

Ethiopian Constitutional Experience under Emperor Haileselassie: Comparative Analysis of 1931 Constitution and 1955 Revised Constitution

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Abstract

Prior to 1931, Ethiopia depended on traditional customary laws of Fetha Negest, Kibre Negest, and Serate Mengist. The 1931 constitution unlocked new episode in the Ethiopian political and legal regimes. This article comparatively analyses emphasis, contents, and motivation of the 1931 constitution and the 1955-revised constitution. The analysis shows the 1931 had endorsed and entrenched major laws from former customary laws. The 1995-revised constitution had included democratic concepts like human rights than the former; however, these values remained paper tiger. The emperor desired to establish his legitimacy under the auspices of these constitutions. This implies that the 1955-revised constitution was a trick to dismantle the already started question of legitimacy of the emperor as it was manifested in the 1960s and 1970s revolutions.

Keywords: Constitution, constitutionalism, Haileselassie, 1931 constitution, 1955-revised constitution

1. Introduction

The Ethiopian political history came through several stages and complex political development. Beginning from the Aksumite kingdom to present many evidence shows that Ethiopia is the country of enormous and prosperous history (Adejumobi, 2007). Each regime used its own regulation and legal framework either to sustain its regime or to suffocate the people not to question the legitimacy of kings and their power. Three customary legal frameworks laid a basis for legal and political administrations in Ethiopia. According to Sileshi (2009), *Serate Mengist* one of the well-known documents was a document that allocate power among the crown, dignitaries and the church. The document states about succession to power and provides regulatory frameworks. It stresses the political life of the royal courts and issues connected to it (Gashaw, 2015). This document was composed of 21 articles and assumed to have contributed to Aksumite civilization (Sileshi, 2009). *Fetha Negest* (Law of the kings) was another customary law that fashioned the formulation of civil and penal laws. This had laid a standard of making justice practiced. This law holds the highest rank in the Ethiopian legal history up to 1931 (Adejumobi, 2007). This served as a document of justice where the kings have to refer to give decision. The third document was *Kibre Negest* (Glory of Kings), which was believed to appear in the 13th century and contain the legend of the Solomonic origin of

Ethiopian monarchs. According to this document, it was not the Jews who are chosen people, but Ethiopian monarchs and their lineage to rule the entire world (Keller, 2010). The kings claimed to be descendants of King Solomon of Israel. It contains about the divine origin of their kingship (Paulos, 2011). Grounded in this legend, kings were seen as representatives of God on the earth. None have the right to question the legitimacy of the power of the kings. It is sinful for anyone who tries to question the power of kings. This was literally mentioned under article 5 of 1931 constitution.

"...He [the emperor] is consequently entitled to all the honors due to Him in accordance with tradition and the present constitution. The law decrees that anyone so bold as to seek to injure His Majesty the Emperor will be punished".

The role of these documents was vital in strengthening the politics and power of monarchs. However, with the coming of Emperor Haile Selassie to power, the customary laws were replaced by the 1931 constitution. Even though the emperor made a great effort to introduce the modern constitution, common elements were taken from these documents. The legitimacy of the power of the kings and their divine origin remained integral. Ethiopian monarchs were given the name *Niguse Negest* (King Kings) up to the demise of the monarchical system. Put differently Haile Selassie had a title "*Niguse Negest Seyume Egziabher*, (King of Kings elect of God)" (Clapham, 2006). The right to succession was limited to monarchs' family and beyond that their relatives. Whatever order and decree the kings make had to be implemented; otherwise, it is an offense against the divine representative king and God. This had been rooted in the traditional laws and later taken to the 1931 constitution. The impact of these customary laws on Ethiopian politics up to the ascension of Haile Selassie to power was imminent. Although some changes were made to the 1931 constitution in 1955, its emphasis was to maintain the legitimacy of the emperor than before. Furthermore, it was a tool to halt the then-upcoming legitimacy questions to the emperor by the educated ones. Therefore, this paper addresses the concern of the 1931 and 1955-revised constitutions and comparatively analyzes the differences between the 1931 and 1955-revised constitutions.

