Democracy Conference," aimed at creating a transitional government that would organize a new constitution and multi-party elections was held from July 1-5, 1991. More than twenty political fronts, organizations, and movements, as well as representatives of various nationalities and numerous local and foreign observers, gathered together to establish the transitional government and to help chart the course of Ethiopia in a sea of burgeoning democratic movements around the world.⁴⁷

The various political groups "agreed" to an EPRDF-mandated power-sharing plan, which created a Council of Representatives consisting of eighty-seven seats.

had made an agreement prior to the talks. While the opportunity for a negotiated transition seemed at hand, the chance for a peaceful shift to democracy was illusory.

⁴³ *Unity Among Opposition Fronts Called 'Fragile'*, F.B.I.S., May 16, 1991, at 6.

⁴⁴ *OLF Expresses 'Dissatisfaction' With U.S. Role*, F.B.I.S., May 31, 1991, at 7.

⁴⁵ The "Thirty-year civil war" describes the length of time Eritrea fought for independence, beginning during Haile Selassie's reign in 1961.

⁴⁶ *Interim President Denies 'Conspiracy' With U.S.*, F.B.I.S., June 4, 1991, at 5.

⁴⁷ *'Democracy Conference' Opens; Meles Elected Chair*, F.B.I.S., July 3, 1991, at 5. As before, the COEDF was excluded from participating in the conference, the lame excuse being that it had declared war against the transitional government. Ironically, however, the ostensible reason for its exclusion from the London conference was its lack of an armed force.

Although the basis for the allocation of council seats remains somewhat of a mystery,⁴⁸ thirty-two seats were reserved for the EPRDF, twelve for the OLF, and the remaining forty-three seats for twenty-two other groups.⁴⁹

The conference participants concluded their deliberations by unanimously adopting the views respecting democratic rights and the unlimited human and political rights of individuals and peoples⁵⁰ that were embodied in the Transitional Charter presented by the EPRDF.⁵¹ On July 22, 1991, following the Peace Conference, the Council of Representatives unanimously elected Meles Zenawi chairman of the transitional council and head of state. Two of the three nominated candidates stepped down to allow Meles to stand unopposed for election,⁵² a gesture not unlike the normal election process in many dictatorial African nations.

b. *Setting up the Framework for Elections*

In furtherance of the Transitional Charter's provision for regional elections, the Council of Representatives established an Electoral Commission to supervise the electoral process. The objective of the Commission was to create favorable conditions so that regional and local elections could be held by the end of the first week in June 1992.⁵³ The commission created electoral committees at the zonal, district, and *kebele* (neighborhood) levels, and provided guidelines for the election of committee members.

The Council of Representatives also adopted a draft decree on the establishment of an ethnic-based administration of the transitional period in Ethiopia. The decree allowed "nations, nationalities, and peoples" to establish "national transitional administrations" within their own geographical areas to effectuate self-governance. Subsequently, fourteen transitional administrative organs were empowered to elect their own parliaments and to make decisions on regional legislation, official languages, and internal security. While the national and regional administrations were afforded their own structures and authority, overall political responsibility and authority was reserved by the Council of Representatives for national, regional, district, and other administrative levels in accordance with the Charter.⁵⁴ Regional boundaries were redrawn by agreement between the EPRDF and the OLF and with the approval of the Council of Representatives. The new boundaries were supposed to correspond with ethnicity, but in fact reflected political power rather than strict ethnicity. Under these arrangements, the TPLF was the biggest winner, for it gained rich farming lands in adjacent provinces in exchange for its desert areas. The Somalis acquired territory as well, from certain Oromo areas that they had not previously held. The Amharas were the clear losers in the ethnic redistricting process.⁵⁵

The effect of the reconstitution of the country along purely ethnic lines will be to further divide a country whose ethnic diversity has traditionally been a point of

⁴⁸ Supposed factors involved in the allocation include a) a group's contribution to the overthrow of the Derg, b) the size of forces that they currently have mobilized, c) the size of the population that the group claims to speak for, and d) insurance that the EPRDF does not have a majority on the council. Berhanu Nega, *Some Observations on Ethiopia's Transition to Democratic Politics*, 2 *IMBYLTA* 16 (1991).

⁴⁹ Robert M. Press, *Ethiopia's Ruling Rebels Move Toward Open Political System*, *THE CHRISTIAN SCIENCE MONITOR*, July 23, 1991, (The World), at 5.

⁵⁰ 'Democracy Conference' Opens; *Meles Elected Chair*, *supra* note 51, at 6.

⁵¹ *EPRDF Charter Adopted*, F.B.I.S., July 5, 1991, at 7.

⁵² *Meles Zenawi Elected Head of State*, F.B.I.S., July 23, 1991, at 3-4.

⁵³ *Minister Urges Army to Shun Political Activity*, F.B.I.S., March 24, 1992, at 8.

⁵⁴ *National Administration Draft Decree Adopted*, F.B.I.S., Nov. 21, 1991, at 2.

⁵⁵ *Ethiopia: New Government, New Map*, *AFRICA CONFIDENTIAL*, Nov. 8, 1991, at 7.

contention. Recognition of strict ethnic divisions accentuates the differences among the groups and encourages political organization along these lines. Furthermore, it creates a fertile ground for inter-ethnic conflict. The net effect of this policy may very well be similar to the situation that exists today in Yugoslavia, with people identifying themselves as members of an ethnic group rather than as citizens of Ethiopia.

c. *Setting the Tone of the Transition*

The Charter is committed to respect for collective and individual rights, guaranteeing both kinds of rights without ranking them according to their relative importance. This is significant, for in an ethnically diverse nation, collective rights when coupled with individual rights, offer greater possibilities for maintaining or attaining state legitimacy, order, and stability than the individual rights alone. If properly handled, respecting ethnic diversity through collective rights is a constitutional imperative, not a mere policy choice. To be sure, collective rights are not without danger, a prominent one being the Charter's affirmation of the right to secede.

