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ETHIOPIA'S "LEAP IN THE DARK": FEDERALISM AND SELF-DETERMINATION IN THE NEW CONSTITUTION

PAUL H. BRIETZKE*

INTRODUCTION

Benjamin Disraeli took a calculated "leap in the dark" in 1867, when he extended the right to vote to almost all British men.¹ With hindsight, his leap can be seen to have been a necessary (but not sufficient) means of defusing discontent and promoting democratization. Ethiopia seems poised for an even bigger constitutional leap into a murkier realm, into an ethnicized attempt at democratization.² To gain acceptance, a new constitution like Ethiopia's must seem to be all things to all people and, in Ethiopia and elsewhere, the end of the Cold War has seen an explosion of ethnic nationalisms similar to the one occurring in Europe late in the 19th century. Without benefit of hindsight one can only make informed guesses about the effects of a new Ethiopian "constitutionalism" on events which are largely beyond the drafters' control. I will argue that there are grounds for a guarded optimism over Ethiopia's leap.

BACKDROPS

In the past, Ethiopian constitutions have responded to the realities of the time, perhaps in a cynical fashion. Rather than creating a constitutional monarchy, Haile Selassie's Constitutions of 1931 and 1955 amounted to monarchical constitutions. A small Amhara elite from Shoa Province, a group whose successors are now in political eclipse, obtained patronage—access to land, office, and the many other perks within the Emperor's gift—but all effective power remained in Haile Selassie's hands. We can perhaps detect the influence of the *potestas* that characterized the public law of Imperial Rome and much of medieval Europe. The soldiers who mounted a successful coup against Haile Selassie in 1974 constituted themselves as a revolutionary, 120-member parliament: Derg or Dergue. As so often happens, the most ruthless soldiers slowly dominated others within the Derg, and the most ruthless of these—Mengistu Haile Mariam—eventually established a Stalinist regime.³

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¹ G. M. Trevelyan, *British History in the Nineteenth Century*, London, 1937, at 345. The Reform Act, 1867, acquires a constitutional importance, under Britain's unwritten constitution.

² Compare Merera Gudina, "The new directions of Ethiopian politics", in (1994) 2 *New Trends in Ethiopian Studies* 913 (quoting Ali Mazrui in part) (a "reckless over-politicization" of ethnic differences in Ethiopia today, during a "transition from crisis through crisis to crisis" and in an attempt to create an "ethno-cratic state"); with Jennifer Parmalee, "Africa: bloodied, torn at its ethnic seams", *Washington Post*, 14 July, 1994, A1 ("Today, Ethiopia is trying an experiment in ethnically based democracy that it acknowledges is a high stakes enterprise").

³ Paul Brietzke, *Law, Development and the Ethiopian Revolution*, Lewisburg, 1982; Aberra Jembere, "The making of constitution in Ethiopia", (1994) 2 *New Trends in Ethiopian Studies* 66, 76; Colin Legum, "The Amhara factor", *Third World Rep.* S.E./1, 26 August, 1992, 1, 2; Molly Lien, "Red Star Trek: seeking a role for constitutional law in Soviet disunion", (1994) 30 *Stan. J. Int. L.* 41, 46; John Van Doren, "Positivism and the rule of law, formal systems or concealed values: a case study of the Ethiopian legal system", (1994) 3 *J. Transnat. L. & Pol.* 165, 171.

Until 1987, the Derg and then Mengistu were content to rule by Proclamation: the traditional vehicle for an ordinary piece of legislation in Ethiopia. The legal unaccountability of officials that was pioneered by Haile Selassie took even more authoritarian directions under Mengistu, and this helped to fuel regional rebellions and an increased ethnic consciousness. The process that culminated in Mengistu's 1987 Constitution began in 1983, with the establishment of an Institute for the Study of Ethiopian Nationalities. Little sensitivity towards ethnic sensibilities emerged, however: a regional administrative autonomy was supposedly created by the 1987 Constitution, but there was no meaningful political or ethnic autonomy. In true Leninist fashion, apart from celebrations of local music and dances, Mengistu's style of governance was universalist and unitarist in the extreme; through "popular" mobilizations, "the masses" were to be emancipated from their nationalities as well as their class.⁴

Weakened by a protracted guerrilla war in Eritrea and by withdrawals of Soviet support, Mengistu's regime was overthrown by the Tigrayan People's Liberation Front (TPLF) in May 1991. The new Transitional Government (TGE) is dominated by the Ethiopian People's Revolutionary Democratic Front (EPRDF), a group controlled by the TPLF and its leader, now President Meles Zenawi. Most governmental and opposition groups attended the July 1991 Conference that approved the Charter⁵ under which the TGE operated, and which forecast the contents of the new Constitution. While the EPRDF did defeat the Derg and restore order in most areas, it remains a de facto military regime that operates as a civilian government de jure. The Carter Centre concluded in September 1994 that the EPRDF displays a "moderate" commitment to democracy, one lying between a "strong" and an "ambiguous"

⁴ Jembere, above, n. 3, at 73; Paul Henze, "The defeat of the Derg and the establishment of new governments in Ethiopia and Eritrea", (1992) 1 *Rand Rep.* P-7766 (discussing Mengistu's "command-administrative system and classic Stalinist political system"); Robert Hovde, "Democracy and governance in Ethiopia", (1994) 2 *New Trends in Ethiopian Studies* 127, 132 (Mengistu's use of Haile Selassie's model of an Amhara dominance, and of a Stalinist national integration, provoked an ethnic backlash); Peter Lewis, "Political transition and the dilemma of civil society in Africa", (1992) 46 *J. Int. Aff.* 31, 47; James Paul, "Human rights and the structure of security forces in constitutional orders: the case of Ethiopia", (1994) 3 *Wm. & Mary Bill Rt. J.* 235, 249. See also Amnesty International, *Ethiopia: End of Brutal Repression, A New Chance for Human Rights* (June 1991) (the 1987 Constitution aimed to turn Ethiopia "into a socialist society with a high level of development where justice, equality and social prosperity prevailed"); Murray Forsyth, "Federation and confederation", in Chris Brown (ed.), *Political Restructuring in Europe: Ethical Perspectives*, London, 1994, 50, 59; Daniel Gamachu, "A nation in perpetual transition", (1994) 2 *New Trends in Ethiopian Studies* 83, 102 (the Derg's 1975 Programme of the National Democratic Revolution in Ethiopia promised that self-determination would be "recognized and fully respected"); Gudina, above, n. 2, at 923-924 (like the 1931 and 1955 Constitutions and the current draft Constitution, the 1987 one consolidates "feudal absolutism" at home while seeking to please foreigners); Yohannes Chane Metiku, "Ethiopia's right to 'life' in international law", (1994) 2 *New Trends in Ethiopian Studies* 205, 212 (the inter-tribal conflicts seen under Emperor Menelik late in the 19th century revived again under the Derg); Van Doren, above, n. 3, at 186 (the 1987 Constitution "never got off the ground").

⁵ Transitional Period Charter of Ethiopia, Charter No. 1 of 1991, *Negarit Gezeta*, 50th year, No. 1 [*Neg. Gaz.* 50/1]. The "Charter" characterization is presumably designed to distinguish the document from the ordinary legislation of a "Proclamation". See John Cohen, "Transition toward democracy and governance in post Mengistu Ethiopia", (1994) 1, 5 *Harv. Int. Instit. Dev. Pap.* No. 493; Jeffrey Herbst, "Challenges to Africa's boundaries in the new world order", (1992) 46 *J. Int'l Aff.* 17, 21 (the end of Cold War patronage led to the rapid overthrow of regimes in Ethiopia, Liberia, Chad and Somalia). The Charter adopts the "U.N. Charter on Human Rights", democracy and self-determination as basic principles. Cohen, at 5. It creates an 87-member Council of Representatives (COR). The Chair appoints the Council of Ministers, subject to COR approval.

commitment.⁶ While some find the EPRDF to be actively attempting to reduce the gap between its announced aims and its actual performances, others claim that it is "increasingly comfortable playing the role of all-powerful chief".⁷

Perhaps the EPRDF's democratic potential can be better understood if its performance during elections, and in the economic and human rights realms, is examined. The African-American Institute monitored the June 1992 general elections in Ethiopia and found them to be "sterile", "formalistic" and poorly organized: some candidates and voters were harassed, only a small percentage of eligible voters registered, and there was little civic education or electoral competition.⁸ This lack of competition can largely be attributed to the fact that five major opposition parties withdrew one week before the election. Officials then continued to serve beyond the expiration of their formal mandate in January 1994. But a member of the Inter-Africa Group argues that the EPRDF made a "serious effort" to correct the mishaps of the "terribly flawed" 1992 elections⁹ during the June 1994 elections for the Constituent Assembly that ratified the new Constitution. Still, the EPRDF won 487 of the 547 seats in this Assembly, with the major opposition parties boycotting the election once again.¹⁰

It is difficult to move from autocracy to democracy when the credible opposition parties¹¹ refuse to submit themselves for election. Some thus blame the slow progress towards democracy in Ethiopia on the opposition, while opposition leaders argue that their boycott is motivated by the EPRDF's stacking of the political deck against them. Voter apathy and poorly designed and implemented electoral laws played a role in outcomes, but access to the state-owned media and to public forums has often been denied to opposition groups. Also, the EPRDF has the clear electoral advantages of "wealth, communications, organization, and

⁶ (1994) 3(3) *Africa Demos* 27: "moderate" means that "formal commitments . . . are accompanied by only measured, cautious, and preliminary steps toward institutionalization or pluralism. Promises reflect a sense of democratic purpose, but deeds are not yet commensurate." Democratic details are worked out and procedures and a timetable have been established, however. See Herman Cohen, Testimony Before House of Representatives Sub-Committee on Africa, 27 July, 1994 (Lexis-Nexis); Paul, above, n. 4, at 257.

