



**K.K. AHMED, *Umpiring a Federal System: The Ethiopian Choice in Comparative Perspective*, Fribourg, Stämpfli Publishers, 2017, pp. 272.**

**T**his book, included in the «Publications of the Institute of Federalism, Fribourg, Switzerland», focuses on the Ethiopian federal model. The analysis of the role of the federal umpire in the Ethiopian federal structure is insightful due to its comparative perspective. The Ethiopian framework is compared with the classical federal model, or, as defined by eminent scholarship, the archetypes of the federal state: United States, Switzerland and Germany (Palermo & Kössler, 2017). It shall be acknowledged, primarily, that Ethiopia is not a pluralist democracy, as it does not acknowledge a multi-party system, given the dominant position of the Ethiopian People's Revolutionary Democratic Front (hereinafter EPRDF). To this regard, the Author often highlights that the 1995 Ethiopian Constitution is the EPRDF Constitution. The Ethiopian Constitution-making process was headed by the EPRDF (Fessha, 2010) and, currently, the party is still the pillar of the Ethiopian political system (Abebe 2014).

Moreover, the analysis of all constitutional transplants in Africa shall take into consideration the social and religious context. This means ethnicism, tribalism and, *ipso facto*, African federal constitutions aiming at providing for ethnic accommodation. The only way to statehood is the “holding together federalism” (Stepan 1999) and, undoubtedly, Ethiopian ethnic federalism falls within this range of cases (Erk, 2016).

The federal ethnic solution (Anderson, 2013) has been chosen by EPRDF in order to avoid the disintegration or the balkanization of the country (Fiseha, 2006). This goal is

clearly outlined in the well-known Preamble “We, the Nations, Nationalities and Peoples of Ethiopia...” relevant, among federal States, for its peculiar formulation, where ethnic diversity is emphasized. The Preamble sets out the aspiration of the constitutional text where the terminology is often recalled in its constitutional dispositions. Another cornerstone of the Ethiopian federal system is the inclusion of the secession clause among the catalogue of rights of “Nations, Nationalities, and Peoples” (hereinafter NNPs) (Art. 39 par. 1), which is considered, together with the principle of self-determination, “an unconditional right” (Abdullahi, 1998; Habtu, 2004). The House of the Federation (hereinafter HoF), which is vested with the power of judicial review, represents another core element of the Ethiopian federal system, which is still overlooked by scholarship.

Considering that the hallmark of federal systems is nowadays identified with the famous formulation “shared rule and self-rule” (Elazar, 1987), umpiring the federal system represents a practice to manage intergovernmental litigation. The role of umpire is generally wielded by a neutral institution, far away from political influences. The classical impartial bodies in federal systems which have been historically identified with the US Supreme Court are the *Bundesverfassungsgericht* and the Swiss *Bundesgericht*. The Ethiopian choice is strongly different from the classical models, since the 1995 Constitution emphasizes the sovereignty of ethnic groups (Art. 8), which is the cornerstone of the federal structure.

To begin with, shall be outlined the reasons of this institutional setup: first, the 1995 Constitution is grounded on a political contract between NNPs and the sovereignty shall stand in NNPs (Fiseha and Habib, 2010); second, the framers of the 1995 Constitution highlighted more the political nature rather than the legal value of the Constitution itself (Nahum, 1997); third, in light of such constitutional roots, the power to interpret the Constitution lies in the NNPs and unelected judges are not legitimized, as they are not directly linked with the NNPs. In addition, it shall be noted that the 1995 Constitution was not influenced and shaped by the values of liberalism and human rights. Conversely it was based on group rights, which means that linguistic, religious and cultural rights are much more relevant as laid down in Article 61 par. 3.

The relevance of ethnicity is enshrined through the composition and functions of the HoF, the institution where ethnic groups are represented. According to Article 61, the NNPs are represented in the HoF by at least one member and, according to their population size, by an additional representative for each million of their population. HoF members can be elected directly or indirectly by State Councils. This configuration makes the HoF a political chamber with the power of judicial review. In addition, even though the HoF is considered a Federal House alongside the House of People of Representatives (hereinafter HoPR) (Article 53), Ethiopia is, *de facto*, a unicameral federal system. This is a remarkable standpoint of the Ethiopian federal structure, due to the role of HoF. In fact, the chamber does not detain any substantive legislative power, meanwhile it is empowered to interpret the Constitution (Article 61, par. 1) and to decide all constitutional disputes (Article 83). In defence of this choice it has been argued that the HoF is the institution where the core values of Ethiopian federalism can be safeguarded.

