

The Political and Legal Fiction of Ethio-Eritrean Federation under God's Mandate of an Ethnocratic and Sacral Empire¹

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Abstract:

The concepts of federalism and empire discussed in this article are in relation to the 1952-1962 Ethio-Eritrean federation. Eritrea is a pluralist state in the Horn of Africa where accommodation and celebration of diversity enabled the diverse ethnic and religious groups to coexist in peace and harmony for the most part of the pre-and-post-colonial eras. After Second World War, however, the former Italian colony was forced to enter into political, ethnic, religious, and legal entanglements with the Ethiopian Empire which led to 30 years of war. This article examines the compatibility of federal arrangement with a centralist and sacral empire that envisioned a homogenous ethnolinguistic state and distinctively vertical and hierarchised duality between its centre and its peripheries with no supreme constitution to limit the centre's power or protect a federal member state. A "godly anointed" Ethiopian emperor who is neither accountable to humans nor be questioned by human subjects had a misaligned interest, conflicting objectives, and incompatible ethnocratic ideology and "divine right" mythical belief devoid of ethnolinguistic, religious and political pluralism and political decentralisation that federal governance entails. Therefore, the author argues that it was not a genuine federation in a contemporary sense of federal governance that meets the standard of sovereign equality of autonomous state(s) under international law. The article concludes that the UN-legislated federal arrangement was a legal ruse and political cul-de-sac with neither exit options nor guarantor(s) to uphold the integrity of the Federal Act if the centralist empire violates the UN Resolution and Eritrea's autonomy. It was designed to mask the true intention of the initiative-forced annexation, integration, and assimilation of post-colonial Eritrea into a regional empire.

Keywords:

Federalism; Self-Rule; Shared Rule; Sacral Empire; Divine Rights; Ethnocracy; Annexation.

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1. Introduction

At the heart of a contemporary federation is the decentralisation of power, which is grounded on the fundamental notion of “unity and diversity” that accommodates the diversity and demands of different states as well on the duality of equals between federation and member state(s) where the equilibrium between “self-rule and shared rule” maintained and formally acknowledged, respected and protected by a supreme constitution (Burgess, 2000: 268). So, the question is: would it be possible for an ethnolinguistically and religiously diverse state to establish a sustainable federal arrangement with an ethnocratic and sacral feudal empire that envisions a uniform and homogenous ethnolinguistic state and distinctively vertical and hierarchised duality between its centre and its peripheries with no constitutional terms that limit the center’s power to protect a federal member state? This is because the structure of genuine federalism is often a “two-way street” which involves a “conscious process of institutional design intended to strike and perpetuate a particular balance of interest, forces, and objectives” of shared governance, negotiated compromise, mandated cooperation, consented mutual accommodation, and measures of reciprocated tolerance (Hueglin and Fenna, 2006: 24, 28). However, a federal arrangement with a hegemonic, unitarist, centralist, and ethnocratic feudal empire that upholds a *primordialistic* myth of religious, legal, political, and ethnic entitlements to subjugate others can hardly comply with the idea of sovereign equality of an autonomous state(s) under international law or even modern federation systems when the relationship between the center and periphery(ies) is one of domination, territorial expansion, subordination, superimposition, and top-down clientelism (Olivier, 2018: 1202), which are a proven recipe for conflict and tension (Clapham, 2009: 187; Brosché, 2008: 3). Be that as it may, before we discuss the arrangement of the federal agreement between the state of Eritrea and the Ethiopian empire (1952-1962) that led to a debilitating 30-year conflict, it is important to briefly discuss the nature and origin of the coercive, exclusive, and schismatic doctrines of Ethiopia’s centralised empire, as well as its canonical laws from which it derives its legal and political legitimacy.