⁷ Peter Winkler, "Ethiopia's uncertain future", (1994) *Swiss Rev. World Aff.*, above (Lexis-Nexis). See Abdullahi An-Na'im, Testimony by Dir., Human Rights Watch/Africa, to House of Representatives Sub-Committee on Africa, 24 July, 1994 (Lexis-Nexis); Cohen, above, n. 5, at 4 (never transparent, EPRDF decision-making processes are becoming more opaque); Theodore Vestal, Statement to the Sub-Committee, 27 July, 1994 (Lexis-Nexis) ("The EPRDF has used battlefield skills in leadership and discipline to divide and conquer political foes" by "downplaying . . . nationalism" and by "the fostering of fragmentation by emphasizing ethnicity"). Here, "nationalism" must mean attachment to the larger nation-state of Ethiopia, rather than to a particular nation within Ethiopia, or else the statement is nonsensical.

⁸ Cohen, above, n. 5, at 3; Hovde, above, n. 4, at 131.

⁹ Julie Flint, "Ruling party triumphs in Ethiopian election", *The Guardian*, 4 July, 1994, 9 (quoting Andreas Ashete of the Inter-Africa Group—a transnational, non-governmental organization based in Addis Ababa).

¹⁰ *Ibid.*, quoting a member of the Oromo Liberation Front (we must correct flaws rather than boycott elections; "the Oromo are going to live under a constitution in which they have not participated"); "Carter Center convenes Ethiopian opposition groups", (1994) 3(3) *Africa Demos* 14, 15 (1994 elections "technically more efficient" than 1992 elections); "Ethiopia votes", *The Economist*, 4 June, 1994 (parties boycotting the elections adopted the traditional Amharic practice of *kusfia*, of turning your back on your enemy). The Constituent Assembly may order that general elections be held in February or March 1995. "Ethiopia may hold elections in February—President", Reuters Despatch, BC Cycle, 5 September, 1994 (Lexis-Nexis).

¹¹ In alphabetical order, the opposition parties reportedly include: the Agew People's Democratic Union, the All Amhara People's Organization (AAPO), the Coalition of Ethiopian Democratic Forces (COEDF), the Council of Alternative Forces for Peace and Democracy (CAFPDE), the

control of the armed forces".¹² As is frequently the case in Africa, in Ethiopia most opposition parties draw their support from one ethnic group or another. Feeling excluded from participation, these parties have (or will soon) become the "self-defence communities" common in much of Africa,¹³ communities which perform the localized functions for particular ethnic groups that the EPRDF is unable or unwilling to perform. The easy availability of weapons in Ethiopia creates the potential for a violent self-defence or a violent assertion of secessionist aims. The EPRDF emphasizes the violent incidents that have occurred, and it requires that some opposition groups renounce violence before they can participate.¹⁴

Many commentators and diplomats play down the EPRDF's democratic lapses, because of the opposition's perceived disorganization and immaturity and because of the need to rebuild an illegitimate state which has atrophied during its economic decline under Mengistu. The EPRDF usually receives high marks in the economic arena for its "liberalization": the eventual deregulation and privatization of the economy, widely regarded by Westerners as a necessary (if not sufficient) condition for democratization. Despite their former Marxist orientations, EPRDF officials took to the World Bank's structural adjustment programme with gusto, and were rewarded with increased aid from various sources. Inflation was reported at 6 per cent per annum in 1993, down from 50 per cent per annum in mid-1991, and economic growth was reported at 7.6 per cent for 1993—although drought is expected to reduce this to 3.5 per cent for 1994. Large numbers of bureaucrats have been sacked, many of them formerly-dominant Amharas; the currency has been devalued, almost to black-market rates; military spending has reportedly been halved; and the monopoly of the state agricultural marketing board has been ended and farmers are beginning to respond to new incentives, although devaluation has made imported inputs too expensive. Many city dwellers are unhappy with these reforms however,

Ethiopian Democratic Action Group, the Ethiopian Democratic Union Party (EDUP), the Ethiopian Medhin Democratic Party, the Ethiopian National Union Party (ENUP), the Ethiopian People's Revolutionary Party (EPRP), the Gurage People's Liberation Front, the Islamic Front for the Liberation of Oromo (small and rather fundamentalist), the Oromo Liberation Front (OLF), the Somali Liberation Front, and the Southern Ethiopia People's Democratic Coalition (SEPDC or Southern Coalition). An-Na'im, above, n. 7; Colin Legum, "Ethiopia: the religious factor", (1992) *Third World Rep.* S.F/1, 1, at 2; "Carter Center", above, n. 10, at 14. On the Oromo, see An-Na'im, above, n. 7 (19,000 OLF members were detained after clashes in 1992, and 100–500 remain in detention); Gudina, above, n. 2, at 925 (the Oromo is the largest ethnic group in the Horn of Africa, a majority reduced to the status of a minority); Colin Legum, "Ethiopia: A country in need of international support", (1992) *Third World Rep.* S.L/1, 1, at 3 (the OLF asked the World Bank to deny aid to Ethiopia until OLF demands were met—an attempt to discourage donors by creating doubts about political stability).

¹² Vestal, above, n. 7. See An-Na'im, above, n. 7 (the 1994 elections show that "the EPRDF has managed to exclude . . . those parties which carry real political weight, and sought to camouflage this by involving minor parties with little or no political support."); *ibid.* (citing the non-implementation of the Peaceful Demonstration and Public Political Meeting Proclamation, No. 3 of 1991, and of Art. 4(1) of Proclamation No. 6 of 1991); Hovde, above, n. 4, at 138 (many Oromos and Amhara deny that "their" parties within the EPRDF represent them). Compare John Cohen, above, n. 5, at 1 (optimism declined because of boycotts by opposition parties and an administrative inability to implement policies, but the EPRDF "appears dedicated to moving forward") with Vestal, above, n. 7 (after a brief honeymoon, it became clear that the EPRDF had no intention of sharing power).

¹³ See Martii Koskeniemi, "National Self-Determination Today: Problems of Legal Theory and Practice", (1994) 43 *I.C.L.Q.* 241, 258.

¹⁴ Cohen, above, n. 6.

and privatization proceeds only slowly, with many state economic controls remaining.¹⁵

A major problem with the EPRDF's economic policies concerns land. The Derg had nationalized Ethiopia's feudal-style landholding arrangements in 1975, but initial productivity gains were more than wiped out by subsequent attempts at a Stalinist system of collectivization, relocation and forced deliveries.¹⁶ The fear now is that past elite and governmental abuses will be perpetuated because the new Constitution provides only a weak right to private property. The Constituent Assembly did not choose to ratify the minority's alternative and more protective proviso in the draft of the Constitution.¹⁷ Under the EPRDF's Urban Land Proclamation,¹⁸ everything is state land (apart from a few existing, provably private parcels) which is to be leased at very high rentals in Addis Abeba and a few other areas. These leasing arrangements have curbed private investment, raised fears of a new feudalism, and reportedly are being re-considered.¹⁹

Despite serious abuses revolving around a continued arbitrariness by the police and judges, the human rights situation is "vastly better" under the EPRDF than under Mengistu. This augurs well for democratization.²⁰ Reliable information

¹⁵ Ibid. ("independent" boards of directors have been appointed for state-owned enterprises, government subsidies have been eliminated, and most enterprises are profitable); Herbst, above, n. 5, at 21–22; "Ethiopia: Meles dictates the agenda", (1994) 35(2) *Africa Confidential*, 3, at 3–4; ibid. at 4 (health and education expenditures have been doubled and investments reduced in state-owned enterprises, but agreement is lacking on privatization schemes); "Ethiopia: President Meles says transitional period will continue despite opposition", BBC Monitoring Serv. (MS, AF), 5 March, 1994 (Lexis-Nexis); "Ethiopia: peasants on top", *The Economist*, 13 March, 1993, 52, at 53. See George Moose, Testimony Before House of Representatives Africa Subcommittee, 27 July, 1994 (Lexis-Nexis): "In March, the World Bank acknowledged Ethiopia's progress in improving allocation of foreign exchange, removing many restraints on foreign investment and shifting expenditures from defense to social services. A further bright spot was the recent liberalization of the financial services sector, as a result of which several private banks and insurance companies plan to open for business this year."

¹⁶ Brietzke, above, n. 3, at 233–246, 291–297; Henze, above, n. 4, at 7, 11; ibid. at 29 (resettlement projects created mortality rates of up to 30%).

¹⁷ Draft Constitution of Ethiopia (unofficial translation), approved May 1994 by the Council of Representatives [hereinafter draft Constitution, as I have been unable to obtain a copy of the ratified Constitution, which is quite similar], Art. 40. Ethiopians can "own private property . . . unless the law provides otherwise in the public interest", ibid. at 40(1). People have a "full right" only to the immovables and other improvements on the land, ibid. at 40(6)—a labour theory of value, in effect. The right to land and natural resources "belongs only to the state and the people. Land is the inalienable common property of the nations, nationalities and peoples of Ethiopia," ibid. at 40(3)—a provision that does not seem to create property rights in a *nation*. (A court could subsequently hold that "people" is defined by the latter sentence.) Private investors have the right to "use . . . land upon payment of money", ibid. at 40(5) (emphasis supplied). In the alternative Art. 40, which was supported by a minority on the Council but was not ratified by the Constituent Assembly, the property right is unqualified, ibid. at alt. 40(1), and covers anything "produced by . . . labor, creativity or capital", ibid. at alt. 40(2) (emphasis supplied). The state may determine the size of landholdings "in the public interest" and especially to promote an equality of access to livelihood and housing, ibid. at alt. 40(3). The state can expropriate property, with prior compensation based on market prices, and upon a public demonstration that the public interest cannot be satisfied in any other way, ibid. at alt. 40(5).

¹⁸ No. 80 of 1993. See An-Na'im, above, n. 7.