The Charter creates autonomous regions defined purely in terms of ethnic character so as to allow each ethnic group, or at least the dominant ones, to manifest their identity throughout the region.⁵⁶ Each of these groups is afforded the right to secede. It appears that by granting the right to secede, the Charter legalizes the destruction of the very union it purports to establish. The Charter suggests several reasons for this apparent contradiction. The right to secede under the Charter only exists if an ethnic group's rights to separate identity, language, culture, and autonomy are not respected. The argument suggests that because these rights are fundamental to ethnic integrity, they would be meaningless without a remedy. The right to secede is that remedy. Thus, those in favor of the right might justify it as an effective deterrent to government violation of an ethnic group's rights, arguing that a government faced with such a drastic sanction is unlikely to risk incurring it. In addition, proponents might view the existence of the right to secede as essential to allay ethnic fears and suspicions. Finally, experience suggests that whenever ethnic movements play a central role in constitution making, the right to secede figures prominently.

Creating a constitutional right to secede, however, is ill-advised as a practical matter and ill-conceived as a matter of constitutional theory. As a practical matter, those convinced that the right to secede is a self-evident truth have trouble realizing that secession has no stopping point. Once started, the process spawns a never-ending cycle. Admittedly, the right to secede has a great deal of political and psychological value. It is often loaded with "political and psychological gunpowder,"⁵⁷ thereby bolstering the political argument for independence. As a practical legal matter, however, its value appears limited, if not nonexistent, for the right lacks any legal mechanism for its enforcement.

As a matter of constitutional theory, the right to secede is also ill-conceived. A constitution has value as a "pre-commitment strategy."⁵⁸ To be successful, this strategy

⁵⁶ According to Omar Ismail, Oromo deputy in the provisional parliament, one effect of the new Ethiopian regime's acknowledgment of an individual's right to his ancient culture, language, and civilization is that many are digging up ancient history in search of their historical roots and origins in order to define their identities. For example, some Afari say they have brothers near the Egyptian borders in northern Sudan, while others say the Afari people came from Iraq originally. The Oromo say that they are from the Near East historically and that they are Semitic people originally. *Ethnic Rivalries, Role of Oromos Examined*, F.B.I.S., Jan. 17, 1992, at 10.

⁵⁷ Yoram Dinstein, *Collective Human Rights of Peoples and Minorities*, 25 INT'L & COMP. L.Q. 102, 108 (1976).

⁵⁸ Cass R. Sunstein, *Constitutionalism and Secession*, 58 U. CHI. L. REV. 633, 636 (1991).

must ensure the peaceful and unhampered operation of democratic politics in the face of severe ethnic differences. Recognizing a right to secede does not promote such a strategy. In a society divided along ethnic lines, the right to secede is apt to lead to politics of brinkmanship rather than cooperation among ethnic groups. Such a right would encourage ethnic groups to engage in strategic behavior aimed at obtaining benefits or minimizing burdens for their group alone.⁵⁹

The promulgation of the right to secede in Ethiopia may have been due in part to the transitional government's view of major inconsistencies between the Derg's propaganda about autonomy and equality and its actions of encouraging disintegration rather than unity of its peoples.⁶⁰ Viewing itself in a wholly different light due to provisions in the Charter guaranteeing the people's right to self-determination,⁶¹ the transitional government purported to be truly "of the people." The major inconsistencies in the transitional government's own assertions about a peoples' right to self-determination became apparent when the EPRDF resisted OLF's claim of secession. Furthermore, the transitional Council of Representatives has stated that while it backs the principle of self-determination laid out in the Charter, it will not tolerate the "creation of neighborhood governments."⁶² Yet, the transitional government's definition of a nation ostensibly includes such an entity as a neighborhood government.⁶³ The EPRDF's credibility is suffering as a result of this hypocrisy on the secession issue.

2. Evaluation of the Process

Although the demise of the Derg marked an historic moment for Ethiopia, the "fundamental flaws" in the process of transition call into question the real chances of democracy for a country haunted by an authoritarian tradition. The exclusionary policies of the EPRDF comported with its former Marxist theories and negated its paper commitment to a meaningful transition. Typical of a non-peaceful transition, the EPRDF's representative actions include its banning of the official party of the former government from participating in the transition process, acquiring absolute control of the instruments of power, and interfering with the electoral process.

a. Beneath the Surface of the EPRDF's Proclamations

In one of its first official statements, the EPRDF pledged respect for human rights and freedoms. One of the first actions taken by the new government, however, was the imposition of a twenty-four hour curfew. Initially, the curfew may have been justified to ensure the safety of the people and their property,⁶⁴ but the transitional government did not lift the curfew until one year after its installation as the leading party of the nation.⁶⁵

⁵⁹ *Id.* at 648.

⁶⁰ *Afar Liberation Front Decries 'False Propaganda'*, F.B.I.S., Dec. 17, 1991, at 3.