2. Ethiopia: Sacral Kingship and Ethnocracy vs. Ethno-religious Diversity

“In the Ethiopian Empire supreme power rests in the hands of the emperor”³

Christianity was introduced to Ethiopia as early as 330 A.D. when the Axumite state of Abyssinia was converted to Orthodox Christianity by Emperor Ezana, who ruled from roughly 320 to 360 A.D. The Roman Empire, from which the Axumite Empire is thought to have risen and flourished with a strong inspiration, orientation, and influence of the Roman Empire’s Christian identity, was a significant influence on Ethiopia’s early history in terms of cultural, religious, political, and legal persuasions (Tadesse, 1968: 25, 43).

³Article 6 of the 1931 constitution and article 26 of the 1955 revised Ethiopian constitution.

Although Ethiopia is similar to Europe in that it has a long history of adhering to a monotheistic religion founded on strict exclusivity, initially Christianity was said to have been limited to the King's court circles and remained a religion of the upper class (Heron, 2018: 755-756; Kaplan, 1984: 16-17). It gradually trickled down to ordinary people, and later through forced conversions spread widely among the Ethiopian population over the centuries, in contrast to Christianity in Europe, which took off and spread at the grassroots of the Roman Empire (Ibid). Conquests have always been followed by mass forced conversions to Christianity and, in Ethiopia, most of the conversions were carried out by the imperial arms and decrees rather than by churches and religious missionaries (Taddesse, 1968: 2, 170, 330; Larebo, 1987: 1-17).

With the arrival of Christianity in the 4th century, King Ezana subscribed to the Roman Law concept of *divine rights of the king* and a "sacred dynasty" anointed by God. In the beginning, Ezana referred to himself as "The son of the war god *Mahrem*" and later, he elevated himself to a higher divine hierarchy with a new epithet or religious title *Gebra Kristos* "The Servant of Christ," (Munro-Hay, 2001: 49; See also, DeCort, 2023) claiming that divinity was bestowed upon him by God where he cemented the untouchable *divine* status of his Kingship. Since then, the claim of *divine* endorsement became the core Abyssinian/Ethiopian political and legal model employed by the subsequent Kings to establish the legitimacy for their imperial rule as godly kings with unquestionable divine rights to rule. This ultimately laid a foundation for the codification of the 6th-century canonical imperial law of *Kibra Negest* (Glory of the Kings) under the ruler of King Kaleb who also referred to himself as "servant of Christ" (Ibid). The divine endorsement of the kings is clearly detailed in the legal text divulging that God is the source of the law. The *Kibra Negest* states that "Thus hath God made for the King of Ethiopia more glory, and grace and majesty, than for all the other kings of the earth because of the greatness of Zion, the Tabernacle of the Law of God, the Heavenly Zion" (Larebo, 1987: 7). This legal framework was based on the idea that the monarchy, the orthodox church, and Ethiopian nation are inextricably intertwined and sufficiently linked that it was impossible to separate one of the three without eradicating the others. (Ibid). In a way, it's fair to say that the Monarchy was the *de facto* head of the church and the church was a political tool that facilitated the monarch's objectives, but it has also benefited significantly. The symbiotic relationship between the Orthodox Church and the Ethiopian monarchy is claimed to be connected by divine decree and driven by the same interest and work towards the same objective in an interdependent, mutually reinforcing, and complementary manner (Ibid). Therefore, the *Kibre Negest* was the first Ethiopian canonical law that set the precedent for the Ethiopian judicial system and political modes of governance that legitimised the inviolability and indisputability of the political and religious power of the Kings to control the Ethiopian empire and the people through forced conversion and submission to Kings' divine rights for centuries (Brooks, 1996: xiii; Larebo, 1987: 1-17; Pankhurst, 1987: 32).