1.1. Ethiopian Constitutional Experience under Emperor Haile Selassie

1.1.1. The 1931 Constitution

After his ascension to power Emperor Haile Selassie introduced the first written constitution. The constitution was indicated as a gift for his people. He based his proclamation on the Japanese Meiji constitution of 1889 (Sileshi, 2009). The emperor is powerful and all power belongs to him in the constitution (Marcus, 1994). Twelve of fifty-five articles state the absolute power of the king. The constitution and other

subsequent laws were formulated and officially enacted in Negarit Gazette. On 16 July 1931, the emperor proclaimed the constitution was a sign of modernity and the people should recognize that he is a descendant of Solomonic dynasty as his predecessors (Hall, 2003). He proclaimed it was a benevolent gift to the people (Alemante, 1992). The constitution assured that the emperor is absolute and his power was unquestionable (Gashaw, 2015). This was officially legitimized by the Orthodox Church (Paulos, 2011). The Orthodox Church had served as a right arm of the emperors in confirming the divine origin and legitimacy of monarchs (Larebo, 1974). The constitution comprises seven chapters and fifty-five articles. The 1931 constitution devotes much emphasis on the person of the emperor and his legitimacy of holding political power. This implies that he was divinely ordained to rule and the people (subjects) have a divine responsibility to acknowledge him and his power. Therefore, it constitutes the divine right theory of the origin of the state, which is entrenched in the premises of divine privilege of the ruler over the ruled (subjects).

1.1.2. The 1955 Revised Constitution

The 1931 constitution was revised in 1955. Sileshi (2009) discusses that the constitution was revised for obvious reasons than introducing a new one. This was proclaimed on the 25th anniversary of the emperor. As Getachew (2012) argues, there were two main factors that motivated the emperor to revise the constitution. One is the aim to win international image (both himself and the country), and the other is maintaining the absolute power of himself. Besides, the international trend as a whole and African condition in particular influenced the condition of Ethiopia. The independence of many African countries from their colonial masters had brought intellectual discourses among western educated youngsters (Keller, 2010; Silberman, 1960). On the other hand, Haile Selassie's era was characterized by western political influences (Getachew, 2012). The influence of the United States constitution forced the emperor to modify the 1931 constitution (Daniel, 2013). In addition, the establishment of the United Nations and the 1948 Universal Declaration of Human Rights infiltrated into Ethiopians' minds and forced the emperor to revise the constitution to respond to social and economic changes (Sileshi, 2009). The Federation of Eritrea in 1952 (Gashaw, 2015) had brought a great influence on Ethiopian politics. The reason is that Eritrea had a modern constitution for it was under Britain (Getachew, 2012). In order to make a significant claim over Eritrea, the constitution had to be reformed because Eritrea was an integral part of Ethiopia. In its form and nature, the 1955 revised constitution was very different from 1931. This is to label it moderate and sophisticated compared to the older one (Keller, 2010). Despite these changes, the status and personality of the emperor remained intact.

1.2. The comparison between the 1931 and 1955 -Revised Constitutions

The Ethiopian constitutional practice during 1930-1974 brought significant changes compared to the pre-1931 and within the emperor Haile Selassie's regime. As the objective of this paper is to compare both constitutions, the main areas are identified. Here both constitutions constitute seven chapters, however, these articles compositions differs. The 1931 has 55 article and 1955 revised composed of 131 articles. Even though these constitutions lack complete constitutionalism, it laid a modern political and legal foundations. The place of the emperor, however, remains the same albeit some modified articles regarding human and democratic rights, parliamentary freedom, ministers' independence, and judiciary as well. Backed with the constitution, the absolutism of the emperor came to its zenith, which later ignited grievance of intellectuals and students (Beken, 2007). The first chapter of the 1931 constitution deals with the issue of the Ethiopian empire and the succession to the throne. The constitution elaborates this in five articles. The territorial integrity of Ethiopia was mentioned to be the emperor's authority at the top. Article five of the constitution states about the emperor's person that;

“By the virtue of his imperial blood as well as by the anointing, which he has received, the person of the emperor is sacred, his dignity is inviolable and his power is indisputable..., he deserves all honors according to the tradition and the present constitution”.

This was confirmed by article 6, which says ‘the empire supreme power rests in the hands of the emperor’. The 1955 revised constitution on the other hand, in chapter one, deals with the same thing in a more elaborated way than 1931. Twenty-five articles, of which five are directly taken from the former constitution, were there in one way or another. Articles 3, 5, 6 and 7 give a detail about the succession to the throne. Article 4 further strengthens the sacredness, inviolability, and indisputability of the emperor's person. Put differently, the 1955-revised constitution gave a right to a crown council to decide about regency and succession in some cases.