⁶¹ The Charter specifies in Part I, Article 2 that the right to self-determination of nations, nationalities, and people is guaranteed. Subpart (c) of this Article provides that if the concerned nation, nationality, and people feel that their rights have been denied, suppressed, or tampered with, they can implement their right to self-determination, which includes independence. THE TRANSITIONAL CHARTER art. 2, part I (1991).

⁶² "A nation or nationality has been defined as those who live in one geographical area, who use a single language and who have a common idea of unity." *Government Decree on Local Election Conditions*, F.B.I.S., Dec. 23, 1991, at 3. It is under this definition that the OLF claims it represents a nation of Oromos.

⁶³ *EPRDF Given Go-Ahead on Dissent 'Crack Down'*, F.B.I.S., Nov. 25, 1991, at 7.

⁶⁴ With approximately 80,000 guns unaccounted for when the EPRDF took control, the government had a real fear for the safety of its citizens. *President Declares 'War' on Oromos*, F.B.I.S., June 29, 1991, at 3.

⁶⁵ *Government Announces Lifting of Remaining Curfews*, F.B.I.S., May 28, 1992, at 2.

Another immediate action taken by the EPRDF was a ban on all demonstrations. On June 1, 1991, Mr. Meles admitted that the EPRDF had temporarily banned all public demonstrations "to avoid ugly, armed confrontations."⁶⁶ Yet, at the same time, Amnesty International expressed concern that the EPRDF was engaging in violence, particularly the killing of nine demonstrators to disperse a demonstration during the first week of June.⁶⁷ Although the international community was assured by Mr. Meles that the right to hold peaceful demonstrations and to strike would soon be restored,⁶⁸ it was not until August 12, 1991 that the government officially reinstated the right to demonstrate.⁶⁹ Previously, the EPRDF had specifically outlawed demonstrations organized by the former government's officials and members of its official party, the Workers Party of Ethiopia (WPE). The EPRDF also ordered WPE members to surrender all of their weapons and government documents, and to turn themselves in to the new ruling party.⁷⁰

The EPRDF promulgated various other decrees early in the transition process to "ensure" that democratic institutions would be incorporated into the new government. Yet, the safeguards against government abuse built into these decrees give them no more credibility than the "Constitutions" of Haile Selassie's day. For instance, Decree No. 6/1984 concerning the utilization of state mass media states that the media should be available to various political organizations as a vehicle through which to present their views to the public during the transitional period.⁷¹ The decree purports to allow for utilization of the media by all organizations without favoritism, prohibits censorship of ideas, offers a choice of one or two languages, and criminalizes blackmailing organizations through use of the media. Supposedly, the public is to have a free forum in which to air their views. In practice, this has not occurred. The OLF and other organizations have been forced to broadcast clandestinely.⁷² The freedom is also a very qualified one, even under the decree, because it mandates that comments and criticism directed to government officials must be free of baseless allegations, and the official criticized is given the chance to reply to the criticism. Additionally, the State Council decides with respect to all queries on the interpretation of this decree. In essence, the decree gives a freedom of speech only to people who do not wish to criticize the government — a questionable freedom indeed.

⁶⁶ 'Several Hundred' Killed in Explosion, F.B.I.S., June 3, 1991, at 8.

⁶⁷ *Id.*

⁶⁸ *Id.* at 9.

⁶⁹ The Council of Representatives' decree on demonstrations reiterated the Article I stipulation of the Transitional Charter that any person has the right to organize and participate in any peaceful demonstration or popular political rally. The decree requires that any group or individual organizing a demonstration or rally is obliged to give notice in writing at least 48 hours before the proposed rally. The notification letter must contain a) the aim of the demonstration of the public political gathering, b) the venue of the demonstrations, c) the date and time, d) the estimated duration, e) assistance needed from the government, and f) the full name, address, and signature of the individual or group organizing the demonstration or public political gathering. Towns or provincial offices have the responsibility of taking the necessary steps to safeguard the peace, security, and daily lives of the people. A town or provincial office cannot prohibit the holding of the demonstration or public political gathering at any time or place. The decree also contained numerous prohibited areas and conditions for demonstrations, including the caveat that no demonstration or public gathering is allowed to have discrimination or the spreading of rumors based on tribalism as its objective. Additionally, the Workers Party of Ethiopia is prohibited from taking part in any political movement. *Meles Zenawi Issues Decree on Demonstrations*, F.B.I.S., Aug. 16, 1991, at 1.

⁷⁰ *Officials Told to Surrender Within 48 Hours*, F.B.I.S., May 30, 1991, at 6. See also *Directive Abolishes Defense, Interior Ministries*, F.B.I.S., June 20, 1991, at 6 (text of June 16, 1991 directive by acting Prime Minister, abolishing WPE and associations formed by it).

⁷¹ *Decree on Media Use by Political Organizations*, F.B.I.S., Nov. 22, 1991, at 7.

⁷² Many of the items published by the Foreign Broadcast Information Service are received from such clandestine broadcasts of the OLF and other organizations. See *OLF Sets Conditions for Election Participation*, F.B.I.S., June 1, 1992, at 3, from (Clandestine) Voice of Oromo Liberation in Oromo.