¹⁹ Cohen, above, n. 6; Jembere, above, n. 3, at 75 (the EPRDF should not thus perpetuate "unlawful" nationalizations by the Derg and Mengistu); Moose, above, n. 15; Winkler, above, n. 7; "Meles dictates", above, n. 15, at 3.

²⁰ Ibid. at 3–4. See Amnesty International, above, n. 4, at 13 (under Mengistu, "constitutional safeguards against torture, arbitrary or unlawful arrest and detention have been consistently disregarded, particularly in political cases."); Cohen, above, n. 5, at 22 (there were some 50,000 extra-judicial executions under Mengistu's regime); ibid. at 24, n. 84 (while 18 journalists are detained,

about human rights is often difficult to obtain in Ethiopia (and many other countries), and it is frequently distorted by various groups furthering their own aims.²¹ However, the EPRDF's Council of Representatives apparently ratified key international human rights conventions late in 1993: the Civil and Political Covenant, the Economic and Social Covenant, and Protocol II to the Geneva Conventions. Unfortunately, Protocol I and the Torture Convention appear not to have been ratified. Some of the 2,500 people charged, 1,400 of whom are still in detention, await trial for Mengistu-era crimes, and a Special Prosecutor has been appointed. The Carter Centre is providing technical assistance, but progress is slow and narrow and precise definitions of Nuremberg-style "war crimes" are needed.²² Much else remains to be done: to release prisoners of conscience, guarantee fair trials, end arbitrary administrative detention and the use of torture, clarify the fate of the disappeared, and abolish the death penalty.²³

The new Constitution contains an extensive catalogue of human rights, which are modestly protective on the surface—apart from the majority's proposals concerning property.²⁴ But such a catalogue is no better than the commitment of government officials to respect it and of the judges to hold these officials

173 new newspapers have been registered under the Freedom of the Press Proclamation, No. 34 of 1992, *Neg. Gaz.* 52/8; only 43 are published regularly—many by former officials dismissed by the EPRDF. See also Zbigniew Brzezinski, *The Grand Failure: The Birth and Death of Communism in the Twentieth Century*, New York, 1989, 256: "Human rights is the single most magnetic political idea of the contemporary time. . . . Its appeal is responsive to the emergence of increasingly literate and politically conscious masses who can no longer be so easily isolated and indoctrinated . . .".

²¹ Moose, above, n. 15. See Cohen, above, n. 5, at 5 (noting a divergence of opinion, with enough evidence to support those who see the EPRDF as having little respect for human rights); Gudina, above, n. 2, at 918 (the persecuted of yesterday have become the persecutors of today); Hovde, above, n. 4, at 143 (the EPRDF accuses the Ethiopian Human Rights Commission of using human rights "fabrications" as political weapons against government, while the Commission argues that such allegations should be tried in a court).

²² Draft Constitution, Art. 28 (removes any statute of limitations, or possibility of pardon or amnesty with regard to prosecutions for "crimes against humanity as provided by international conventions ratified by Ethiopia and other laws"); Special Prosecutor Proclamation, No. 22 of 1992; An-Na'im, above, n. 7 (Human Rights Watch/Africa supports the prosecutions as establishing an accountability for human rights abuses, and a draft proclamation establishes international law as the basis for defining the relevant crimes); Cohen, above, n. 6; Cohen, above, n. 5, at 4; *ibid.* at 23 (300–800 of those arrested were released after *habeas corpus* proceedings), (there are growing international pressures for the Ethiopian prosecutions that Martin Hill of Amnesty International calls "a major triumph for human rights and democracy"); Donatella Lorch, "Where tyrants ruled, cry for justice", *New York Times*, 11 November, 1994, A4 (310,000 pages of documents have been compiled, and trials are scheduled to begin on 13 December, with Mengistu and 21 other defendants-in-exile being tried in absentia), (critics wonder "whether a court influenced by the party in power can be fair", and whether persons detained for years without trial should now be charged); John Hicks, Statement to the House of Representatives Subcommittee on Africa, 27 July, 1994 (*Lexis-Nexis*); Paul, above, n. 4, at 237 n. 11; "Ethiopia's state terror on trial", *The Economist*, 17 December, 1994, 43. The trials are rare events—Nazis were not tried in German courts and the French punished collaboration rather than human rights violations—and fair trials in Ethiopia could serve as a model for, e.g., Rwanda. As Kifle Wodajo observes: "You cannot close the book on the past". *Ibid.* at 44.

²³ Amnesty International, above, n. 4, at 40–41 (a list compiled in June 1991 that is still far from fully implemented).

²⁴ Draft Constitution, Art. 13–44, applicable to all levels and branches of government (Art. 13) but subject to a complex state of emergency proviso (Art. 95)—see n. 45, below. On property rights, Art. 40, see n. 17, above. Other rights include: life, liberty and security (Art. 14); Humane treatment (18); those of persons in custody (19, 21); those of the accused (20, 22–23); dignity (24); equality (25); privacy (26); those of religion and conscience (27); free speech and press (29); assembly (30); association (31); movement (32); citizenship (33); those of marriage and the family (34); those of women (35); those of children (36); justice (37); voting and being elected (38); those of nations, nationalities and peoples (39—see nn. 51–53 and accompanying text, below); economic, social, and cultural (41); those

accountable. Despite recent Proclamations,²⁵ such commitment is more than a bit wobbly at present. The Constitution was drafted by a Commission which was boycotted by the representatives of several opposition parties. The head of the Commission, Kifle Wodajo, stated that the controversial issues were the secularization of the state, land ownership and the rights of nations/nationalities.²⁶

The new Constitution combines presidential and parliamentary forms of government in ways that minimize the separation of powers and the checks and balances seen in, for example, the U.S. Constitution and the German Basic Law. Such devices are often regarded as protective of human rights and "free" (unregulated) markets, at the expense of a frequent governmental gridlock which a developing country can ill afford. The main constitutional curbs on governmental activism or authoritarianism in the Constitution revolve around federalism and self-determination provisos, which are the foci of this article and may prove similarly conducive to a governmental gridlock in Ethiopia.

While some foreign governments are uncomfortable with the EPRDF's political style and regret their failure to protest at particular incidents, such as the repression at Addis Abeba University, there is general satisfaction with the new

of workers (42); development (43); and protection of the environment (44). The "freedom of expression" is "without interference" (Art. 29(2)), but: "Nothing . . . shall absolve anyone from liability arising from laws enacted to protect public morals, peace, human dignity and democratic rights of citizens", Art. 29(6). Freedom of assembly is identically qualified (Art. 30(2)), and Art. 30(1) adds: "Appropriate procedure may be enacted to ensure that public meetings and demonstrations do not disrupt public activities or that such . . . do not violate public morals, peace and democratic rights". (The phrase "public morals", in Art. 29(6), 30, licenses a considerable and discretionary police powers-type of regulation under the civil law.) Under Art. 31: "Associations formed in violation of the appropriate laws or . . . with the objective of overthrowing the constitutional order . . . shall be prohibited". The right to vote and be elected is unqualified, except that political organizations must elect their officials "in a free and democratic manner", Art. 38(3). The length of the human rights provisions is often explained by there being little Ethiopian caselaw on the subject. Cohen, above, n. 5, at 8.

²⁵ E.g. Proclamation to Provide for the Independence of Judicial Administration, No. 23 of 1992, *Neg. Gaz.* 52/5. *Inter alia*, this Proclamation declares judges independent of the Ministry of the Interior. Cohen, above, n. 5, at 24. Many judicial replacements have no legal training, and implementation of a Proclamation regulating lawyers was delayed by the reorganization of the Ministry of Justice, *ibid.*

²⁶ Ethiopian Council of Representatives Ends Deliberation on Constitution, 3 May, 1994 (Xinhua News Agency Item 0503001, Lexis-Nexis). See Proclamation to Provide for the Establishment of the Constitutional Commission, No. 24 of 1992, *Neg. Gaz.* 51/8; Cohen, above, n. 5, at 6 (a major problem with the English translation of this Proclamation, Art. 4); *ibid.* at 11 (the EPRDF seems to be waiting for the new Constitution to resolve many issues and ambiguities); Jembere, above, n. 3, at 76; Getachew Kejela, "Lively debate on draft Constitution", 3(4) *News from Ethiopia*, 30 April, 1994, 1, at 2 (published by the Ethiopian Embassy in Washington) ("the members of the commission hold divergent interests, political programs and outlooks . . . [seen] in almost each of the chapters of the constitution and . . . indicated by majority and minority votes"). Gudina, above, n. 2, at 923 argues that the draft Constitution transforms "Ethiopian state and society according to their [the EPRDF's] image", but this is what all successful revolutionary (in the legal, Kelsenian sense) regimes do. There were delays in appointing the 29-member Commission, the deliberations of which were boycotted by the EDU, ENUP, OLF, Southern Coalition, and others (see n. 11, above). The draft was to be in accord with the spirit of the Charter, above, n. 5, and opened for public discussion, but only modest amounts of public information and education resulted. A May 1993 Constitutional Symposium attracted some foreign "experts", and technical assistance was provided by the Carter Centre. The Council of Representatives approved the draft, and it was then ratified by the Constituent Assembly elected in June 1994: see nn. 9-10 and accompanying text, above. Cohen, at 4-7; "Politics No. 604: Ethiopia", *Indigo Publications*, 25 December, 1993 (Lexis-Nexis). Compare Gudina, at 923-924 (discussed in n. 4, above) with Statement by H. E. Meles Zenawi, Africa News Service, 26 July, 1993 (Lexis-Nexis) (the people "must believe" in the draft Constitution, must "call it their own"; it must be "conceptually accessible" and "easily understood", but there is no need to reinvent the constitutional wheel).