However, throughout the centuries, the law of *Kibre Negest* was exposed to the influences of the Byzantine Empire and the Old Testaments of the Egyptian Coptic



church (Strauss, 2009: xxxvii) among other things, and thereby fully developed into a collection of laws (*Canons of the Kings*). Hence, by the 16th century, it evolved into a new divine legal text: the *Fetha Negest*, which translates to “The Law of the Kings”. In addition to the common mythical assertion that the divine legal text “fell from heaven during the reign of Constantine” of the Roman Empire (Haberland 1965 as cited in Strauss, 2019: xlii), the *Fetha Negest* was sometimes referred to in the Amharic language as *yabahirya hegg* which is translated as “the law from abroad” which precisely reflects its foreign origin of the canonical laws (Messing, 1957: 309) of *Fetha Negest* and *Kibre Negest* of Ethiopia. While the Church and the state were conceived as one entity, the Orthodoxy’s God and the King were two masters to be worshiped by the multi-faith population in which the master-servant relationship has shaped the contemporary Ethiopian religious and political identity which entirely neglected the religious and ethnocultural diversities of its subjects until late 20th century. So, *Fetha Negest* was the *nomocanon* of the Christian theocratic state of Ethiopia which enabled the King(s) to control the religious, administrative, civil, criminal, and political apparatus of the country with no account for their actions before the court. This is because it was the governing law of almost absolutely everything on land including matters of ecclesiastic law, public laws (criminal and administrative laws) and private laws (civil) placing the king(s) at the top of the legal, sociopolitical, and religious hierarchy with monarchical absolutism (Fleiner and Fleiner, 2009: 241). Also, the *Fetha Nagast’s* regulations governing the appointment of judges are utterly discriminatory against non-Christian ethnic groups, women, and disabled people, because it clearly declares that judges had to be older and non-disabled Orthodox clergymen who are well-versed in the bible, which equates to legal diligence, mental intelligence, moral superiority and sense of justice than any other groups in the country (Heron, 2018: 771). Since Orthodox Christianity and the divine will serve as the basis for the national laws, it coheres with the principles of Ethiopian canonical and the privileged status of the Church to have religious leaders with deep knowledge of the church interpret the laws and legitimise the imperial power of the godly rulership. Although women were one of the groups who were perceived to be lacking the moral standard and intelligence to sit as judges, the reason they were forbidden from serving in the judiciary was because they were forbidden from serving in the church (Ibid).

The basic premise of the *canonical law* of the feudal empire was grounded on the divine belief that “the higher up in the hierarchy someone is, the closer they are to God and thus to truth and justice” (Fleiner and Fleiner, 2009: 241). This accorded the priest-judges, the King’s viceroy, and administration (King’s servants) a privileged and authoritarian position in the socio-economic and legal hierarchy, above the general populace, with no obligation to answer to the people they purport to represent (Ibid). Therefore, to reflect the “divinely ordained” authority of the kings, all Ethiopian monarchs and emperors bore multiple divine titles until 1974. For instance, Emperor Menelik, who ruled Ethiopia from 1889 to 1913, had a *Ge’ez* (ancient Semitic language) title that reads *Neguse Negest and Seyoume Igziabeher* which is the English translation

of “King of Kings, Elect of God”. As a sign of imperial submission, this was sometimes accompanied by the title *Moa Anbessa Ze Imnegede Yehuda* (Conquering Lion of the Tribe of Judah), which was an allusion to the title of God and placed God’s office above the name of the emperor (Pankhurst, 1987: 32) to depict the king as an embodiment of God legitimised by the “divine royal right vested in him by the grace of God, and is the highest law-making authority and the highest judge. He is the absolute sovereign, subject not even to his own law” (Fleiner and Fleiner, 2009: 226-227). At the top of the judicial hierarchy of the Supreme Imperial Court was an imperially appointed “Minister of Justice” with the title of *Afe Negus* ‘the Mouth of the King’ who presided over the imperial courts and the judges of the country and was solely accountable to the emperor (Vibhute, 2015: 5). The same was true with the subsequent King, Emperor Haile Selassie, who controlled the national courts and the judges through his *Afe Negus*.