Other illustrations of the EPRDF's lack of respect for human rights and freedoms include the manner by which law and order is maintained under the EPRDF. The EPRDF has allowed summary executions of ordinary thieves; indiscriminate, warrantless searches of houses; and incarceration of Derg officials without criminal proceedings being brought against them.⁷³ A Special Attorney General's Office was established by decree on February 3, 1992 to investigate Derg-WPE crimes. The Office has the power to issue warrants for the arrest of a person and for the search and seizure of property.⁷⁴ Though the decree may represent some semblance of due process guarantees, the lack of safeguards in this decree has enabled the EPRDF to use the Special Attorney General's Office as an instrument for dealing with those who criticize or oppose the regime. In a detailed report consisting of complaints based on eyewitness accounts and victim's reports, the Ethiopian Human Rights Council (EHRCO) cited instances of this abuse where persons have been detained throughout the country for alleged WPE crimes. These individuals have been arrested and their property seized without any investigation or proper legal criminal proceedings. The EHRCO report concluded that the transitional government has pre-occupied itself with the Derg's human rights violations at the expense of correcting ongoing human rights abuses.⁷⁵

The EPRDF gives the appearance that it is a government committed to democracy. Hidden beneath this surface is the EPRDF's genuine character. Although it started out by saying all the right things, its actions have belied its words, exposing the EPRDF's verbal democratic facade.

b. Major Flaws in the Transitional Conference Procedures

The manner in which the July 1, 1991 National Conference was held provides further evidence of the foregoing conclusions regarding the EPRDF's empty commitment to democracy. The conference was solely and exclusively organized and sponsored by the EPRDF. It called the conference, prepared the agenda, and drew up the National Charter. In addition, prior to the meeting, the EPRDF made agreements with the EPLF, recognizing Eritrean secession, and made agreements with several other delegations over seat allocations.⁷⁶

A major flaw of the July 1 National Conference was the process by which participants were admitted to the conference. Rather than devising consensual, clear, open, and impartial criteria for admission to the conference and creating a democratic body to apply these standards, the EPRDF unilaterally determined the right to participate in the political process. Political parties and groups that disagreed with the EPRDF's political and constitutional preferences were excluded. This exclusionary procedure is irreconcilable with the EPRDF's condemnation of the Derg's authoritarianism and its own strident avowal of democracy. It further evidences an intent on the part of the EPRDF to minimize any opposition to its dominance in the new government.

Contrary to Meles Zenawi's statement prior to the conference that no organization would be excluded from the conference except for those that excluded themselves by declaring war and following the path of war,⁷⁷ three organizations were excluded: the Coalition of Ethiopian Democratic Forces (COEDF), the WPE and the monarchist

⁷³ Nega, *supra* note 48, at 11, 17.

⁷⁴ 'Special' Attorney General's Office Established, F.B.I.S., Feb. 5, 1992, at 4.

⁷⁵ Human Rights Group Issues Report on Detentions, F.B.I.S., July 20, 1992, at 4.

⁷⁶ Ethiopia: Majorities and Minorities, AFRICA CONFIDENTIAL, July 12, 1991, at 2.

⁷⁷ Interim Government President Gives News Conference, F.B.I.S., July 1, 1991, at 14.

forces.⁷⁸ None of these organizations had declared war. Although the WPE, as the official party of the previous government may have had war-like intentions, it was in no position to execute such intentions. Hated and discredited among the people, the defeated WPE had neither the means nor the popular support to wage a war it had already lost. As far as the COEDF and the royalists were concerned, there was little or nothing upon which to justify their exclusion. Only by opening the arena to all opposition elements and allowing all voices to be heard could the transitional process acquire some semblance of a social contract. Such a compact is essential to true constitution-making and to establishing a legitimate constitutional order. Unfortunately for the country, the constitutional moment for such a compact was foolishly and selfishly passed up. Furthermore, the participation of all political forces would have broadened the debate, even if their participation would not have affected the outcome of the conference.

In addition, the EPRDF put some delegates in the unenviable position of having to request a postponement of the conference in order to inform themselves on the matters to be discussed, as the agenda and the proposed Transitional Charter were not distributed to most of the delegates until the first day of the conference.⁷⁹ In light of this, it is surely permissible to wonder to what extent the Charter was a product of consensus, expressing the fundamental and deliberated agreement of the participating groups to move toward a transition to democracy.

More fundamentally significant was the exclusion of major sectors of the society from participation. The conference attendees, all unelected elites, may have considered themselves voices for the "nation," but by virtue of their status, they could not have truly represented the diverse interests of "peasant associations, kebele associations, associations of women, youth, students, teachers, lawyers, doctors and other professionals."⁸⁰ As a result, "the Ethiopian people remained without any say about the form or content of the transitional process. Their role, as before under the Derg, was that of a silent and captive audience."⁸¹

c. The Result: Absolute Control by the EPRDF

In addition to determining participation in the July 1 conference, the EPRDF assumed absolute control of all the significant events that occurred during and after the conference. The mere fact that strategic offices, such as the president, the prime minister, the ministries of foreign affairs, defense, and the interior, were filled with EPRDF members illustrates the powerful positioning of the EPRDF and how it has "allowed itself to assume in the transitional process two roles simultaneously: as a player and as a referee."⁸²

As previously mentioned, neither the basis for allocating council seats nor the EPRDF's insistence that the Council not exceed eighty-seven members was ever fully explained.⁸³ What is clear, however, is that the EPRDF split itself up into its four constituent parties for the purpose of acquiring seats. Although the TPLF agreed to take only ten seats, it retained its dominant position by association with the other three parties that comprise the EPRDF. Practically, politically, ideologically, and organizationally, the TPLF and its three partners comprise a single and cohesive entity. The EPRDF thus gave

⁷⁸ Nega, *supra* note 48, at 12.