Constitution. Relations with the United States in particular have been warm, and some Ethiopians may have exaggerated expectations of the benefits that such relations may bring. U.S.A.I.D. is, however, funding an \$11.5 million, six-year Democracy and Governance Project, covering electoral administration, constitutional drafting, judicial reform (independence, protection of human rights and enhancing the rule of law), the media and civil society in general.²⁷

Kifle Wodajo, the head of the Constitutional Commission, notes that multi-party politics are still seen as a recipe for disintegration throughout the Third World (the South, if you prefer), and in Africa in particular. Fears of disintegration confer an increasingly limited licence on leaders who try to maintain a one-party, "nation-building", iron grip on politics.²⁸ Can the EPRDF and its new Constitution transcend this fear and this temptation, while traditional "secrecy and . . . command-administrative methods" persist in Ethiopia?²⁹ The EPRDF holds things together for the present, sometimes by military or other authoritarian means, and pins its hopes on post-constitutional events and processes. It would be well advised quickly to give more solid evidence of its good faith commitment to human rights, multi-party democracy, civic education and an emerging civil society. In much of Africa, a new wave of political and economic liberalization promises new institutions, policies and prosperity.³⁰ Where will Ethiopia fit into this continental drift?

FEDERALISM

Properly classified as a human right in the new Constitution, self-determination (including secession) is thus segregated from federalism provisos. These two concepts are separated here for analytical convenience only, and they will be brought together at the end of the article. "Federal" arrangements in previous Ethiopian constitutions were all pretence and no substance, so any federalism must now find a new constitutional equilibrium which responds to uniquely Ethiopian needs and desires. For example, federalism is generally understood as based on some form of divided sovereignty, and Article 8(1) of the new

²⁷ Hicks, above, n. 22. See Henze, above, n. 4, at 31; Robin Lubbock, "A campus subdued", *Chronicle Higher Education*, 10 November, 1993 (government responded violently against student demonstrations, shut Addis Abeba University down for three months, detained more than 100 students, and dismissed three administrators and 39 academics); "Meles dictates", above, n. 15, at 4; "U.S. official meets President Meles", Voice of Ethiopia External Service in Amharic, 26 January, 1994, 1600 GMT (BBC Monitoring Serv. & Westlaw) (George Moose, Asst. Secretary of State for Africa, praising peaceful and democratic changes in Ethiopia and announcing that the U.S. is "ready to provide all necessary assistance"). Stung by the collapse of the Shah, Carter and Reagan tried to save face by striking a bargain with Somalia's Siad Barre and thus abetted a more tragic collapse. The Americans then recovered themselves on the Horn, to make a significant contribution to avoiding bloodshed and guerrilla warfare during the EPRDF's 1991 takeover. Henze, at 8-18, 15; Peter Schraeder, "U.S. intervention in the Horn of Africa amidst the end of the Cold War", (1993) *Af. Today* 7, at 8. But Schraeder argues that the end of the Cold War has reinforced the American tendency to ignore African issues. There has been no coherent American pursuit of multiparty democracy and human rights there, *ibid.* at 26.

²⁸ Parmalee, above, n. 2 (citing Kifle Wodajo). See n. 54 and accompanying text, below.

²⁹ Henze, above, n. 4, at 32. But see draft Constitution, Art. 12(1): government is to be "open and transparent to the public".

³⁰ An-Na'im, above, n. 7; Herbst, above, n. 5, at 17. See Cohen, above, n. 6 (Ethiopian politics became very polarized in a very short time, and there is little dialogue among groups about the future); Cohen, above, n. 5, at 3 (the Council of Representatives proved less assertive than expected, and tolerance and democratic competitions by the opposition were less than expected); Hovde, above, n. 4, at 127; *Africa Demos*, above, n. 6 (discussed in n. 6 and accompanying text); "Meles dictates", above, n. 15, at 3.

Constitution states: "Sovereignty resides in nations, nationalities and peoples . . .". Without a right to self-determination, this could be interpreted as meaning that sovereignty is so infinitely divisible as to reside nowhere—apart from the bosom of the regime of the day. Debates and events in the European Union, Canada and Australia, in the former Czechoslovakia, Soviet Union and Yugoslavia, and in the Third World generally illustrate growing pressures to remodel power-sharing arrangements, so as to accommodate radically different ideas about living with diversity.³¹ Has Ethiopia hit upon something with an international significance, a creative new way of dividing sovereignty in logically and politically justifiable ways?

Some Ethiopians and Ethiopianists would answer this question with a resounding "No". They see federalism as a divide-and-rule tactic by the EPRDF or, alternatively, as a justification for "the independence of Eritrea without the intent of applying it equally to other parts of the country".³² Regional governance is too poorly organized, defined and understood in Ethiopia, the argument runs, to serve as the basis for a genuine federalism. In any event, such a federalism would be too slow, complex and costly (especially in terms of the scarce human resources absorbed), and it would provoke additional conflicts over the distributions of power and revenue. Samuel Huntington argues that a drawing of state boundaries on ethnic lines in Ethiopia "supplements what is unavoidable with what is undesirable".³³ However, Ali Mazrui concludes that Ethiopia had already disintegrated when ethnic groups began plausibly to demand self-determination from Mengistu's regime. Mazrui thus argues that the key question is whether Ethiopia should, like the Soviet Union, create a Commonwealth of Independent States.³⁴ This may indeed prove to be the outcome from the new Constitution, although many Amhara (through opposition parties like the AAPO)

³¹ Deborah Cass, "The word that saves Maastricht? The principle of subsidiarity and the division of powers within the European Community", (1992) 29 *C.M.L.R.* 1107; Koen Lenaerts, "Constitutionalism and the many faces of federalism", (1990) 38 *Am. J. Comp. L.* 205, 235, 263; Shivadev Shastri, "Lessons for the European Community from the Indian experience with federalism", (1994) 17 *Hastings Int. & Comp. L. Rev.* 633, 656. See Cohen, above, n. 5, at 10 (citing John Abbink) (Ethiopia is the first post-colonial African country where a part has broken away successfully, and where a radical redesign of the political fabric is being attempted); Forsyth, above, n. 4, at 50 (despite dramatic reversals, federalism is "in the air" in mainstream political debates); *ibid.* at 55–56 (increasingly popular trend to avoid comparisons by declaring all states *sui generis*).

³² An-Na'im, above, n. 7. See Worku Abera, "Tribalism rules in Ethiopia", *New African*, September 1993, 20, at 21; Gudina, above, n. 2, at 913; *ibid.* at 930 (a "bantustanization" of Ethiopia by ethnic group courts disaster); Vestal, above, n. 7; n. 54 and accompanying text, below.

³³ Cohen, above, n. 5, at 14 (quoting Huntington). See *ibid.* at 1, 4 (recent regionalizations in Ethiopia have seen contradictory policies with apparent legal effect issued by different officials), 9 (discussing Proclamation to Provide for the Establishment of National/Regional Self-Government, No. 7 of 1992, *Neg. Gaz.* 51/2), 14 (Haile Selassie's un-federal system of administration probably still exists on the ground in many areas); Gamachu, above, n. 4, at 106–107 (discussing this Self-Government Proclamation); Hicks, above, n. 22; Jembere, above, n. 3, at 75 ("Any territorial division . . . should be based on . . . economic development and administrative convenience rather than ethnic and linguistic criteria"), 77; "Meles dictates", above, n. 15, at 3; "President Meles", above, n. 15 (some civil servants were sacked because they refused transfers from central government to regional administration offices). Parmalec, above, n. 2 (many Ethiopians say that a devolution which recognizes ethnicity "will erode the bonds that the country's various nationalities share and invite a Soviet-style breakup into ethnic fiefdoms"); n. 54 and accompanying text, below.

³⁴ Ali Mazrui, "Planned governance and the liberal revival in Africa: the paradox of anticipation", (1992) 25 *Cornell Int. L.J.* 541, 542. See Cohen, above, n. 5, at 21 (quoting Paul Henze) (Ethiopian events "can have hideous consequences decades hence, as we see in the ex-Soviet Union").

reject ethnic federalism and argue for the "historic unity" of Ethiopia, and for the Amharas' right to live and to act politically in all parts of the country.³⁵

Others no less persuasively argue that ethnicity in Ethiopia can only be diffused rather than suppressed and that *some* devolution of power and revenue is essential to achieving flexibility, compromise, democracy and stability.³⁶ What is to be devolved, and how, then become both the most relevant and the most difficult questions. Apart from Switzerland and Canada (where French Canadians may now try to secede), successful federalisms have hitherto been those where state borders do not coincide with ethnic identifications. While ethnic groups are for the most part geographically dispersed in the United States, for example, the borders of the nine Ethiopian states are drawn so that, except in the southernmost state, each of eight dominant ethnic groups gets its "own" state. This move perpetuates the Ethiopian tradition of drawing administrative boundaries along ethnic lines, boundaries that continue to provoke disputes today. Most untraditional is the statement in the new Constitution that "nations, nationalities and peoples within the states . . . shall have the right to establish, at any time, a state of their own".³⁷ How this is to be done is not explained.

India reportedly provides the model for new Ethiopian federal structures,³⁸ but some of the paper arrangements in Ethiopia resemble (probably unintentionally) those of the German Empire Constitution of 1871³⁹—a Constitution which (through its influence on Japan's Meiji Constitution) was a model for Haile Selassie's 1931 Constitution. In particular, the new Council of the Federation is to interpret the Constitution, establish the Constitutional Court, decide revenue-sharing questions, promote equality and unity, and decide self-determination and secession questions.⁴⁰ The Council of the People's Representatives is otherwise the "Supreme power of the Federal Government", a body that will pass federal laws which come into force with the President's signature.⁴¹ A division of constitutional labour rather than a genuinely bicameral legislature has thus been created: the consent of the Council of the Federation is not a precondition to the effectiveness of federal legislation.

Each state is to have its own legislative, executive and judicial "powers"—an idea which, if taken seriously, will absorb much scarce manpower. State powers will include implementing state constitutions, social and economic development

³⁵ Hovde, above, n. 4, at 139; Parmalee, above, n. 2 (quoted in n. 33, above). See Metiku, above, n. 4, at 210 ("The idea of pulling apart one of the proudest old nations . . . is . . . strange" because "losing a traditionally unified nation only foments tribalism"); n. 54 and accompanying text, below.

