

# Ethnic Diversity and Federalism

Constitution Making  
in South Africa  
and Ethiopia

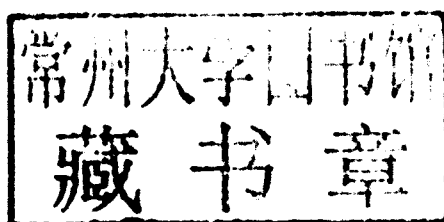
**YONATAN TESFAYE FESSHA**

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## Constitution Making in South Africa and Ethiopia

YONATAN TESFAYE FESSHA

*University of the Western Cape, South Africa*



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# Chapter 1

## Introduction

### **Background to the Study**

Ethnic heterogeneity rather than homogeneity characterizes the populace of many countries around the world. More than 90 per cent of the current 180 or so states in the world are ethnically plural in character; these states are home to almost 95 per cent of the world's population (Gurr 1993). The heterogeneity ranges from having just two different ethnic or linguistic groups to an accommodation of a sizable number of ethnic groups.

More often than not, the constitutional approach and the political practice followed by most of these multi-ethnic states do not accommodate their ethnic diversity. The institutional principles of these states have ignored or suppressed the cultural differences which are the major aspects of their social realities. At the forefront of the constitutional and political agenda of most of these countries has been the pursuit of political unity and territorial integrity. The overriding aim of these countries has been to create and maintain national unity, often at the expense of ethnic diversity. The reassertion of ethnic identity and political rights along those lines has been considered an enterprise that compromises political unity and territorial integration.

The political conflicts that have engulfed many countries around the world are often explained in terms of states' failure to manage the increasing assertiveness of ethnic politics. The genocide perpetrated in Rwanda, which claimed the lives of one million people, and the civil war in south Sudan, which went on for over 30 years, are two stark examples of identity-driven conflicts in Africa. The ethnic conflicts in the Balkan (Gurr 1993) and Sri Lanka, (Rajagopalan 2000: 205–8), in which many lives have been lost, are but a few of the costs that states have sustained as they pursue their practice of political unity and fail to adopt a truly inclusive constitutional approach that recognizes ethnic plurality.

There is, however, an emerging trend of accepting the principle that ethnic diversity of a society must be recognized and provided practical expression, typically through some form of institutional principles. In some cases, this shift towards the recognition of ethnic diversity and providing practical expression thereto has been achieved by adopting a federal system. In the African continent, Nigeria, a country of more than 250 ethnic groups, has, for example, adopted a federal form of government (Dent 1995). In Asia, the relatively successful federal arrangement of the state of India is another notable response to the problem ethnic diversity poses in a country of "18 national languages and some 2,000 dialects and a dozen ethnic communities and seven religious groups" (Majeed 2005: 181). The

Swiss federalism, which is referred by some as “a love of complexity” (as quoted in Schmitt 2005: 348), also manifests that the country has opted to deal with its ethnic diversity through federal arrangements.

### **Statement of Problem**

The move towards the politics of accommodation asks the question of the relevance of institutional design in a multi-ethnic society where ethnic groups are geographically concentrated. This is the question that this book seeks to address. It examines how a state can use its institutional designs to accommodate ethnic diversity without posing a threat to the political and territorial integrity of the state. In particular, it examines the relevance of the federal design to the political crisis and continuous tension that dominate multi-ethnic states around the world. It investigates whether adopting institutional principles in a federal form helps us to adequately respond to ethnic claims and build a state that belongs to all who live in it.

This study uses the federal experiences of two countries as case studies: Ethiopia and South Africa. Both multi-ethnic states have recently emerged from a history of ethnic and racial conflicts that have divided their respective societies for decades. In an attempt to move away from the past and build a state that belongs to all who live in it, the constitution-makers of both countries opted to use federalism as a vehicle. Although both countries have adopted federalism, the model of federalism each adopted in response to the ethnic heterogeneity that prevails in each country and the challenges it entails are poles apart. This is also where the interest of using the two countries as case studies stems from.

The major point of difference between the two systems lies in the significance they attach to ethnicity. In the case of Ethiopia, ethnicity constitutes one of the major features of the constitution. Nine regional self-governments delimited, by and large, on the basis of ethnic identity make up the Ethiopian federation (Article 47 the Constitution of the Federal Democratic Republic of Ethiopia). All sovereignty, according to the Constitution, resides with these ethnic groups, which the Constitution refers to as “Nations, Nationalities and Peoples of Ethiopia” (Preamble Ethiopian Constitution; see also Article 9 Ethiopian Constitution). That is why the Ethiopian federalism is often referred to as ethnic federalism. South Africa has, on the other hand, adopted, to say the least, an unassuming approach to the issue of ethnicity. The Constitution recognizes, albeit implicitly, the political relevance of ethnic identities. Unlike the Ethiopian federal arrangement, however, the South African approach eschews the constitutional categorization of ethnic identities. The two constitutions, thus differ in the significance they attach to ethnicity as a basis for the organization of their respective societies that they seek to regulate.

