

INNOVATIONS

Ethiopian Constitutional Experience Under Emperor Haileselassie's Regime: Comparative Analysis of 1931 Constitution and 1955 Revised Constitution

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Abstract

Before 1931, Ethiopia depended on the traditional customary laws of Fetha Negest, Kibre Negest, and Serate Mengist. The 1931 constitution unlocked new episode in Ethiopian political and legal history by introducing modern written constitution. Even though, significant issues were taken from customary laws and formally put in the written constitution, elements in these constitutions opened Ethiopia's entrance to modern politics. After few years of operation, the 1931 constitution was revised in 1955 to respond to emerging social, economic, and legal questions. This review comparatively analyses the emphasis, contents, and motivation of the 1931 constitution and the 1955-revised constitution. The analysis shows 1931 had endorsed and entrenched major laws from former customary laws. The 1955-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 the legitimacy of the emperor as it was manifested in the 1960s and 1970s revolutions.

Keywords: 1. constitution 2. constitutionalism 3. Haileselassie 4.. 1931 constitution 5. 1955-revised constitution

1. Introduction

The Ethiopian political history came through several stages and complex political development. There is an argument that Ethiopia is a country of more than 3000 years and is known to have established ties with Asia, the Middle East, and ancient Europe (Getachew, 2009, Keller, 2010). Beginning from the Aksumite kingdom to present much evidence shows that Ethiopia is the country of enormous and prosperous history (Adejumobi, 2007; Paulos, 2011). Ethiopian traders exchanged gold, ivory, musk, and wild animals to these countries and others (Paulos, 2003; Andargachew, 1993). In the political aspect, each regime used its own administrative and legal framework to sustain its regime and to undertake its administrative functions. Accordingly, three customary legal frameworks laid the basis for legal and political administrations in Ethiopia. According to Sileshi (2009), *Serate Mengist* one of the

well-known documents was a document that allocates power among the crown, dignitaries, and the church. The document states 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 the Aksumite civilization (Sileshi, 2009).

Fetha Negest (Law of the kings) was another customary law that fashioned the formulation of civil and penal laws (Crummey, 1969; Adejumobi, 2007). *Fetha Negest* incorporated two main issues. The first section (1-22 chapters devoted to discussing religious and liturgical life. The second part (23-52) discusses secular matters (issues of government and politics (Graven, 1957). This had laid a standard of making justice practiced. It was established by Yekuno Amlak, who reconstituted the Solomonic dynasty (Barrera, 2006). This law holds the highest rank in Ethiopian legal history up to 1931 (Adejumobi, 2007). This served as a document of justice where the kings have to refer to give decisions.

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. This document has 117 chapters and was written in the Egyptian language and translated to Arabic and then to Ge'ez by a group of Ethiopian clerics (Gashaw, 2015a). According to this document, it was not the Jews who are a chosen people, but Ethiopian monarchs and their lineage to rule the entire world (Keller, 2010; Barrera, 2006). The kings claimed to be descendants of King Solomon of Israel. It contains about the divine origin of their kingship (Paulos, 2011; Hall, 2003). Grounded in this legend, kings were seen as representatives of God on the earth. These customary laws are highly confined to reiterate the divine responsibility of kings in Ethiopia and their lineage to the Solomonic dynasty. Hence, none have the right to question the legitimacy of the power of the kings. This legend was interrupted when the Zagwe dynasty took over power and restored in 1270 when Yekuno Amlak came to power (Adejumobi, 2007). The Solomonic dynasty legend has culminated when emperor Haile Selassie was overthrown from power by the socialist Dergue in 1974. Accordingly, it is sinful for anyone who tries to question the legitimacy and power of kings. Later in 1931, emperor Haile Selassie I (1930-1974) introduced first written constitution. Similarly, article 5 of the 1931 constitution indicates the power of the emperor is not subject to question and any attempt to attack his reputation and his power is unforgivable. "...He [the emperor] is consequently entitled to all the honors due to Him [following] tradition and the present constitution. The law decrees that anyone so bold as to seek to injure His Majesty the Emperor will be punished". These documents played a vital role in strengthening the politics and power of monarchs. The legitimacy of the power of the kings and their divine origin remained integral. Ethiopian monarchs had been seen sacred and their legitimacy should not be questioned. As a result, they assumed the name *Niguse Negest* (King Kings) up to the demise of the monarchical system in 1974. Nevertheless, 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 customary laws. Specifically, emperor Haile Selassie had the title "*Niguse Negest Seyume Egziabher*, (King of Kings elect of God)" (Clapham, 2006). The right to the succession was limited to monarchs' families. Whatever order and decree the king make had to be implemented; otherwise it is a transgression against the king and God. This had been rooted in the customary laws and later taken to the 1931 constitution. Although 1931 The impact of these customary laws on Ethiopian politics up to the coming of Haile Selassie to power was imminent. At this point, these customary laws laid a solid foundation for the modern constitution. The 1931 constitution however had a yeast of customary laws purported by

the Orthodox church(Keller, 2010). Similar to customary affirmations, the person of the emperor, his power, and succession to power remained an integral part of the constitution. On some factors and emerging questions from the educated part of the society, the 1931 constitution was revised in 1955. Although some changes were made to the revised constitution, the absolutism and person of the emperor remained untouched and consolidated. Furthermore, it was a pre-emptive strategy crafted to halt upcoming questions regarding the legitimacy of the emperor by educated ones. It is widely believed that Ethiopia had a modern constitution under emperor Haile Sellasie and this was a historic turn from customary laws to the modern constitution. Despite the inclusion of modern terms into the constitution, similar was applied to the absolutism of the emperor. Besides, as the concern for modern democratic leadership was getting intense, the emperor was obliged to include issues that were not included in 1931. However, the emperor himself was a parameter for every decision and the center of power. When critically seen the 1955 revised constitution was the systematic consolidation of absolutism and monopoly.