⁷⁹ *Id.*

⁸⁰ Alemante Selassie, *Recent Developments in Ethiopia: Prospects for Democratic Pluralism*, IMBYLTA, Fall 1991 at 2, 4.

⁸¹ *Id.*

⁸² *Id.* at 3.

⁸³ Nega, *supra* note 48, at 16.

the appearance of fostering power-sharing, while in fact it maintained its dominant position and ensured that the other parties remained in the minority.⁸⁴ Moreover, now that the OLF has pulled out of the transitional government, the EPRDF's hold on power has become even more unassailable.

The EPRDF's virtual monopoly of power is apparent from yet another perspective. In a democratic system of government, the monopoly over legitimate force belongs to the state, not to a single political party. In light of this tenet, the EPRDF's action of transforming its own TPLF armed force into the army of the state is disconcerting. The national army is merely an appendage of the EPRDF. Rather than being an independent entity, it is responsible solely to the EPRDF. Its very existence is dependent on the EPRDF's retention of power. Furthermore, it is troublesome that the army is comprised almost exclusively of Tigrayans. It cannot claim to be a national army, even to the extent that the Derg's army, being composed of diverse ethnic groups, could. The Oromo majority of the Derg's army, allegedly controlled by Amharas, stands in sharp contrast to this solely Tigrayan force. As long as the army's loyalty is to a single party, the EPRDF, and not to the state, the EPRDF's regime will never achieve the legitimacy afforded the victors in a truly democratic contest for power.

d. *Botched Elections: Who is to Blame?*

Democracy is defined as a government in which the supreme power is vested in the people and exercised by them directly or indirectly through a system of representation. An essential element of such a democratic system is free elections. Absent this element, the premise on which the system of democratic governance is based crumbles.

Local and regional elections were held in many areas of the country on June 21, 1992. These elections should have validated the ostensible goal of achieving a democratic transition. Instead, the EPRDF visibly demonstrated its inability to play by the rules of the democratic game and to remove itself from the controlling position it has held since driving the Derg out of Addis Ababa.

Early in the spring of 1992, ethnic groups began complaining that the EPRDF was engaging in violent activities in contravention of its support for free and open elections.⁸⁵ The OLF vowed not to participate in the elections until all the necessary conditions for free and fair elections were met, and the EPRDF army was confined to barracks.⁸⁶ On June 17, 1992, the OLF withdrew from the elections.⁸⁷ In response to

⁸⁴ Jean-Pierre Campagne, *New Rulers Revive Old Style Vigilantes, Come Down on Foreign Press*, AFP, June 8, 1991, available in LEXIS, Nexis Library, AFP File.

⁸⁵ For example, in the Harerge region of Ethiopia, guerrillas from the Issa ethnic group fought the EPRDF's army. The Issa and Gurgura Liberation Front (IGLF) charged that the EPRDF had begun the fighting and sent troops to patrol in their region just as the transitional government was talking about the organization of free elections in autonomous regions. *Issa Guerrillas Said Fighting Ethiopian Army*, F.B.I.S., Mar. 25 1992, at 3. The Ogaden National Liberation Front (ONLF) voiced complaints that the EPRDF forces interfered in the affairs of the locally elected committees in Ogaden, a region bordering on Somalia. *Ogaden Front Official on Government Action*, F.B.I.S., Apr. 22, 1992, at 6.

⁸⁶ *OLF Sets Conditions for Election Participation*, F.B.I.S., June 1, 1992, at 3-4. Another 18 political organizations and members of the Council of Representatives submitted a petition to the Electoral Commission claiming that the countrywide regional and district elections would be sabotaged due to a variety of inadequacies in the electoral scheme. The Electoral Commission and 45 of the 87 members of the Council rejected the petition based on a lack of evidence; however, the Council decided to set up a committee to investigate the matter in cooperation with the Electoral Commission.

⁸⁷ After the OLF pulled out of the transitional government, efforts were made by foreign diplomats to bring it back into the political process, so far without success. On June 23, 1992 Edmund Keller was asked to leave the country within 24 hours for violating the neutrality of the observer's agreement. *U.S. Election*

the complaints, and to prevent further withdrawal by ethnic groups in some regions of the country, the Council of Representatives postponed the regional elections in some areas due to "administrative problems encountered and particularly characteristic" of these areas.⁸⁸ Notwithstanding these complaints, and the withdrawal of the OLF and other organizations,⁸⁹ Meles Zenawi was adamant in his belief that the country was undergoing a democratic transition.⁹⁰

The credibility of the transitional government, however, was severely damaged by its election activities. Foreign observers confirmed the widespread belief that the elections were marred by fraud, intimidation, and violence. The EPRDF emerged as the clear victor in what essentially proved to be a one-party election. In the north, where the elections were uncontested, it was a foregone conclusion that the EPRDF would claim all the electoral votes, because the area was solidly controlled by the TPLF. In addition, the situation in the south demonstrated that the EPRDF would not tolerate opposition. Among other acts of intimidation and violence, political parties took control of the registration process and made it difficult for supporters of opposition parties to register.⁹¹ Though it should have done no better than to gain a minority of the votes, the EPRDF dominated the elections in the highly contested race in the south, confirming the belief that the EPRDF would never risk losing.