In the case of Ethiopia, the fact that the point of departure of the self-government as expressed in the federal arrangement is not geography, but

ethnicity, has given rise to controversies. The Ethiopian constitutional approach to claims of ethnic identity, it is argued, intensifies ethnic loyalty and hatred among ethnic groups rather than healing the wounds sustained as a result of historical injustices and fostering political unity. Some, as a result, fear that the risk for political disintegration and violence is too great. The fear is intensified by the fact that the Constitution recognizes the right to self-determination in the clause that provides for secession (Article 39 Ethiopian Constitution). Others refer to the recent Ethiopian political history and argue that any constitution that aims to learn, and at the same time move away from the wrongs of the past, should not fail to recognize ethnicity.

The modest approach to ethnicity followed by South Africa has also similarly given rise to contrasting remarks. Critics have stated that the South African approach to ethnic heterogeneity represents the usual trend in Africa where there is no disposition to cultivate or even acknowledge diversity. Accordingly, it reinforces the common practice of African states where political unity is pursued at the expense of cultural plurality. For others, it represents ‘a modest but well-considered approach to claims of ethnic identity’ (Alemante 2003: 54).

It is the contrast between the institutional principles that underlie the responses of the two countries to the challenges of ethnic diversity which makes them the best candidates for case studies. Using the two case studies, this book seeks to respond to the research questions outlined above. The issues this study investigates are not only topical in multi-ethnic states around the world, but constitute the core problems to which communities, ranging from the troubled Sudan to Nigeria and from the Western Sahara to the Democratic Republic of Congo (DRC), are struggling to find solutions. In this regard, the book may assist those multi-ethnic states that are struggling to find institutional solutions to the ethnic conflicts that characterize their society.

## **Argument**

The book contends that a multi-ethnic state must somehow recognize the ethnic plurality that characterizes its society. It presents recognition of ethnic diversity as an important institutional principle of a state that seeks to respond to the challenges of ethnic diversity. It advances this argument based on two points. First, an empirical examination of the experiences of multi-ethnic states suggest that states that are predicated on suppressing ethnic diversity have not succeeded in achieving their goal of creating a common national identity. In fact, the empirical evidence suggests that most of these countries are plagued by ethnic-based conflicts. Second, a state cannot remain neutral in so far as ethnic relationships are concerned, although this, admittedly, is the best strategy to build a state that does not create a hierarchical relationship among the different ethnic groups. The upshot of this argument is that the state has no choice but to recognize its multi-ethnic character.

Recognizing ethnic diversity is not, however, categorical. The extent to which a state should recognize ethnic diversity is contingent on the political relevance of ethnicity in the state under consideration. At the centre of this argument is the position that views politicized ethnicity as a contingent process. The likelihood of ethnic differences translating into a political divide that warrants recognition in the public sphere is dependent on historical and political circumstances that attend the state formation process or the so-called 'nation-state-building' project.

Yet care must be made not to confuse the non-categorical view of ethnicity with the categorical-denial of ethnicity which suggests that a state should turn a blind eye to ethnic diversity or, in the extreme case, suppress ethnic diversity. The non-categorical view of ethnicity does not detract from the position that recognition of ethnic diversity is an imperative institutional principle in a multi-ethnic state that seeks to build a state that belongs to all who live in it. The implication is rather that the political relevance of ethnic identity should come into the equation when the state determines the extent to which it should provide recognition to ethnicity.

The institutional principle of recognition can be given practical effect through the constitution, other important documents and state symbols. This book further argues that recognizing ethnic diversity does not suffice. The state's decision to recognize ethnic diversity must be supplemented by institutional principles that go beyond symbolic concessions, which the institutional principle of recognition seems to largely represent. Although the book does not reject the relevance of universal individual rights in a multi-ethnic society, it casts doubt on the capacity of the individualistic approach to effectively respond to the challenges of ethnic diversity. It contends that universal individual rights must be supplemented by institutional principles that give practical effect to the act of recognition.