Emperor *Haile Selassie* was named *Tafari Makonnen* at birth, but later he assumed a divine imperial name and divine title *Haile Selassie* “the power of the trinity” “His Majesty, *Conquering Lion of the Tribe of Judah and King of Kings of Ethiopia, Elect of God*” (Asserate, 2015: 1529). Another historical narrative that was “propelled” by the *Kibre Negest* was the covenant thinking of divine blessing and mythical belief that the Kings and emperors had *Solomonic* bloodline claiming direct ancestral roots to the Biblical King Solomon of Israel and that the Tabernacle of the Law of God (The Ark of Covenant) was brought from Jerusalem to *Axum* by Solomon’s son (Zewde, 2000: 4; Brooks, 1996: xiii). Incorporated in the legal, socioeconomic, political, and religious spheres of the state, the king’s divine rights narratives not only have served the feudal Ethiopian kings as a basis for sacralisation and legitimatisation of their imperial authority, but also shaped the historical, political, cultural, religious and psychosocial mindset of the society (Pankhurst, 1987: 32). This results in what Kebede Messay (1999) refers to as the “*luctuating hierarchy*,” in which people’s accomplishments and status fluctuates not because of their merits or lack thereof, but at the whims of the imperial or divine power which sustains the principle of socioeconomic and political asymmetry (Messay, 1999: 203). On the asymmetrical and hierarchical power relations in Ethiopian society he has eloquently summarised it:

“[T]he modern meaning of equality before the law is not what Ethiopians have in mind when they speak of justice. In fact, the high respect for social hierarchy empties justice of the notion of equality. Nonetheless, the ranking of justice above all the other virtues may mean that it contains them all ... The riddle is solved if the whole thinking is referred to as clientelism. God is expected to be just in the sense of rewarding those who obey and worship Him ... Rewards should be bestowed on them, not for their merits, but for their submission, for their acceptance of the role of God’s servants. Divine justice does not, therefore, implicate equal treatment; rather, it leans toward favoritism, especially for those chosen by God Himself” (Ibid).



The Church provided a moral standard that emphasised traditions of conformity, glorification of authority, and adoration of divine right tradition, which contributed to the development of a psychosocial scheme tolerable for the political hierarchy to exploit citizens while maintaining the social order. Gebru Tareke (1991) highlighted the role of the Church in shaping the historical, ideological, and socio-economical aspects of the Abyssinian society as follows:

“By extolling the virtue of social hierarchy, the Orthodox Church helped to stabilise the Abyssinian social formation; it was the continuing edge of relations of exploitation... Central to the Church’s code of morality was the belief in divine omnipotence, the sanctity of royal authority, the justness of overlordship. Supported by a tradition of awesome antiquity, enjoying direct access to land and the product of the peasants, and exercising a virtual monopoly in education, the Church affected every facet of rural life” (Tareke, 1991: 15).

As Larebo (1987) explains,

“The major agent in the process is the monarchy, which the Kibre Negest, through a genealogical link with Solomon, brings into blood relationship with the House of David and, ultimately, with Christ Himself. Underlying this assumption is that the rule of the Solomonic dynasty over the Ethiopian nation is presented as divinely ordained, and its legitimacy is put on a footing which is beyond human challenge” (Larebo, 1987: 6).

If the command *“that none except [King Solomon] the male seed of David, shall ever reign over Ethiopia”* [emphasis added] is ever contested, the *Kibre Negest* warns the worst possible outcomes (Ibid). Although Ethiopia is known for the ethnolinguistic, cultural, and religious diversity of its population, at the heart of the Solomonic dynasty were the Amharan and the Tigrayan ethnic groups. Scholars often use the name *Abyssinia* and Ethiopia interchangeably, but the existence of Ethiopia as a state in the present geographical boundaries was created by Emperor Minelik in the 19th century through a process of brutal conquest, subjugation, annexation, and incorporation of autonomous territories and peoples (Bulcha, 1988: 33). The imperial history of *Abyssinia* has largely been limited to these two Semitic Abyssinian ethnic groups who settled in the Ethiopian Northern highlands (Tigray, Gonder, and Gojam), “resulting in the creation of ethno-nation of Ethiopia as solely made up of Amhara and Tigrayan ethnic/racial groups” (Yates 2020: 3) while the rest of the ethnic and religious groups are either left out or treated as “objects rather than subjects of history” (Zewde, 2000: 4). Hence, the Ethiopian legal and political governance stands against the basic principle of common law that “men should not be ruled by men but by law” (Fleiner and Fleiner, 2009: 247), because the system was controlled mainly by Amhara or Amharanised men who claim a divine right to govern and oppress subjects.