Since the elections, the EPRDF has sought to amend the mistakes that occurred in the electoral process. On the whole, however, even if the mistakes are corrected, it is not easy to dispel the widespread feeling that the EPRDF has broken its promises to uphold civil rights and to ensure that the transitional process would be democratic. On the contrary, many believe the EPRDF is positioning itself to perpetuate its hegemony. The fact that the EPRDF, together with its allies, now controls 96.6% of the electoral votes confirms this belief. This coerced domination is not very different from the formal adoption of a one-party state; in reality, that is the result.⁹²

Observer Given 24 Hours to Leave, F.B.I.S., June 24, 1992, at 5. The African-American Institute (AAI), as part of the international observer group invited by the Transitional Government, responded to the EPRDF's allegations. AAI asserts that Keller emphasized support for the democratization advances underway in Ethiopia and denied the EPRDF claim that Keller had expressed support for a reassertion of Oromo identity and/or Oromo independence. *The African-American Institute Responds to False Accusations Against Senior Members of its Election Observer Delegation*, PRESS RELEASE (AAI, Washington, D.C.), June 25, 1992, at 2. Chairman of U.S. House of Representatives Subcommittee on Africa, Mervyn Dymally, urged Zenawi to continue dialogue with OLF, while admitting that hopes of seeing Ethiopia succeed in its democratic experiment have been dashed by the reported widespread government interference in the electoral process. *Parties Call For Annulment of Election Results*, F.B.I.S., July 17, 1992, at 3.

⁸⁸ *Parties Call for Annulment of Election Results*, *supra* note 87.

⁸⁹ The All-Amhara People's Organization (AAPO) also announced its withdrawal, claiming that its candidates were being threatened, beaten, and harassed; there were technical problems in the electoral process; people had been cajoled into not voting for AAPO; and the candidates were not ready for the election. *Withdrawals From, Postponement of Elections*, F.B.I.S., June 18, 1992, at 2.

⁹⁰ *President Says 21 Jun [sic] Elections on Schedule*, F.B.I.S., June 19, 1992, at 3.

⁹¹ *Ethiopia — Prospects for Democracy: Hearing on Looking Back and Reaching Forward: Prospects for Democracy in Ethiopia Before the Subcomm. on Africa of the House Foreign Affairs Committee*, 102d Cong., 2d Sess. 127 (1992) (Testimony of Herman Cohen, Assistant Secretary, Bureau of African Affairs, Department of State).

⁹² Under pressure from foreign observers and political parties in the south, the Council of Representatives has established a neutral committee to rectify electoral anomalies resulting from the June 21 elections. *Committee Set Up to Rectify Election 'Anomalies'*, F.B.I.S., July 20, 1992, at 4. Ten political parties, grouped in a Democratic Alliance of Southern Peoples, called for the annulling of the regional elections of June 21, charging that the poll was rigged by the ruling faction. They claimed that the number of voting cards issued exceeded the number of voters. The alliance threatened that if their demands were not met, the 10 would likely renounce their 10 seats in the Council. *Parties Call for Annulment of Election Results*, F.B.I.S., July 17, 1992, at 3.

III. THE PROSPECTS FOR CHANGE

A. *The Transition to Democracy and the Rule of Law: Prospects in the Global Context*

1. *The Challenge of Changing from a Liberation Movement to a Democracy*

A struggle for liberation, bent on removing oppressive forces from power, unites the myriad interest groups of a nation. It would seem that such a force should be able to carry its goals through institutional arrangements and processes, dedicated to democracy. This unity of all against a common enemy, however, is fleeting. As victory is achieved or becomes apparent, the struggle for power and the need for self-preservation begin to replace the lofty ideals of liberation. Sooner or later, unity gives way to dissension, intolerance, and eventually authoritarianism.

Marina Ottaway, analyzing South Africa's chances for a smooth transition to democracy, observes that this has been the pattern on the African continent, established over time, from the independence of Ghana in the late fifties, to that of Zimbabwe in the early eighties. Without exception, African liberation movements have given rise to single-party systems, not democracies.⁹³ While Ethiopia has not had to struggle against colonial rulers like so many other African nations, popular liberation, from whatever form of oppression involves similar principles. The elusive key to democracy is maintaining a balance among competing interest groups. When the approach chosen is hegemony rather than compromise or consensus, the effect is to promote the interest of the single entity under which the nation is "unified."

For instance, in late 1990 it became apparent that the African National Congress (A.N.C.), as a unifying force, was overriding the establishment of various grass-roots organizations whose existence was deemed crucial for achieving an autonomous civil society in South Africa.⁹⁴ Though believing that the A.N.C. may have theoretically accepted multi-party democracy, Ottaway concluded that by their subordination of all organizations to the party, "[the A.N.C.] leaders saw themselves as poised to seize state power."⁹⁵ Ottaway distilled the South African dilemma down to a general paradox, likely present in all liberation movements, that transition from oppression creates a need for "an all-encompassing, broadly representative front" while "[t]ransition to democracy requires the breaking-up of that movement into a variety of organisations, representing the different interests and conflicts of a real country."⁹⁶ The duality of such a transition process presents just as great a challenge in Ethiopia.⁹⁷ If the EPRDF wants Ethiopia to evolve into a democracy, it must allow dissent, provide an atmosphere for political competition, and face the challenge of defeating rivals politically, not militarily.

2. *The Difficulties of Implementing the Rule of Law*

Wiktór Osiatyński identified two distinct processes that can be followed for constitution-making in discussing the prospects for a democratic constitution to take root

⁹³ Marina Ottaway, *Liberation Movements and Transition to Democracy: the Case of the A.N.C.*, 29 J. MOD. AFR. STUD. 61, 81 (1991).

⁹⁴ *Id.* at 75.