This book locates these institutional principles within the federal design. In multi-ethnic states where the different ethnic groups are generally territorially concentrated, federalism, it is submitted, has the capacity to accommodate ethnic diversity while at the same time maintaining national unity. This book argues that the institutional principles of federalism can be used as a device to supplement the act of recognizing ethnic diversity with practical institutional arrangements. The institutional principles are embodied in the self-rule and shared-rule component of the federal arrangement.

Even if one agrees that the federal design is quite relevant in building an all inclusive state in multi-ethnic societies, it is the particular nature of the federal design that ultimately determines the extent to which it can successfully build a multi-ethnic state that successfully embraces unity and diversity. Consistent with the view that denies a singularity position to ethnicity, the book argues that a federation that is designed to accommodate ethnic diversity must be underlined by a greater degree of plasticity in its recognition of ethnic diversity and must, to the extent possible, mirror the political saliency of ethnicity in the state under consideration. In other words, there is no singular model that can be prescribed to multi-ethnic states that are dealing with the challenges of ethnic diversity. The

institutional design of a federal state must vary depending on the nature of ethnic relationships that are prevalent in the country.

With this view in mind, the book introduces what it calls the 'purpose continuum'. On this purpose continuum are located institutional designs whose purpose ranges from prevention to remediation. At the prevention end of the continuum are institutional arrangements that are designed to prevent the elevation of ethnic identities to political identities. The quintessence of a preventive institutional design is that it responds to ethnic concerns without precipitating conditions in which ethnicity becomes a single rallying point of political mobilization. This form of institutional response is appropriate in contexts where the political mobilization of ethnicity is not significant and inter-ethnic solidarity is not at stake.

At the other end of the continuum are federal designs that are remedial in nature and whose purpose is to serve as a corrective measure to the already greatly deteriorating ethnic relationships. These federal designs are marked by their rigorous use of ethnicity as a basis to organize their state and society. This particular type of institutional response is sensible in a multi-ethnic society that is heavily characterized by inter-ethnic rivalry and a political space that is dominated by the political mobilization of ethnicity. The precise position of a state's institutional response on the purpose continuum should thus be based on a correct analysis of the political saliency of ethnicity in that country.

Federalism is not a panacea for all challenges of ethnic diversity. It is submitted that federalism, as institutional device, is not enough to respond to the challenges of ethnic diversity. A federal design that is constructed to accommodate ethnic diversity must go beyond the traditional institutional features of a federation. It must include non-traditional institutional features of a federation and other non-federal features in order to give full effect to the institutional principles that respond to the challenges of ethnic plurality. This includes, first, institutional features that reflect the multi-ethnic character of the state and thus give practical effect to the institutional principle of recognition. Second, it must incorporate institutional designs that promote the institutional principle of shared rule in the most contested political space of the executive and the lower house of the national parliament. Third, it must include, in addition to a judicially enforceable bill of rights, institutional features that extend the institutional principles of self-rule and shared rule to respond to the concerns of intra-substate minorities.

A few caveats are in order. First, as the title of this book suggests, the focus is on ethnic diversity. Other types of diversity are not discussed in this book. The methodological approach adopted in this book, which involves using two case studies to arrive at a certain conclusion, requires that we deal with the same subject matter. Thus, although race is an important part of identity politics in South Africa, this book has decided to focus on ethnicity, thus making the selection of the two countries for case studies a plausible option. The book makes reference to other politically relevant cleavages, including race and regionalism, only when it is necessary to make a point on the main focus of this book.

Second, the track record of federalism suggests that federalism, if it is to work at its best, needs to be complemented by certain other processes and structures: the rule of law, democracy and the culture of human rights in particular. Unpacking these processes and structures is not the objective of this book. The focus is on how the institutional design of states can be used to regulate the challenges of ethnic diversity. In particular, it zooms in on the institutional principles that federalism specifically makes available for the purpose of accommodating ethnic diversity.

At this juncture, it is important to note that institution and institutional principles, as understood in this book, refer to established rules and practices that constitute a state's response to the challenges of ethnic diversity. Primarily, this includes the constitution, legislation and other established practices that regulate the management of ethnic diversity.

Third, in so far as the processes and institutions that are discussed in this book are concerned, the aim is to examine how they can be used as a device to accommodate ethnic diversity. The point of reference to these institutions and arrangements is their role in the accommodation of ethnic diversity. Thus a discussion on educational curriculum, for example, would not delve into the details of education policy and examine the quality of the education policy. The concern is rather to examine how decisions on education curricula can reflect on a state's policy of accommodation. One should thus not be wary of the 'isolated approach' that this book has adopted and the specific angle from which this book discusses matters like language policy, education and the like.