³⁶ Cohen, above, n. 6; Hovde, above, n. 4, at 133–134 (citing Kidane Mengisteb in part); Parmalee, above, n. 2 (President Meles argues that government has no choice but to recognize an ethnic diversity so long repressed). See n. 55 and accompanying text, below.

³⁷ Draft Constitution, Art. 47(2). See Cohen, above, n. 5, at 9, 11; Gamachu, above, n. 4, at 112; "Tribalism in Africa; no easy answers", *The Economist*, 10 September, 1994, 46. See also Forsyth, above, n. 4, at 54. Art. 47 lists 45 "nations, nationalities and peoples" in the Southern Peoples State.

³⁸ Cohen, above, n. 5, at 8. But see also Shastri, above, n. 31, at 653 (problems of maintaining initiative and coherence under India's federal arrangements).

³⁹ See Art. 6–8, in Louise Holborn, *et al.* (eds.), *German Constitutional Documents Since 1871*, New York, 1970, 24, 94–95.

⁴⁰ Draft Constitution, Art. 62. The Council is to consist of one representative from each "nation, nationality, people", plus an additional representative for each additional million people within the group, Art. 61(2). Representatives "may" be elected directly or by state parliaments, Art. 61(3). The degree of future independence of the Council is questionable: "its budget" is to be submitted to the Council of People's Representatives (COPR) for approval, Art. 65, and "it shall perform the functions assigned to it jointly with the" COPR, Art. 62(5). A separate Council of Ministers is created under Art. 76–77 and, *inter alia*, it declares states of emergency: see Art. 95, discussed in n. 45, below.

⁴¹ *Ibid.* at Art. 50(3), 57.

policies and plans, the administration of land and natural resources *under Federal law*, taxation of the sources reserved to states, self-administration under "general national standards" and a "democratic order where the rule of law reigns", plus those powers "concurrently given" to federal and state governments. There is no constitutional list of such concurrent powers, although the federal government can decide to delegate some of its powers later.⁴² The formal powers of Ethiopian states are thus rather meagre, compared to the powers states possess under many other federal arrangements. This is driven home by the rather narrow powers of state taxation in Ethiopia, and by the fact that revenue-sharing arrangements will only be established at some time in the future.⁴³

Accorded a modicum of political independence, Ethiopian states will probably remain subservient to the federal government in economic and social policy matters. The managerial benefits of federal decentralization are thus unlikely to materialize under the language of the new Constitution, although something like the "subsidiarity" that is becoming popular in some other places could be created as a matter of ordinary federal legislation.⁴⁴ The new Constitution also seems to offer no novel solutions to the perennial problems of federalism: maintaining initiative and coherence, even in the management of health and education that is often thought to be safely delegable to states. Higher courts solve some of these problems in successful federal systems, but the willingness and the ability of Ethiopian courts to undertake such a task can be doubted. Most enduring federalisms are those in which the subunits enter into a "contract" to form the central government. The problem with having a unitary state like Ethiopia's (or, come to that, Britain's) devolve some of its powers to the states it has created is that devolved powers can always be clawed back—especially during a state of emergency declared by the central government.⁴⁵ Finally, a federalism as most people understand it can never result when states are free to leave the "union"

⁴² *Ibid.* at Art. 50(2), 52. See Cohen, above, n. 5, at 12 (an Italian unintegrated prefectural system of administration is likely to persist).

⁴³ Draft Constitution, Art. 96–97, 99–100. When either the federal or a state government delegates a function to the other, it shall cover the expenses involved, Art. 96. States may tax income from state enterprises and employees, land use, mining and forestry royalties, agriculture, transport, houses and other property, and the granting of licences, Art. 99. Concurrent federal/state tax powers include joint federal/state enterprises, income and sales taxes from business enterprises, shareholders' dividends, and "big mining, petroleum and gas operations", Art. 100. Revenue-sharing arrangements will supposedly be worked out in the future, Art. 97. Conspicuously absent from these lists is a state's concurrent power broadly to tax the income of individuals. See Cohen, above, n. 5, at 13 (ecological diversity and economic imbalances will make an equitable and growth-oriented system of revenues difficult to attain in Ethiopia).

⁴⁴ *Ibid.* at 11–12 (citing John Harbeson), 14 (Haile Selassie's un-federal system of administration probably still exists on the ground in many areas); Edwin Rubin and Malcolm Feeley, "Federalism: some notes on a national neurosis", (1994) 41 *U.C.L.A. L. Rev.* 903, 951. As George Stigler and Pope John XXIII proposed long ago, and as Australia and the European Union are coming to accept, subsidiarity involves assigning a function to the *lowest* level of government capable of performing it efficiently—and of acquiring a limited sovereignty and legitimacy in the process. Cass, above, n. 31, at 1107–1111; Trevor Hartley, "Constitutional and institutional aspects of the Maastricht Treaty", (1993) 42 *Int. & Comp. L.Q.* 213, 214, 218; Lenaerts, above, n. 31, at 224; "Europe is in the gutter", *The Economist*, 21 May, 1994, 14 ("subsidiarity—the ghastly Euro-word that simply means doing things together only if you can do them better that way than separately"). The federal government can delegate many of its functions to a state or states under draft Constitution, Art. 50(3)(a).

⁴⁵ Laurence Tribe, *American Constitutional Law*, New York, 1988 (2nd ed.) § 6.1, 401; Jembere, above, n. 3, at 77; Lenaerts, above, n. 31, at 205, 255 (the only common denominator of federalisms is that judges strike an "appropriate balance" between the federal government and the states, while otherwise deferring to federal legislation); Shastri, above, n. 31, at 653, 661 (Indian government

without facing military action, as is the case under Article 39 of the new Constitution.

SELF-DETERMINATION

The human right about which the poets sing and for which the patriots die, self-determination, arguably illustrates most of the problems and the potential of evolving international arrangements and the new Constitution. The Soviet and American governments, absorbed in their balance of (nuclear) power politics and playing a game of musical chairs around the Horn of Africa, formerly helped their client-states to repress demands for self-determination. The end of the Cold War has meant an end to this abusive and expensive control, and this has led to an explosion of pent-up demands in Ethiopia and elsewhere. A New World Disorder will continue to flow from these self-determination demands and ad hoc reactions to them, unless governments and international organizations can quickly offer creative solutions.⁴⁶ Adapting a comment by Robert Hovde, the critical question for Ethiopia is: who should clear a path through the political thicket, and how, and who should then be able to walk this path?⁴⁷

World-wide, the existential problem of self-determination is that 185 states purport to represent (and occasionally coerce) some 5,000 nations: groups perceiving a common and distinctive history (often of suffering), language, culture and/or religion. There are about 90 such nations in Ethiopia and all but eight are quite small; this compares with 350 in India and 130 in the former Soviet Union.⁴⁸ The political conflation or legal fiction long used to paper over the

plays vital role of mediating between states). See also Lenaerts, at 206. Under draft Constitution, Art. 95(1)(a), the Council of Ministers can declare a state of emergency on the basis of external aggression, dangers to the constitutional order which cannot be controlled through an ordinary law enforcement, natural disasters or epidemics. The declaration must be approved or renewed every four months by a two-thirds vote of the Council of People's Representatives, Art. 95(3). Extraordinary regulations and suspensions of rights are permitted. Curiously, the right to self-determination and secession cannot be suspended, but the *process* of seeking secession can be suspended, Art. 95(4)(c).

⁴⁶ Paul Brietzke, "Self-determination, or jurisprudential confusion exacerbating political conflict", forthcoming 1995 *Wis. Int. L.J.* See Cohen, above, n. 5, at 10 (citing John Abbink) (conflicts in southern Ethiopia echo basic contradictions world-wide, between democracy and self-determination); Robert Jackson, "Juridical statehood in sub-Saharan Africa", (1992) 46 *J. Int. Aff.* 1, 3 (self-determination attributed to the French Revolution and the unification or separation movements in late 19th and early 20th Century Europe); Tony Judt, "The new old nationalism", *N.Y. Rev. of Bk.*, 26 May, 1994, 44 (perhaps the best single source); Herbst, above, n. 5, at 27-28 (the gradual disintegration of the centre, as well as a secession, leading to chaos and loss of life in Liberia and Somalia, may be a harbinger of the future); Hovde, above, n. 4, at 127 (Ethiopia long a hostage of the Cold War).

⁴⁷ *Ibid.*

⁴⁸ Draft Constitution, Art. 39(5) (quoted in n. 51, below); Brietzke, above, n. 46; Jason Clay, "What's a nation? Latest thinking", in William Haviland and Robert Gordon (eds.), *Talking About People: Readings in Cultural Anthropology*, London, 1992. See Rodolpho Stevenhagen, *The Ethnic Question: Conflicts, Development and Human Rights*, New York, 1990, 57-58 (quoting A. D. Smith in part) (ethnic nationalism seeks its conversion into an abstract and political "nation", and to then establish this as the sole criterion of statehood); Gudina, above, n. 2, at 927 (about 101 ethnic groups in Ethiopia); Rosa Ismagilova, "Traditional structures in the current ethno-cultural processes of Ethiopia", (1994) 2 *New Trends in Ethiopian Studies* 871 (the "revival of ethnicity and nationalism almost everywhere" has meant that cultural integration processes are less intense than 15 years ago in Ethiopia, Kenya, Nigeria, etc.); Van Doren, above, n. 3, at 117 (42 "tribes" in Ethiopia); "Ethiopia", above, n. 10 (there are more than 70 "nationalities" among the 53 million Ethiopians, and all but eight are small). According to the 1980-1984 census, the ethnic composition of Ethiopia is: Amhara, 38%; Oromo, 35%; Tigrinya, 9%; Gurage, 3%; Ormeto, 3%; Sidamo, 2%; Tigre, 2%; Ajar, 2%; Somali, 2%; and others, 4%. Aberra, above, n. 32, at 21. Many would argue that this overstates the Amhara and understates some others, especially the Oromo.

conflicts that inevitably result from such coercion and ostensible representation, the "sovereignty" of a "nation-state" such as a "Greater Ethiopia",⁴⁹ is rapidly losing power and authority world-wide. The "nation" part of this equation amounts to an assertion that the relevant nations are being represented fairly and effectively within the state. Demands for self-determination operate to delegitimize this (positivists') assertion through the claim that the state is not a proper master in its own house.