⁹⁵ *Id.*

⁹⁶ *Id.* at 82.

⁹⁷ The EPRDF, steeped in the Marxist-Leninist tradition, has to date shown no willingness to tolerate meaningful political competition. Its attitude toward the OLF and the COEDF is ample proof of its intention to monopolize power.

in Poland: one is the constitution of principle and the other is the constitution of compromise.⁹⁸

The constitution of principle requires that the constitutional moment be seized and can usually only be created immediately after a period of crisis and massive change. At that point, leaders and people genuinely want to learn from past experiences and limit the possibilities for abuse of power in the future. This process ensures that a commitment to democracy or self-limitation in a moral sense is not lost.⁹⁹ Such an atmosphere set the tone for the United States Constitution. This attitude was present in Poland in 1989, but the leaders of the change soon became politicians and allowed their thinking to turn to the "transformation of a society rather than constitutional limitation of power. . . ."¹⁰⁰

If the EPRDF, the OLF, and other major forces (without exclusion) had acted immediately to produce a constitution when the Derg was first overthrown, many of the various problems subsequently encountered may have been avoided.¹⁰¹ Ethiopia has lost its constitutional moment, however, and missed its chance to create a constitution of principle based on the idea of limiting power. Thus, Ethiopia must now contend, as Poland has, with the second type of constitution-making, the constitution of compromise.

The constitution of compromise is the "result of political process rather than of moral reasoning."¹⁰² It involves a process of learning from previous mistakes and shortcomings.¹⁰³ This is likely to be a lengthy process and carries the danger that many voices will go unheard in sorting out interest groups and their rightful influence on the constitution. Another, more imminent danger in Ethiopia is that no other group now possesses enough bargaining power to engage in any meaningful process of compromise with the EPRDF. Much of what has occurred so far is better characterized as acquiescence to the EPRDF's dictates. Furthermore, even if some compromise occurs, the evidence so far suggests that the struggle is about who shall *control* state power rather than how it should be limited for the benefit of the people. Given these realities, the prospects for a democratic constitution taking root in Ethiopia appear dim.

B. *Particular Issues for Ethiopia's Prospects for Democracy: A Reprise*

As earlier noted, the major factors affecting Ethiopia's prospects for democracy come from the country's history. Although people generally do have the ability to change past behavior, deeply-rooted traditions are not easily discarded. In Ethiopia these traditions include the Marxist-Leninist foundation of the EPRDF, the two-thousand-year-old imperial tradition, and the subsequent totalitarian rule of the Derg. Other factors include EPRDF's ability to project a hollow democratic form so as to obtain Western economic aid and the ever present potential for conflict among Ethiopia's many ethnic groups.

1. *EPRDF's Lack of Commitment to Democracy*

The EPRDF's lack of commitment to democracy, as previously noted, was evidenced by the exclusion of political parties from the July Conference; the recent

⁹⁸ Osiatyński, *supra* note 2, at 129.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ Some may point to the formation of The Charter as evidence of Ethiopia seizing the constitutional moment, but as discussed *infra* The Charter did not result from a negotiated process. Instead, it was handed down to the people by the EPRDF.

¹⁰² Osiatyński, *supra* note 2, at 130.

¹⁰³ *Id.*

elections, which were anything but free and fair; the continued clashes with the OLF, apparently designed to force the OLF to withdraw from the government; and the EPRDF's strategy of redrawing political boundaries to suit its own political preferences. These activities by the EPRDF make its governance of Ethiopia contentious and illegitimate. Although vehemently denied and not immediately visible to the uninitiated eye, these actions spring from the EPRDF's Marxist-Leninist tradition. Such a tradition and its philosophical underpinnings are inherently inhospitable to democratic politics and the rule of law.

The rule of law is the fundamental legal component of the political philosophy of a liberal democracy. In a revolutionary socialist conception, the "ultimate goal is radical political transformation leading to the withering away of the state . . .,"¹⁰⁴ including law. Law is thus not just a waste of time, but an unnecessary nuisance that should be avoided when compliance with it becomes unacceptably burdensome or inexpedient.¹⁰⁵ When a group which espoused such views for over two decades, purports to disown its past and embrace democracy overnight some skepticism is warranted. Combine this skepticism with the suspicious political maneuverings of the EPRDF over the past year and a half, and the conjecture that the EPRDF maintains its Marxist-Leninist posture beneath its claims of being democratic becomes a very strong hypothesis. Failing to heed these warning signs and take appropriate precautions to avert the danger of another round of authoritarianism and violence would surely be tragic.

2. *Ethiopia's Authoritarian Tradition*

EPRDF is not solely to blame for Ethiopia's present predicament. Another of Ethiopia's hurdles on its path to democracy is the country's authoritarian tradition. Constitutionalism and the rule of law are alien concepts to all of the people in Ethiopia. While many people, despite the EPRDF's actions, embrace these concepts as the hope for the future, many others lack a consciousness of themselves as the source of their government and legitimate authority. When, for several thousand years, the source of law has been external to the Ethiopian people, such a radical concept as self-governance is understandably difficult to fully comprehend. What is thus needed to break the stronghold of past tradition is continued education of the people by truly free political parties and an unbiased media.