1.2.1. Institutional Arrangement

The 1931 constitution introduced bicameral parliament of two houses i.e. Chamber of Senate (*Yehig Mewesegna Mikir Bet*) and Chamber of Deputy (*Yehig Memeriya Mikir Bet*). As stated under article 7 of the 1931 constitution, the laws prepared by those chambers become executed through imperial promulgation. The members of the Senate were appointed by the emperor from among the nobility and local chiefs who served his empire as prince or ministers, judges or high military officers (Gashaw, 2015). They should be 35 years of age and more in order to be elected to and appointed for six years to the Senate. On the other hand, the members of chambers of a deputy shall be chosen by the nobilities and local chiefs (Article 31 and 32 of the

1931 constitution). However, the terms of service of those in both chambers neither specified in the constitution. The role of the emperor is still decisive to approve any law to be taken into practice. As mentioned under article 34 “no law shall be put into force without having been discussed by the chambers and having received the confirmation of emperor”.

Under 1955 revised constitution the membership of these two chambers became representative principle. The members of both chambers were appointed by the emperor under 1931, but the 1955 constitution reformed and made the deputy chamber elective based on universal suffrage (Getachew, 2012). Here the terms of office fixed six years for Senate and four years for deputy chamber. The qualifications they had to attain were also defined. In the 1955 revised constitution, the time for the regular session, emperor’s power to postpone, extend and suspend sessions, and to dissolve the parliament were some of the improvements (Levine, 1997). In the 1931 constitution, the separation of power among legislative, executive and judiciary had never been mentioned and the role and functions of both chambers as well (Alemante, 1992). However, the 1955-revised constitution has outlined the separation of power between them. Keller (2010) points out that the arrangement and structure of the government in the 1955-revised constitution was far more sophisticated than in the 1931 constitution. It was for the first time that the structure and function of the executive institution as a crown council of ministers and prime minister’s office dictated in a coherent way. The council of ministers was composed of the prime minister, the heads of all ministries and ministers serve without portfolio. Advising the emperor on policy matters and organizing all inter-ministerial activities were mandates of the council of ministers. Even though such changes were evident, the absolute power of the emperor to appoint and dismiss officials including Prime Minister and members of the cabinet continued intact. This further consolidates the absoluteness of the emperor and his power, which was stated in the 1931 constitution in the same manner (Sileshi, 2009). The emperor articulated representatives are the bridge that connects the emperor with the people (Getachew, 2012). Similarly, the 1955-revised constitution had put no formal constraints on the emperor’s power and authority (Keller, 2010). Articles 66-75 strongly discuss ministers, their roles and their relationship with the emperor (Singer, 1970).

1.2.2. Rights and Duties of Citizens

It is important to consider the attention paid to the people by these constitutions. This is attached to the rights and duties of the people. In 1931, the people were considered as subjects. Chapter three of the 1931 constitution talks about certain rights and duties of the subjects. Some articles state about the duties and status of

subjects toward the emperor and the empire (See Articles 18-21 of the 1931 constitution). However, the right to movement (Art. 22), freedom from arbitrary arrest (Art.23), the right to remain silent (Art. 24), unless needed by the law no domical search (Art.25), the right to privacy (Art.26), right to both movable and immovable property (Art. 27) were notified in the constitution. Nevertheless, the concluding article of this chapter put the power of the emperor beyond these rights. It indicates ‘... in no way limit the measures which the emperor, by the virtue of his supreme power...the emperor may do what is better for the interests of the nation’.The inclusion of these rights to the constitution seemed to have a liberal values and democratic philosophies. Nevertheless, the provisions were not implemented. It was designed to win the heart of people but not to grant them rights. They were totally excluded from a country’s affairs and designated subjects. It is arguable that the emperor was worshipped politically and even religiously in the Orthodox Churchbecause he was thought to be of divine origin and his power was absolute.

On the other hand, the 1955 revised constitutionelaborated the rights and duties of the people in a broad sense than the previous one. Moreover, many more rights were added to it. These rights are grouped under the rights to property, life, and private affairs.The following table presents these rights with their corresponding articles.