Only a suicidal state will give up territory or vital functions without a fight—as in the case of Eritrea for example—unless it is forced to do so by conditions which weaken it markedly, by a powerful patron-state which espouses a particular self-determination claim, or by the international community. None of these circumstances now exist in Ethiopia. Self-determination claims have recently become more respectable in international law and politics, but this trend is unlikely to help Ethiopia's nations much: the international consensus seems to be to give the EPRDF its head, since it is so marked an improvement over Mengistu's regime. Self-determination claims might therefore be expected to fail in Ethiopia: to serve as the exceptions that prove the international law rules of Ethiopian sovereignty and territorial integrity, and of an international non-interference in Ethiopia's "domestic" affairs. After all, a state can still be a state—an independent organization with sufficient authority and power to govern a territory—even if it is "illegitimate, incapable, disorganized, divided, corrupt, and even chaotic".⁵⁰ This description characterizes past Ethiopian regimes nicely, regimes that survived for some little time, so it is perhaps to the EPRDF's credit that it is apparently attempting something more elegant, complex and permanent.

There are only a few predominantly mono-ethnic states (true nation-states) today, such as Iceland and Japan, yet most states make no constitutional provision for their multiple ethnic groups. Even under most federal arrangements, non-dominant groups are usually treated as "minorities", and may or may not have rights *as minorities*. The EPRDF argues that this will not suffice for Ethiopia, and no constitution goes so far in recognizing ethnic rights as does Article 39: "Every nation . . . shall have the unrestricted right of self determination up to secession".⁵¹ Beyond the new Constitution's self-protective rights to language, culture, historical heritage, self-administration and a "fair representation in the federal and state governments" lies a nation's right to choose secession. A secession demand by two-thirds of the relevant nation's parliament "shall be effective" when approved by a majority vote of the nation's people, and power will then be transferred to the nation's parliament.⁵² The minority's alternative Article 39, which the

⁴⁹ See Donald Levine, *Greater Ethiopia*, Chicago, 1974; Herbst, above, n. 5, at 18, 23 (African governments' use of sovereignty as a cover for repression is threatened in a world increasingly concerned with self-determination); n. 57 and accompanying text, below.

⁵⁰ Jackson, above, n. 46, at 1–2. See Brietzke, above, n. 46 (given the coercive capacities most states can muster, few self-determination claims succeed if they are not linked to boundary adjustments after a major war); Metiku, above, n. 4, at 206–207 (like people, states sometimes get sick, die, or commit suicide, and a state incapable of maintaining an independence loses its personality in international law), 215.

⁵¹ Art. 39(1). See Stevenhagen, above, n. 48, at 58, 71 (most states veer between elaborate protections of minority rights, and a refusal to do so in the name of national unity and integration). The Preamble to the draft Constitution states the desire to build "a single political community", through "the exercise of our right to self-determination" and "the rectification of historically distorted relationships . . .". A "nation, nationality and people" (hereinafter nation) means a "community" having a common culture, language, consciousness, and "belief in a common bond and identity"—with a majority living in a common territory. Art. 39(5).

⁵² Draft Constitution, Art. 39(2), 39(4). A nation can presumably constitute a parliament for this purpose: see Art. 47(2), quoted in text accompanying n. 37, above.

Constituent Assembly refused to adopt, made secession turn on a two-thirds vote by the nation's people. This vote could not be taken until three years after the nation's parliament had voted to secede, a parliamentary vote which in turn could not be taken until after extensive conciliation efforts by the Constitutional Court had failed.⁵³ The minority's (perhaps vain) hope seemed to be that secession delayed is secession destroyed.

There is much opposition, especially from the Amhara, to a self-determination exercise that goes so far as to proclaim a right to secede and it is problematic as a matter of international law. It is too easy to obtain secession under (the majority's) Article 39, and it is thus unlikely to prove a *last* resort against repression. A right of secession will stimulate a surge of nationalism, and it is inconsistent with a competitive politics under federal arrangements: rather than practise the political art of compromise, some or most opposition parties will simply threaten to leave the state. As a chronically centralizing institution, the Ethiopian military would be unlikely to obey the letter of Article 39 when a nation wants to leave. Domestic and international opposition and conflict may build quickly when a general, abstract and thus relatively unexceptional right to self-determination grows specific as to time and nation. It is extremely difficult to change ethnic entitlements while coping with rapid changes in a developing country. Thus, an ethnic federalism fails to account for the many Ethiopian farmers who migrated or were forcibly relocated southwards because of warfare and soil exhaustion in the North.⁵⁴

Even so, rational hopes persist that self-determination/secession rights in the new Constitution will defuse ethnic discontents, that the ready availability of such rights will so colour Ethiopian politics as to make the exercise of these rights less likely and less violent. Peace and stability would arguably be enhanced in the long run when, as Keynes observed, we are all dead—and the regime may have collapsed. In any event, the "lives of people must surely transcend the integrity of territories".⁵⁵ Clearly, no "rigid historical or institutional template"

⁵³ Legislature Leaves Final Decision on Right to Secede to Constituent Assembly, Voice of Ethiopia, External Service in English, 21 April, 1994, 1530 GMT (BBC Monitoring Serv. and Westlaw): the minority "recognized the right to self-determination but said that the question of secession must be accommodated as the demand arises and, therefore, must not be contained in the law of the land".

⁵⁴ Brietzke, above, n. 46; Cohen, above, n. 5, at 4; Henze, above, n. 4, at 32; Lien, above, n. 3, at 95 n. 268; Metiku, above, n. 4, at 208, 210, 209 (Art. 39 "bizarre" and "unprecedented in the history of nation-states"); Paul, above, n. 4, at 259; Cass Sunstein, "Constitutionalism and secession", (1991) 58 *U. Chi. L. Rev.* 633, 666–669; "Ethiopia: opposition rejects elections", *Indigo Publications* No. 617, 2 April, 1994 (Lexis-Nexis). See Aberra, above, n. 32, at 21 (ethnic federalism enables the EPRDF "to maintain its tribal rule over the population"); Henze, at 32 (Ethiopian arrangements misconceive the "role of ethnicity in politics"); Vestal, above, n. 7; Michael Walzer, "Notes on the new tribalism", in Chris Brown (ed.), *Political Restructuring in Europe: Ethical Perspectives*, London, 1994, 187, 194 (the majority has no obligation to insure the survival of minority cultures, and borders provide only a minimal protection in the modern world); "Tribalism in Africa", above, n. 37 (sceptics see the right to secede as a licence for unscrupulous politicians to stir up chauvinism); nn. 28, 32, 34–35 and accompanying text, above. Jembere, above, n. 3, at 74, notes that United Nations General Assembly Resolution 1514 of 1960 confers self-determination only on nations under alien and colonial domination, and he argues that secession is thus unnecessary in Ethiopia—so long as rights are constitutionally and institutionally protected. This is certainly true, but many current interpretations of General Assembly Resolution No. 2625 of 1970 would accord self-determination to nations not under colonial and alien domination. Brietzke, above, n. 46.

⁵⁵ Nihal Jayawickrama, "The right to self-determination—a time for reinvention and renewal", (1993) 57 *Saskatchewan L. Rev.* 1, 11. See Cohen, above, n. 6; Winkler, above, n. 7 (Ethiopia's a risky but "spectacular change of political direction for Africa" in defusing ethnicity). But see also Gudina, above, n. 2, at 914 (Conti-Rossini's description of Ethiopia as a "museum of peoples" is possibly

should "be imposed on aspiring democratic societies".⁵⁶ I thus argue that the net effect of the new Constitution *provisos on paper* is less that of a constitution as conventionally understood, and more like an international treaty such as the Treaty of Rome. The international law analogies become more apt if Ethiopia is approached as a group of nations co-operating *imperfectly* for their mutual net benefit, and with the *limited* international support that is presumably vital to a successful co-operative outcome. Such an approach probably describes the loci of "Ethiopian" sovereignty more accurately than does the increasingly-outmoded concept of a nation-state.⁵⁷

Like other externalities or public goods, self-determination can only be produced jointly, through a political co-operation: no Ethiopia, Ethiopian or Oromo can achieve self-determination as Ethiopia, Ethiopian or Oromo by itself or herself. The new Constitution purports to "internalize" this externality within existing territorial boundaries, and to create the institutional means for people to become (like Italo-Europeans under the Treaty of Rome) Oromo and Ethiopian at the same time. After all, there are manifest advantages in trying to stay together: each segmentary division into smaller and smaller groups—a major focus of the anthropology of equatorial Africa, involving up to 90 nations in Ethiopia—makes domestic *and* international politics more "noisy, unstable, incoherent, and deadly . . ." ⁵⁸ The opportunities for a domestic and international development are reduced accordingly; tiny Singapore does outperform huge Zaire, but most of Ethiopia's nations are too small to be politically, economically or militarily viable under foreseeable conditions.

FITTING THE PIECES TOGETHER

Ethiopia has hit upon an innovative—rather un-federal and not even very constitution-like—and potentially workable way of promoting integration and diversity at the same time. But as things now stand, rival rules and political arguments appear to deconstruct each other in ways that arguably reflect a continuing dilemma (or logicians' false dichotomy) between the insecure sovereignty and integrity of a territory that is somewhat misgoverned, and the potentially just but parochial and often unviable step of secession. Diversity among ethnic groups is only a potential source of great strength in Ethiopia, owing to the virtual absence of integrative transport and communications networks and of a consensus political culture.⁵⁹ Like most constitutions, Ethiopia's

losing its anthropological beauty and becoming a madhouse), (Ethiopia's central problem cannot be solved by creating more of it; this is like attempting to cure malaria by breeding more mosquitos); n. 36 and accompanying text, above. Gudina's analogy is apt because malaria can indeed be curbed (not cured) by breeding more *sterile* mosquitos.