Moreover, the Amhara ethnic group gained a special status after the *Abbyssinian*/Ethiopian Kingdom moved its center to the *Shoawan* plateau, where they became direct *apanages* of the royal court, the church, and the state (Tadesse, 1968: 122, 186). The Kings' *modus vivendi* and *modus operandi* were designed to ensure the intended hereditary success of power to Amhara, which promoted and preserved the political, linguistic, and religious identity of the Amhara ethnic group until late 20th century. As Regassa (2021) explains, "It was the Amhara ethnic group and coopted elites from other groups that dominated the country for over a century" where all aspects of Amhara culture were imposed on the subjugated peoples, and members of other groups had to become "Amharised" in order to work in the state apparatus (Regassa and Emmenegger, 2023: 67-68). Monarchs from the Amhara ethnic groups may not represent transcendence, but they are rather guided by the principles, ideas, and values codified in a *priori* given transcendent belief system that gives them a transcendent moral authority and ethnic superiority over the other ethnic groups that even king(s) from the Tigrigna ethnic groups (i.e Tigrinyan Emperor Johannes IV, who led a program of enforced Amharanisation in the 1880s) caved into the hegemony of a single group and promoted and enforced the Amharanisation of the Ethiopian empire (Levine, 2012: 35-37). Therefore, the last two *Shoan* emperors, *Minelik* and *Haile Selassie*, who claimed direct descent from King Solomon continued the mythical narrative of the Solomonic religious dynasty and the *Amharanisation* of the political, socio-cultural and religious aspects of the country until the latter was overthrown in 1974 by a military *coup d'état*.

The reign of Emperor Haile Selassie was the longest monarchy spanning from 1930 to 1974. Under the pretext of modernisation and secularisation of Ethiopia, the Emperor wrote Ethiopia's first constitution when he came to power in 1930, but it was not his intention to depart from the law of *Fetha Negest*, because he made it very clear that the goal of his work was to "revise" the canonical law to "better serve modern society", not to fundamentally alter it to accept diversity and representation (Fleiner and Fleiner, 2009: 226). According to Regassa, the asymmetrical power relations and top-down repressive archaic system that were created to maintain the assimilationist, hegemonic, and exclusionist feudal empire through violence, exploitation, injustice, inequality, and religious manipulations are incompatible with federal governance. He states that:

"...the historical formation of the empire through brutal wars of conquest that eventually made the country a prison house of nations, rather than accommodating diversities of culture, history, and political representations. Throughout Ethiopian history, hegemonic narratives depicting kings/emperors as divine rulers with indivisible sovereign power were codified into popular culture and legal documents. Such legitimisation of the inviolability of the power of the rulers was an antithesis of the right to self-rule because principles of self-rule entail



the devolution of centralised power to subnational units and groups” (Regassa, 2021: 76).

Although the new constitution asserted its intention to secularise Ethiopia, the claim to divine authority was codified in the constitution stating that because of his lineage from King Solomon and the anointing he got from God, “the emperor’s person is sacred, His dignity is inviolable, and His power indisputable” (Strauss, 2009: xxxviii; Levine, 2012: 58). In explaining Ethiopian feudal empires and their appeal to divine rights to assert ultimate legitimacy to repress, oppress, conquer, and rule as well as to solidify the notion of divine omnipotence and the primacy of royal authority above the laws of the land, Regassa highlighted that:

“The history of Ethiopia until 1974 reveals that kingship/emperorship was associated with absolute sovereignty of the emperor: unlimited power, supremacy of the emperor above the law, inviolability of the power of the emperor (Semay ayitares, Negus ayikeses— the sky shall not be tilled, the king shall never be prosecuted/litigated), the entangled nature of the personal and divine status of the king, and the king being the absolute adjudicator in any judicial matters. These narratives and features of a despotic system were legitimated and legally codified in the imperial constitutions” (Regassa, 2021: 72-73).