In the past decades, several pieces of research focused on the place of customary and religious laws and practices in the Ethiopian constitutions(Endalcachew, 2015), the history of expropriation laws in Ethiopia (Daniel, 2013), constitution, constitutionalism, and the foundation of democracy in Ethiopia (Gashaw, 2015). Tsegaye (2010) discussed the making of legitimacy in the Ethiopian constitution concerning its design and practices. Despite their invaluable effort to shed a light on the constitutional history, religious and customary laws practices in the Ethiopian constitution, legitimacy as well as constitutionalism, there was little effort to explicate the constitutional regimes under emperor Haile Sellasie's regime. Hence, this analysis was then motivated with the intent to compare the way issues included in these constitutions were sketched. In short, the objective of this review is to analyze the concern of the 1931 and 1955-revised constitutions and comparatively analyze the content, emphasis, and motives between the 1931 constitution and the 1955 revised constitution.

2. Materials and Methods

The review employed descriptive qualitative research with critical reflection. It mainly relied on secondary sources to comparatively examine the content, emphasis, and motivation of the introduction of the 1931 constitution and revise it in 1955. Both published and unpublished secondary sources, articles, books, documents, the 1931 constitution, and the 1955 revised constitution were critically reviewed. These sources were organized, verified and themes were developed to analyze the content, emphasis, and motivation behind the introduction and revision of both the 1931 and the 1955 constitutions. To obtain a clear image of the review thematic and content analysis of these documents carried out in line with the purpose of the review.

3. Result and Discussion

3.1. Ethiopian Constitutional Experience under Emperor Haile Selassie's regime

3.1.1. The 1931 Constitution

Following his ascension to power, Haile Selassie introduced the first written constitution in 1931. 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 the 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 rule over the ruled (subjects).

3.2. 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 two main factors 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 the 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, the Haile Selassie 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 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). 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.

3.3. 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 differ. The 1931 has 55 articles and 1955 revised composed of 131 articles. Even though these constitutions lack complete constitutionalism, they laid 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 the judiciary as well. Backed with the constitution, the absolutism of the emperor came to its zenith, which later ignited the 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.

3.3.1. 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 princes or ministers, judges, or high military officers (Gashaw, 2015b). They should be 35 years of age and more 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 the 1955 revised constitution, the membership of these two chambers became a representative principle. The members of both chambers were appointed by the emperor in 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, the emperor's power to postpone, extend and suspend sessions, and 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 were 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 were dictated coherently. 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 the Prime Minister and members of the cabinet continued intact. This further consolidates the absoluteness of the emperor and his power, which was started 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).

3.3.2. 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 subjects. Chapter three of the 1931 constitution talks about certain rights and duties of the subjects. Some articles state the duties and status of subjects toward the emperor and the empire (See Articles 18-21 of the 1931 constitution). However, the right to the 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 positions 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 in the constitution seemed to have 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 excluded from a country’s affairs and designated subjects. Arguably, 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 constitution elaborated 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 harmony	(Art. 48)
The right to citizenship	(Art. 49)

This could be seen as a little bit changes both in the number of articles on rights and textual recognition of rights of citizens(Gashaw, 2015b). However, the constitution did not make practical changes in the implementation of these rights of the citizens. The constitution in practicality 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 the HaileSELLASSIE regime, this takes a prime role.

3.3.3. Judicial Powers

The power of the judiciary falls to courts of two sorts known as regular courts and administrative tribunals. The function of regular courts was dealing with civil and criminal cases, whereas administrative tribunals examine administrative cases that affect the government(Gashaw, 2015b). The highest judicial power was vested in 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 state 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, in the1955-revised constitution, five of 131 articles talk about the judicial powers and the emperor's position. To make it clear articles 108-112 elaborates on 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 the 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.

3.3.4. 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 confirm the proposed budget was vested in the emperor. The 1955-revisedconstitution on the other hand more elaborated about the budget and finance. A more detailed procedure for the preparation of the budget and its adoptions was introduced. Articles 113-121 state the budget (annual and fiscal administration). Besides, it also clarifies 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 were also the new changes.

The last chapter of the 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 the 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 his power and consolidate his absolutism. The constitution stood for the person of the emperor as it stresses the emperor's power and personality. However, 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 Orthodox church. Many of the reforms were paper tigers as they were not escorted with 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. As a result, the question of legitimacy and the emperor's incompetence to satisfy these emerging needs along with the dynamic international situation led to a full-fledged movement. It was already late to reconstitute the distorted image and acceptance of the emperor and his administration as protests mired in the country. It implies that the 1931 constitution gave a narrow and limited concern to the human rights and issues of the election of representatives to the bicameral parliament. Despite its limitation, however, the 1931 constitution laid a foundation for the legal and political framework of modern Ethiopian politics. In addition, the bicameral parliament that had been introduced laid a foundation for the current House of Peoples Representatives and the House of Federation. The 1955 revised constitution had more elaborated and extended concern in emphasis, content, and motivations. However, it remained unimplemented or the time to implement those newly incorporated issues was too late for the emperor. On the contrary, it should be noted that the modern Ethiopian political and constitutional history directly or indirectly has the influence of the 1931 and the 1955 revised constitutions.

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