⁵⁶ Lewis, above, n. 4, at 39.

⁵⁷ See draft Constitution, Art. 8(1) (quoted in text before n. 31, above); Ali Kazancigil, "A prospective view on the European nation state and unification", in Jyrki Livonen (ed.), *The Future of the Nation State in Europe*, Aldershot, 1993, 117, 128 (the "post-national" or "post-nationalist" view that states will continue their role of an intermediation of global forces); n. 49 and accompanying text, above.

⁵⁸ Walzer, above, n. 54, at 191. See Brietzke, above, n. 46; James Buchanan, "The Coase Theorem and the theory of the state", (1973) 13 *Nat. Res. J.* 579; Rubin and Feeley, above, n. 44, at 952 (a "polity may not constitute our entire sense of self, but it does constitute our sense of political identity").

⁵⁹ Joan Kaplinski, "The future of national cultures in Europe", in *The Future of the Nation-State in Europe* 107, 114; Patrick Thornberry, "The democratic or internal aspects of self-determination, with

new one presents its principles in rather a fragmented and undeveloped fashion. These principles could be developed further, politically and perhaps judicially, to achieve a better "fit" among the ideas embedded in the Constitution: democracy, a limited devolution of powers, self-determination and other human rights.⁶⁰

The main means for such a development would be very new to Ethiopia, but they have received much rhetorical support there recently. They are genuinely democratic competitions, which are designed to encourage potentially breakaway nations to stay in the union long enough for a sense of "Ethiopia-hood" to grow up alongside a sense of nationhood. The EPRDF seems to realize that legitimation of "its" problematic state requires more than the military successes of a few years ago. It should thus move quickly to grant genuine access to the means of political power for alienated (and perhaps self-alienated) opposition parties, parties which are mainly based on ethnicity and which vary widely in their attachment to an Ethiopian unity. An important supplement to such a policy would be visibly to reduce discrimination, and even to practise a bit of "affirmative action", in the distribution of wealth and power. The aim would be to reduce the effects of an "internal colonialism" which created an ethnic hierarchy—virtually a caste system—in the Ethiopian past. Initially, such anti-discrimination concerns would be likely to focus on each nation's access to "its" land and natural resources,⁶¹ an access which the new Constitution does relatively little to protect.⁶² To survive, the various levels of Ethiopian government can no longer be seen as protection rackets, run by elites for their own benefit.

All of these recommendations could be carried out within the admittedly rather loose strictures of the new Constitution: for example, property rights could be granted to a nation, rights akin to "aboriginal" rights in Australia or Canada, without an explicit mandate from the Constitution. But the Article 39 provisions

some remarks on federalism", in Christian Tomuschat (ed.), *Modern Law of Self-Determination*, The Hague, 1993, 101, 118; Brietzke, above, n. 46. See Stevenhagen, above, n. 48, at 73 ("The cultural diversity of the world's peoples is", like the gene pool, a "universal resource for all humankind which may hold the answers for many developmental problems"). But see also Statement by H. E. Meles Zenawi, above, n. 26.

⁶⁰ See Heinrich Scholler, "Jural postulates in the new Ethiopian law", in (1994) 2 *New Trends in Ethiopian Studies* 998 (democracy, human rights, and the rule of law are "new jural postulates"—Hans Kelsen's all-pervasive value base for an Ethiopian government seeking new sources of legitimacy).

⁶¹ An-Na'im, above, n. 7 (the EPRDF must "exercise leadership and demonstrate good faith and commitment to genuine democratization and protection of human rights"); Brietzke, above, n. 46; Allen Buchanan, "The right to self-determination: analytical and moral foundations", (1991) 8 *Ariz. J. Int. & Comp. L.* 41, 48–49; Hovde, above, n. 4, at 132, 134, 137; Ismagilova, above, n. 48, at 872–873; Jackson, above, n. 46, at 8. See Morton Helperin and David Schefer, *Self-Determination in the New World Order*, New York, 1992, 60; Herbst, above, n. 5, at 25 (most Africans have no memory of a peaceful transfer of power, but they are aware of a lack of democracy and of inadequate consumption and are thus willing to experiment with changes in boundaries and institutions); Hovde, at 141 (the EPRDF should grant access to opposition parties in exchange for these parties' temporary recognition of the EPRDF's legitimacy). See also Walzer, above, n. 54, at 196: Hobbes' "war of all against all" concerned religious wars and "internal wars of late medieval 'bastard feudalism'"—arguably, the kinds of wars Ethiopia has long faced. What broke this cycle was not absolutism but tolerance: making divisiveness more tolerable by lowering the stakes of conflict. This would be a good policy for the EPRDF to follow—to defuse differences by tolerating them, often for the first time in Ethiopian history. But see also Henze, above, n. 4, at 32 ("shallow understanding of the essential features and dynamic nature of democracy" in Ethiopia); Paul, above, n. 4, at 257, 259 (while many see force as the only means of opposition in Ethiopia, democracy is likely to cause unprincipled competitions, conflict, and an abuse of rights during elections).

⁶² See Art. 40 (majority and minority drafts are quoted in n. 17, above).

on secession⁶³ seem like a recipe for disaster, at least without a redraft or an "interpretation". Basic to such an interpretation would be the imposition of a concrete burden of proof on the nation in question, a burden of proving the nature of denials of self-determination and thus of the remedy or remedies to be adopted. International law can serve as a guide here: while traditional notions of sovereignty have been partially and unevenly abandoned, sovereignty still imposes a fairly strong preference for the status quo, in politics and in territorial boundaries. This status quo preference arguably requires advocates of self-determination to demonstrate the history of their claim, and to show how linguistic, cultural, religious, self-administration and other human rights have been denied in fact. The more compelling this demonstration and the more serious the denial, the more extreme the remedy to be granted.⁶⁴

Secession is only the most extreme self-determination remedy, lying at the top of a pyramid. Below secession and in descending order of a dis-integration, steps on this self-determination pyramid include: a nation's limited control over its defence and foreign policy, perhaps with central government's consent in the most sensitive areas; self-government in the broad (confederation) sense, with the nation controlling everything except defence and foreign relations and controlling in particular the revenue sources needed to make its powers effective; self-government in some narrower (federal) sense, with varying degrees of local control over social services, economic affairs and a revenue sharing; varying degrees of local control over land and natural resources; a varying religious and cultural autonomy, which is sometimes restricted to control over religious practices and the regulation of civil status; and some form of trust territory, administered by central government under an international supervision—the process that was abused over Eritrea. The new Ethiopian Constitution proposes too few of these self-determination remedies, since nothing is specified as lying in the gaps between secession, quite a narrow form of self-government and a limited cultural autonomy. Remedies could be offered in smaller, incremental steps, to identify the remedy that balances nationalist aspirations against people's safety, the creation or maintenance of a governmental initiative and coherence, and an economic, political and military viability.⁶⁵ If, as seems likely in Ethiopia, a nation does not trust the central government to evaluate a self-determination claim and to choose the remedy, the O.A.U. or some international organization could conciliate or adjudicate the dispute and even send a small peacekeeping force if necessary, to forestall another Somalia—as the situation would probably be seen abroad. Such a process makes sense if, indeed, Ethiopia is becoming a transnational or quasi-international polity.

⁶³ Nn. 51–52 and accompanying text, above.

⁶⁴ Michael Barkun, *Law Without Sanctions: Order in Primitive Societies and the World Community*, New Haven, 1968, 136; Helperin and Scheffer, above, n. 61, at 62, 72; Brietzke, above, n. 46; Herbst, above, n. 5, at 29 (routine presumption of stable boundaries).

⁶⁵ Halperin and Scheffer, above, n. 61, at 74–79 (standards for evaluating self-determination claims); Brietzke, above, n. 46; Hurst Hannum and Richard Lillich, "The concept of autonomy in international law", (1980) 74 *A.J.I.L.* 858, 872–883; Shastri, above, n. 31, at 653–654; Walzer, above, n. 54, at 199 (self-determination can be reflected in "secession, border revision, federation, regional or functional autonomy, cultural pluralism", and non-discrimination), 194 ("The adjustment of claims to circumstances is often a long and brutal business"); Adeno Addis, "Individualism, communitarianism, and the rights of ethnic minorities", (1992) 67 *Notre Dame L. Rev.* 615, 667 (it would be "financially prohibitive and administratively chaotic" to give official status to dozens of languages in Ethiopia). See also Cohen, above, n. 5, at 28. Walzer rather optimistically wants (at 197) to "let the people go who want to go. Many of them will not go all that far", especially after they experience the economic and political disadvantages of secession.

International law requires a nation seeking self-determination to be well organized and just: to temper its pursuit of self-determination with the enforcement of other human rights. Nationalists are almost always interested in the mere fact of full self-government, rather than in its precise form,⁶⁶ so the EPRDF might safely add another procedural hurdle on the road to secession: a demonstrably democratic decision-making process within the nation in question, with full rights of participation and organization rather than the use of guerrilla-style structures. There is some basis in the new Constitution for implementing such a hurdle,⁶⁷ which would presumably attract enthusiastic international support, but it would logically require behaviour from the central government that is as good (as democratic and civil libertarian) as the nation's behaviour—or even better. Such a mutuality of good behaviour ultimately offers the best hope for holding Ethiopia together: democratic (rather than violent and military) competitions to serve the public's interest and thus to win its allegiance to the competitor's level of government.