Table 1.1. Citizens’ rights and duties under the 1955 revised constitution

Rights	Article
Right to equality	(Art. 37)
The right to protection against discrimination	(Art. 38)
Nationality /citizenship	(Art. 39)
Freedom of religion	(Art. 40)
Freedom of speech and press	(Art. 41)
Right to no censorship unless for national emergency	(Art. 42)
Rights to life, liberty, and property	(Art. 43-44)
Rights to assembly	(Art. 45)
Freedom of travel	(Art. 46)
Rights to engage in any occupation and occupational associations	(Art. 47)
Right to protection of family, education and social	(Art. 48)

harmony	
The right to citizenship	(Art. 49)

This could be seen as a little bit changes both in number of articles on rights and textual recognition of rights of citizens(Gashaw, 2015). However, the constitution did not make practical changes in the implementation of these rights of the citizens. The constitution in practical and the system headed by the emperor did not provide an institutional framework to implement these rights.Later the intellectual discourses among the educated youngsters and exposure to democratic outlook around the world regarding rights and democracy germinated the dissatisfaction. Of other reasons initiated and fasten the demise of Hailesellassie regime, this takes a prime role.

1.2.3. Judicial Powers

The power of judiciary falls to courts of two sorts known as regular courts and administrative tribunals. The functions of regular courts was dealing with civil and criminal cases, whereas administrative tribunals examine administrative cases that affect the government(Gashaw, 2015). The highest judicial power was vested to the imperial court (Zufan Chilot). This is the court where the emperor himself was a judge. It is the final court of appeal for many matters. Articles 50-54 states the power and the role of the court, judges and the emperor in the provision of justice. The court was not free of political interference as was supervised by the emperor at the top. Any division of the court may be changed by the absolute judicial power of the emperor. This was characterized by the absence of judicial independence and proper decision making. On the other hand, the 1955-revised constitution, five of 131 articles talk about the judicial powers and the emperor's position. To make it clear articles 108-112 elaborates about the judicial powers of the courts. The independence of judges to make a judicial decision and giving judgment, as well as their responsibility to the law (Art. 110) was more liberal than that of 1931. However, the role of the emperor remains the same to decide appointment, promotion, removal, transfer, and retirement of judges. Although the constitution dictates in this way,still the interference by the emperor in the function of the judicial organ was further entertained.

1.2.4. Budget and Finance

The last area of comparison in this section is the way the budget of the empire was decided. The final chapter of the first constitution lays a budget of the imperial government under article 55 as follows.

The law lay down that the receipt of the government treasury, of whatever nature they may be shall only be expended in conformity with the annual budget fixing the sums to be at the disposition of each ministry. The annual budget shall be framed on the basis proposed by the ministry of finance during deliberation in the chamber of deputies and chamber of the Senate, whose resolution shall be submitted for approval to the emperor.

The budget proposal is prepared by each minister and should be submitted to the emperor for his approval. The power to give confirmation to the proposed budget was vested in the emperor. The 1955-revised constitution on the other hand more elaborated about the budget and finance. A more detailed procedure for the preparation of the budget and its adoptions were introduced. In fact, articles 113-121 states about the budget (annual and fiscal administration). Besides, it also clarifies about the financial services and revenue sources. Tax, fiscal year, and parliament expenditure were enhanced for additional funds with the presentation of the supplementary budget request presented to the Council of Ministers and approved by the emperor (Art. 118). Loan report of budget used by the council of the minister to the emperor, the parliament, and the role of auditory general in the budget audit was also the new changes.

The last chapter of 1955 constitution from article 122-131 raises the issue of international treaties and conventions, capital city, flag, official language, church (orthodox Christianity- on which the emperor had the power to appoint patriarchs as well as his name shall be mentioned in all religious services and rites (Art. 126-128). The establishment of municipal councils based on the constitution and charter of the legislation were incorporated. Whereas article 130 and 131 emphasizes on the natural resources and the amendment of the constitution that was absent in the 1931 constitution.

Conclusion

The introduction of the 1931 constitution was seen as Ethiopia's interesting walk towards modernization. The core driving force to introduce the constitution was emperor's interest to build his reputation and showing Ethiopia as a civilized country as well as to win the international image. This was a great achievement for the emperor to centralize the power and consolidate his absolutism. The constitution stood for the person of the emperor as it stresses the emperor's power and personality. However as mentioned above, the constitution created bicameral parliament for the first time in Ethiopian history. The 1955 revised constitution aimed to consolidate the power of the emperor even though there were many reforms than the 1931 constitution. It extended the boundary of the emperor to control any affairs

of the country including the church. Many of the reforms were a paper tiger for they were not escorted with practical implementation. The parliament and its membership were specified. Yet, the power of the parliament was swallowed into the power of the emperor and it was simply a hose of no power. Reforms and changes that were included in the 1955-revised constitution did not satisfy the political quest of radicals and western educated scholars. It was already late to reconstitute the distorted image and acceptance of the emperor and his administration as protests mired in the country

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