3. *The "No Democracy, No Aid" Factor*

When democracy is pushed upon a nation by other nations as a condition for economic aid, there is a danger that such democracy may last only as long as the cash-flow. The likelihood of this type of pressured democracy taking root is slim. U.S. Assistant Secretary of State for African Affairs, Herman Cohen, testifying before the House Foreign Affairs Committee, Africa Subcommittee on September 17, 1992, stated that U.S. assistance to Ethiopia is dependent upon progress in democracy and human rights. The United State's commitment to this policy is evidenced by the slow pace of negotiations for a World Bank \$600 million aid package. During the negotiations, many "raised doubts [about] the transitional government's commitment to building a nationwide market economy" and about the EPRDF's abandonment of its previous support of

¹⁰⁴ Laurence Lustgarten, *Socialism and the Rule of Law*, 15 J. L. & SOC'Y 25, 26 (1988).

¹⁰⁵ *Id.*

Albanian Marxism.¹⁰⁶ When Meles Zenawi was finally able to say his government would sign this agreement with the World Bank, he publicly adopted the liberal economic policy of the transitional government, marking the first time he specifically abandoned the socialist economic policies of the once Marxist EPRDF. In another negotiation, only after the Ethiopian government agreed to devalue the birr, undergoing a "structural adjustment," did the United States agree to spend \$161 million over three years to aid Ethiopia. The forced conformance with United States mandates may help create some space for the growth of democracy and the United States should not be blamed for wanting some assurance that its aid is well-spent. Yet, the guarantees being given the United States are lip-service, at best. Once the money is in hand, Meles Zenawi and the EPRDF will likely resort to clever subterfuges inconsistent with democratic and constitutional politics.

4. *The Ethnic Conflict Factor*

The structure of the government as set up by the EPRDF is that of an ethnic federation. Some Western observers "cannot see a better alternative to 'ethnic federalism', if it can be implemented carefully, bearing in mind the lessons of Yugoslavia and the former Soviet Union."¹⁰⁷ Yet, "ethnic federalism" has significant pitfalls. To appreciate this danger, it helps to consider the difference between ethnic federalism and political federalism as in the United States. In the United States, state boundaries bear little correlation with deep ethnic, cultural, religious or linguistic divisions. Hawaii may be an exception, but it is an exception that proves the rule. By contrast, under ethnic federalism, ethnicity represents the principal and decisive basis upon which the federation is organized. Since the regions to be created under such a system will be identified with a major ethnic community, each region is likely to see itself as a distinct political entity. Thus, ethnic federalism may endanger the integrity and stability of the state by helping rival nationalisms to flourish alongside one another.

Once each ethnic group, regardless of its size, is given significant self-governing autonomy in its own region, it may be difficult to persuade the ethnic groups to cooperate with one another for national unity. The old Soviet Union, Yugoslavia, and Czechoslovakia had relied on ethnic federalism as one of the fundamental legal means to solve the "nationality question." They sought, however, to contain the destructive potential of ethnonationalism through a civic culture, based on the ideology of Marxism-Leninism and the discipline of a unitary party structure — the communist party. As long as these forces remained powerful, common national interests were maintained. With the demise of the party and its ideology, however, preoccupation with parochial, ethnic self-interests quickly led to national disintegration, chaos, and civil war.

Ethiopia faces a serious risk of national disintegration given the de facto separation of Eritrea and the example this sets for other regions of the country, the demobilization of the national army in the wake of its defeat, and the absence of strong national parties. Thus, Ethiopia should consider alternative constitutional models that accommodate ethnic diversity without impairing national unity. If the federal idea is to be effective, it requires fostering an awareness that each region, by itself, is relatively insignificant vis-a-vis the whole. One way to achieve this is to split the large regions into several smaller units, taking ethnicity into consideration, but also considering history, economic viability, and other criteria calculated to encourage a feeling of interdependence and mutual cooperation.

¹⁰⁶ Jonathan Clayton, *New Ethiopian Rulers Criticised For Lack of Action on Economy*, The Reuter Library Report, Feb. 21, 1992, available in LEXIS, Nexis Library, LBYRPT File.

¹⁰⁷ Peterson, *supra* note 36, at 11.

As things stand, the EPRDF is manipulating ethnicity. Using the same “trick” of colonizing forces, the EPRDF is implementing a divide-and-rule strategy to maintain its control of the state. Its aim and hope is that no ethnic group will be able to successfully challenge the EPRDF, but, instead, will be pitted against one another.

Little, if at all, in the way of democratic progress can be expected amid ethnic conflict and competition. Ethnic competition invariably involves a zero-sum game. The Ethiopian people have been *ETHIOPIAN* for many centuries and yet, now, they must decide whether they are Tigrayan, Amhara, Oromo, or some other ethnic group when in reality many of them are legacies of long traditions of intermarriage among ethnic groups. Unless the elites abandon their ethnic game, there is a real chance that a dissatisfied ethnic group will eventually gain the momentum to claim state power for itself, putting the EPRDF on the receiving end of the gun barrel.

IV. CONCLUSION

If these dire predictions are to be proven false, the EPRDF must make significant changes in its approach to governing. A new conference, embracing all interested political parties would be a first step in the right direction. The great value of such a step would be to produce a new constitutional moment, from which a true government of consensus can be formed. Only such consensus, not a document handed out on the eve of the conference, or one that is now in the process of being hatched, can lead to a stable democracy.

With the winds of change sweeping across this continent and others, the trend toward democracy is epidemic. It would seem that Ethiopia could not help but be caught up in this massive worldwide movement, which is decidedly anti-authoritarian. Unfortunately, a leadership capable of shepherding Ethiopia through a democratic transition is woefully lacking. As a result, the future of democracy in Ethiopia remains as uncertain as it was upon the fall of the Derg.