At the federal level, such a competition would require that government take seriously its new Constitution's policy declarations and promises of governmental transparency and free voting.⁶⁸ It would also require a generosity in redrafting or otherwise going beyond the rights of free speech and press, rights to demonstrate and associate, and rights to obtain an effective remedy if these and other rights are violated.⁶⁹ With such rights guaranteed effectively, the general human rights situation should improve markedly in Ethiopia and an effective civil society should emerge. Ethiopia lags behind some other African countries in the numbers and vitality of its non-governmental organizations (NGOs), which still tend to be harassed and over-regulated by government. Perhaps with the initial sponsorship of foreign NGOs or governments, NGOs could become a major force for holding Ethiopian governments accountable in only a few years and they would eventually serve as powerful forces for integration.⁷⁰ But any emergence of a civil society requires the firm accountability of the police and the military,

⁶⁶ John Rawls, "The law of peoples", in Steven Shute and Susan Hurley (eds.), *On Human Rights*, New York, 1993, 41, 71; Brietzke, above, n. 46.

⁶⁷ See Art. 38(3) (political organizations must elect their officials "in a free and democratic manner"); Art. 52(2)(d) (states shall "establish a democratic order where rule of law reigns"); Art. 62 (discussed in n. 40 and accompanying text, above). See also Addis, above, n. 65, at 674 (developing the self-determination criterion of a demonstrated capacity for institutional engagement).

⁶⁸ See Preamble (quoted in part in n. 51, above); Art. 12(1) (government must be "open and transparent to the public"); Art. 85–92 (principles of foreign relations and defence, and political, economic, social, cultural, and environmental objectives).

⁶⁹ See n. 24, above. James Paul, "Rural development, human rights and constitutional orders in Africa", (1989) *Third World L. Stud.* 57, 67 lists the legal implications of the right to participate: to meet, to form self-managed organizations with a "corporate" status, to federate with domestic and international NGOs, to receive information from government agencies, and to electioneer.

⁷⁰ Cohen, above, n. 5, at 5 (progress by civil society organizations slower than expected in Ethiopia), 26; Paul, above, n. 4, at 248, 250. See Jackson, above, n. 46, at 13–14 (in Kenya, a larger middle class is less dependent on government and better prepared to demand reforms, reforms that will be supported by the West, international organizations, and NGOs); Lewis, above, n. 4, at 33 (NGOs include such coping mechanisms as unions, religious, women's, and students' organizations; professional, trade, community, and ethnic associations; clan affiliations; and economic and cultural networks), 46 (discussing harms of a "passive de-participation, repression or empty forms of controlled participation"), 52 (in 1992, there was perhaps only a five-year "window of opportunity" in the African "associational realm"); Paul, above, n. 68, 72 (describing what are mainly political and associational means to an economic development); "Statement by H. E. Meles", above, n. 26 (Ethiopian President argues that "genuine participation" possible only through a devolution to the region, village, and even household).

in transcendence of Ethiopia's and the EPRDF's "military tradition in politics".⁷¹

These proposals may appear utopian or otherwise unworkable but, like any suggestions which do not entail the prompt dismemberment of Ethiopia, all they require is a very rough and initially temporary consensus and then a growing political will to make new arrangements work. In jurisprudential terms, the apparent absence of an Ethiopian attachment to a Westernized positivism or natural law⁷² is actually an advantage, because it facilitates purposive (unionist) interpretations or modifications of the new Constitution along the lines suggested. Once again by analogy with international law, the Constitution is really a programmatic *lex imperfecta*: programmatic in that it describes an aspirational state of affairs which will not be actually realized in Ethiopia for some time to come, and a *lex imperfecta* in the sense that certain rights or duties are extensively stipulated far in advance of the spelling out and implementation of their corresponding (Hohfeldian) rights and duties under an (international) legal duty to co-operate. Such a process may horrify common law lawyers, but it is a far cry from saying that the new Constitution is worthless: an organic law (akin to Magna Carta, the Declaration of Independence or the Declaration of the Rights of Man, perhaps with less rhetorical brilliance), it can be made to come true in the future by people of good will.⁷³ Without such behaviour from such people, all is doomed under even the best of constitutional documents.

Comparative constitutional law is a risky enterprise, but many of these recommendations are indirectly inspired by adroit politics under Spain's Constitution of 1978.⁷⁴ Facing determined and sometimes violent secessionist movements and an undemocratic past, Spain chose not to define states and state boundaries in any fixed way. Instead, procedures were adopted that are very like those in Ethiopia's Article 39.⁷⁵ But such procedures led to the creation of Autonomous Communities in Spain, rather than to a secession. These Autonomous Communities have broader powers of self-government than do states under most federations, including Ethiopia's, yet the most important (military

⁷¹ Paul, above, n. 4, at 239. See draft Constitution, Art. 87(1) ("The National Defence Force shall be fairly representative of the nations"), 87(4)–(5) (it shall "abide by the Constitution" and be "free from partisanship to any political organization"); *South Commission, The Challenge to the South*, Oxford, 1990, 52–53 (militarism, the main stumbling-block to development, soaks up scarce resources, creates a culture contemptuous of democracy and human rights, and feeds on the injustice that requires repression); Paul, at 245.

⁷² See Van Doren, above, n. 3, at 189–190. The "Ethiopian legal system reveals a large variety of state originated norms in an uncertain relationship with each other and with customary norms", *ibid.* at 183. It is doubtful that Ethiopia has a legal system at all, under Jacques Vanderlinden's positivist criteria or under Lon Fuller's eight natural law criteria. See Lien, above, n. 3, at 45–46 (similarly applying Fuller's and "rule of law" criteria to Russia). This may mean nothing more than that some of our legal philosophy fails and "is revealed as value-laden, mono-dimensional, and culturally biased". Van Doren, at 190. (Ethiopia has, in Western terms, been ruled under a state of emergency since 1974.)

⁷³ See Brietzke, above, n. 46.

⁷⁴ "Spain", in Albert Blaustein and Gisbert Flanz (eds.), *Constitutions of the Countries of the World*, New York, 1991, 43 [hereinafter Spanish Constitution]. See Forsyth, above, n. 4, at 55, at 55–56 (discussed in n. 31, above).

⁷⁵ Compare nn. 51–52 and accompanying text, above, with Art. 2, Spanish Constitution, above, n. 74, at 43: Spain's an "indissoluble unity" where "the right to autonomy of the nationalities and regions" is nevertheless guaranteed. Territories with "common historical, cultural and economic characteristics" may exercise their Art. 2 rights and "constitute themselves into autonomous communities" in one of two ways: an initiative is passed within six months by "Deputations" representing at least a majority of the electorate, and this initiative is forwarded to the Cortes Generales (central legislature) that must enact it as a statute (Art. 143, 146, at 73–74); or an organic law enacted by the Cortes Generales alone (Art. 144, at 74).

and economic security) powers are reserved to central government.⁷⁶ While no one would pretend that separatist pressures have disappeared in Spain, or that good procedures resolve all substantive problems, the medium proved to be the message that defused much ethnic discontent in Spain during the 1980s.⁷⁷ Other important factors in Spain's success are a committed monarch (which Ethiopia lacks), a genuine democratization and a rapid economic growth within the European Union. Foreign governments and international organizations could provide analogous economic assistance, but Ethiopians themselves have to provide the democracy.

CONCLUSION

Ethiopia's "leap in the dark" consists of a rather insubstantial federalism that coexists in the new Constitution with a self-determination which looks serious and points towards secession by some or many of Ethiopia's nations. The draft thus looks more like a treaty among these nations, one which some nations seem reluctant to ratify, rather than a constitution devolving powers to the several states. This is indeed an innovative response to a continental drift towards both democracy and an ethnic nationalism.⁷⁸ In modified or "interpreted" form, the Constitution could be made to work if the political will essential to any enterprise of such proportions can be found. Merera Gudina complains that "Ethiopia has too many heroes and too few innovators".⁷⁹ That may now change, and development may come to Ethiopia at long last, if the innovators become the heroes.

⁷⁶ The extensive powers of Autonomous Communities, defined in Art. 148, *ibid.* at 74, amount to what is left over after Spain's retained powers under Art. 149, at 78, are enumerated: defence; public security (without prejudice to a Community's police); immigration; international relations; customs and foreign trade; the administration of justice; social security, scientific, intellectual property, mercantile, penal, prison, and labour legislation; the monetary and general fiscal systems; civil legislation, with certain modifications by Communities permitted; and a few other, minor powers. Under criteria cited in the text before n. 65, above, Spain's Autonomous Communities fall between self-government in the broad (confederation) sense and in the narrower (federal) sense.

⁷⁷ There are now 17 Autonomous Communities in Spain, including: Catalonia and Basque, established in 1980; Galicia, in 1981; and Aragon, Castilia-La Mancha, Canarias, Navarra, and Valencia, in 1982. Spanish Constitution, above, n. 74, at 37-38; Forsyth, above, n. 4, at 55.

⁷⁸ It has been argued that the modern, liberal, Enlightenment, Hobbesian-Cartesian world-view has run out of steam, especially with regard to self-determination. Koskenniemi, above, n. 13, at 257. In our "post-modern" world, the assumptions no longer hold that progress is inevitable or that it involves movement away from "primitive, tribal, primordial ties" and towards an industrial society. Steinhagen, above, n. 48, at 56. See Herbst, above, n. 5, at 27-28 (discussed in n. 46, above); Kazancigil, above, n. 57 (quoted in n. 57, above). A dialectical analysis arguably suits such circumstances—see Brietzke, above, n. 46—and, in Ethiopia, an Amhara thesis and Oromo antithesis have perhaps found a Tigrayan synthesis which will change sooner or later. See Scholler, above, n. 60, at 1000 (citing Levine, above, n. 49). Another dialectic between traditional power relations and new institutions not yet established (see Cohen, above, n. 5, at 10-11) may play itself out in a violent disintegration, if innovative measures are not implemented quickly and effectively.

⁷⁹ Gudina, above, n. 2, at 929.