The argument and comparative review are presented as follows: Chapter 2 discusses the challenges of multi-ethnic states. It commences the discussion by focusing on the common tendency to transform an ethnically diverse state into a nation-state. It shows that the legitimacy and political integrity of most of these multi-ethnic states has been challenged by the rise of ethnic nationalism and the formation of ethnic-based political movements. It attributes this endemic problem to the organization of the state in these societies and especially to the illusion of nation-state-building in multi-ethnic societies. It then explores the politics of recognition which stresses the need to move towards the recognition of ethnic diversity. It explores the argument that says the state needs to move away from the nation-state paradigm towards the recognition of ethnic diversity.

Chapter 3 seeks to locate institutional principles that supplement the act of recognition. It does this within the context of a federal arrangement. In this regard, it first determines the meaning of federalism and federation. It then examines the capacity of federalism to provide practical expression to the act of recognition by accommodating ethnic diversity while at the same time maintaining national unity and political integrity. It examines whether the institutional principles that underlie federalism (i.e., self-rule and shared rule) can go a long way towards accommodating the multi-ethnic character of a society. Furthermore, it seeks to identify the major issues that multi-ethnic states have to deal with in their effort to translate the institutional principles of recognition, self-rule and shared rule into institutional reality. It identifies key institutional issues against which the

institutional response of both Ethiopia and South Africa can be examined. In general terms, it sets the template for analysing the cases of both South Africa and Ethiopia.

Chapters 4 and 5 deal with the South African case study. Chapter 4 discusses the political role of ethnicity in South Africa's constitutional and political development. With the view to setting the background for a discussion of the institutional arrangement in South Africa, it traces the role and place of ethnicity in South Africa's constitutional and political discourse. This is followed by Chapter 5 which focuses on the present institutional response of South Africa to the challenges of ethnic diversity. Using the template developed in Chapter 3, it evaluates the South African system with a view to determining whether it responds to the particular ethnic-diversity-related exigencies of the society it seeks to regulate.

Chapters 6 and 7 follow a similar pattern with a reference to Ethiopia. Chapter 6 examines the role and place of ethnicity in Ethiopia. By discussing the political history of Ethiopia, it determines the political relevance of ethnic identity. Using the template developed in Chapter 3, and against the background portrayed in Chapter 6, Chapter 7 proceeds to examine how the institutional principles of recognition and federalism, as adopted in the Ethiopian context, has been able to accommodate ethnic diversity while at the same time maintaining national unity.

Chapter 8 concludes the journey of this book by doing two major things. First, it summarizes the major findings of this study. Second, it identifies key institutional lessons that may assist multi-ethnic states to recognize and provide practical expression to the ethnic plurality that characterizes their society and to build an all-inclusive state.



## Chapter 2

# Towards the Recognition of Ethnic Diversity

### Introduction

As it is indicated in the introductory chapter of this book, ethnic plurality is the defining feature of almost all countries in the world. What is also common is that most of these ethnically diverse states are seldom free of ethnic tensions. This chapter focuses on the challenges of multi-ethnic states and examines whether the design and orientation of the state towards ethnic diversity contributes to the ethnic turmoil that exists in many of these ethnically plural states.

Two main arguments are put forward in this chapter. First, it is argued that the rise of ethnic nationalism and the formation of ethno-nationalist movements in many parts of the globe are often attributed to the organization of the state which often reflects the tendency to transform an ethnically plural state into a nation-state. This refers to a process in which states engage in the construction of a state that is characterized by cultural and social homogeneity. States generally focus exclusively on the maintenance of national unity and political integration, provoking a forceful nationalist response from marginalized ethnic groups, much less to blend different communities into a nation-state. Second, a multi-ethnic state that claims a policy of neutrality when it comes to ethnic relationships cannot avoid identifying itself with a particular ethnic group. State neutrality on ethnic relationship mostly turns out to be a myth. Based on these and other considerations, including the limitations of universal individual right to respond to the demands that ethnic diversity poses to ethnically plural states, the chapter contends that institutional recognition of ethnic diversity is often the only way forward. As an alternative that provides a system through which a state can acknowledge its ethnic diversity and maintain national unity without the need to transform itself into a nation-state, institutional recognition of ethnic diversity is the healthier response to the exigencies of ethnic diversity.

The chapter commences by discussing the so-called nation-state-building process that preoccupied many ethnically diverse states and shows how it mostly gave rise to conflict-ridden societies. This is followed by sections that consecutively examine the relevance of universal individual rights and the option of political divorce to the multi-ethnic challenge. Finally, the chapter introduces the principle of recognition and examines how a state that organizes its society based on the principle of recognition can accommodate ethnic diversity and ensure national unity.