Strictly connected to the role of the HoF, are the powers and functions of the Council of Constitutional Inquiry (hereinafter CCI). The CCI is the advisory body of the HoF, and it is composed of the President and the Vice-President of the Federal Supreme Court; six legal experts, appointed by the President of the Republic on recommendation by the HoPR; three persons designated by the House of the Federation from among its members. The main task of the CCI is to submit nonbinding recommendations to the HoF “for a final decision if it believes there is a need for constitutional interpretation” (Article 84 par. 3 lett. b). Subsequently, constitutional disputes shall be decided by the HoF within thirty days of receipt.

In this stimulating and informative read, the Author underlines the debate over the interpretation of the cumulative reading of Art. 84 par. 1 and 2. The first spells out that the HoF/CCI shall have the power to investigate constitutional disputes, while the second gives such power in relation of any Federal or State law contested as being unconstitutional. Even though eminent scholarship (Fiseha, 2007, 2016) argued that the review of the constitutional legislation is limited to federal and state law, excluding regulations, administrative rules and decrees, the Author strongly endorses the exclusive

power of the HoF/CCI in matters of constitutional adjudication. Moreover, the Author highlights that the Constitution does not assign to the judiciary any residual power in constitutional adjudication. This claim is grounded on the combined reading of Article 84 and Article 83 par. 1, together with Article 62 par. 2. These dispositions provide that the power to interpret the constitution is wielded by the HoF.

Alongside the constitutional dispositions, it shall be acknowledged the informal mechanism of umpiring. The federal-state relations are managed by the dominant party, which plays a key role in order to avoid ethnic conflicts. The lack of federal case law in Ethiopia is “justified” by the EPRDF Central Committee, where federal disputes, at the vertical and horizontal level, are negotiated.

Given the accurate description of the Ethiopian model of umpire, the Author highlights, in the last chapter, the feasibility of the Ethiopian choice. In defence of Ethiopian ethnic federalism, he stresses the current federal arrangement is better suitable because regular courts are unable to judge over group rights and ethnic conflicts. The HoF is considered in a better position to reduce the main threat faced by the Ethiopian State: disintegration and a new civil war.

The attention to group rights is rooted in Kymlicka’s theorization (Kymlicka, 2001), which argues that human rights shall be enforced with minority rights. The Ethiopian federal system depends upon the enforcement of the sovereignty of NNPs and the HoF enshrines the idea that the role of umpire shall be vested in NNPs. In this regard, the drafters firmly rejected the US model of judicial review, given the different constitutional values and the different ideology underlying Ethiopian Federalism (Abebe, 2014). This “culturalist” approach shall be read taking into account the skepticism over the legitimacy and capacity of the Court to safeguard the NNPs’ rights. Therefore, the constitutional adjudication in Ethiopia shall take into consideration the political order and the societal values. This means, according to the Author, performing a moral reading of the Constitution. Moreover, the Author strongly maintains that the majority of arguments against the Ethiopian “political” review lacks of theoretical and empirical grounds.

The NNPs, through the HoF, decide any issue concerning self-determination, secession and their own rights. The core institutional setup of the federal structure was given in order to answer to the main challenge of the Ethiopian Federation. The HoF is simply considered more inclusive and legitimized than ordinary courts: it has been identified the best tool for managing ethnic conflicts.

The analysis set in this book makes clear that the Constitution was entirely drew and currently implemented by EPRDF, a dominant multi-ethnic coalition party which is the core element of the whole country. As a result, the sustainability of this federal structure depends upon the inseparability of EPRDF. In fact, as outlined elsewhere, the EPRDF controls directly all regional state councils, the HoF and the HoPR and, indeed, despite the appearance of ethnic pluralism, the EPRDF is a very centralized party. As a consequence, the lack of party pluralism discourages and frustrates proceedings on federal matters. The party is the main hub for resolving disputes between the two levels of government. Furthermore, at present, in future perspective, the main concern is whether the current federal arrangements may work out in a different political context. Problems and dysfunctions may arise, considering that the HoF is not an impartial arbiter. This question involves the future of the Ethiopian Federation, even though the EPRDF is still firmly in power (Piergigli 2012; Fiseha, 2012; Hessebon and Idris, 2017).

This book enriches the literature on the Ethiopian constitutional system as it sheds light extensively on the Ethiopian choice to vest the HoF with the role of the federal umpire. The Author of this book supports the federal structure of Ethiopia for it is rooted in Ethiopian history and society, which represent its sources of legitimation.

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