Also, among those claimed cosmetic changes included in the imperial constitutional provisions was the introduction of a two-chamber parliament: the Senate (*yeheg Mawossena Meker-bet*), and the Chamber of Deputies (*yeheg Mamria Meker-bet*). Although the Senate and Chamber of Deputies were set to act the roles of the judiciary and the legislative branches consecutively, neither of them was elected by the public nor had legal power (Markakis and Beyene, 1967: 199). They were appointed by the emperor to serve and enable him to maintain a fictional narrative of the existence of constitutional terms bound by fundamental law to limit power or protect and guarantee the rights of individuals, groups or people against an arbitrary exercise of power. As stated above, this monarchical absolutist King did, however, maintained the highest authority over the legislative and the judicial branches, having absolute power to enact new legislation, change existing legislation enacted by parliament, and interfere with court procedures to overturn any decisions including common law precedents.

3. The Eritrean Federation with a Sacral and Ethnocratic Feudal Empire

When the British-led allied powers defeated the Italians in East Africa in World War II, the 50 years of Italian colonial rule in Eritrea came to an end. In April 1941, the British earned a temporary mandate to administer Eritrea under its military administration until September 1952. Therefore, the Treaty of Peace between Allied Powers and the defeated European countries which went into effect on September 15, 1947, required Italy to renounce all claimed titles to its territorial possessions in Africa, including Libya,

Italian Somaliland, and Eritrea (Schiller, 1953: 376). However, instead of allowing the Eritrean people to decide their fate, the Four Powers—Great Britain, the Soviet Union, France, and the United States—were tasked with the decision to dispose or expose the former Italian colony to potential regional occupation. The United Nations General Assembly was to be consulted in the event that the Four Powers were unable to reach a consensus after a year. Consequently, the issue was turned over to the General Assembly after the four countries presented four distinct solutions none of which they could agree on (Ibid). As a result, in November 1949, the General Assembly established a United Nations Commission for Eritrea, which consisted of representatives from Burma, Guatemala, Norway, Pakistan, and the Union of South Africa with a 20-person administrative secretariat. Between February and June 1950, the Commission conducted a survey of the Eritrean populace and also sought inputs from the governments of Egypt, France, Italy, the United Kingdom, and the Ethiopian feudal monarchy as to the best course of action. But once more the Commission offered three conflicting solutions (Ibid., 366-377). While the representatives of Burma and the Union of South Africa wanted Eritrea and Ethiopia to become a federation “on terms compatible with the self-respect and domestic autonomy of both countries”, Norway, on the other hand, sought the reunification of Eritrea with Ethiopia, with the possibility that the Western Province, the lowlands bordering Sudan, would remain under British Administration. The exclusion of the Eritrean lowlands from the unification proposal was because the Eritrean lowlanders (predominantly Muslims) had largely rejected the idea of unification or federation with the ethnocratic sacral empire and demanded full independence.

Of all the commissioners, the representatives from Guatemala and Pakistan seem to have read the subjective and objective conditions of Eritrean society and suggested Eritrea should be placed under a UN trusteeship for a maximum of ten years, after which it should become fully independent. As Albert Dicey (1885) wrote about federalism in his groundbreaking compendium of constitutional law, at least two prerequisites must be met before a federation may be established: objective and subjective preconditions (Albert V. Dicey, 1885: 75-76). The subjective precondition being the people’s sentiments, the emotional and psychosocial attachment of the state population with the federal state or federal state to be. The objective precondition of federalism, on the other hand, relates to common memories (memories of war, colonization, etc.), shared historical experience, political creed, ethnic/religious harmony, collective consciousness (i.e., shared mythical/religious beliefs, ideas, attitudes and knowledge) and binding common national identity with the state that intends to share the same political future. Therefore, if the inhabitants don’t have the subjective desires and objective features to unite or federate, there is clearly no basis for federalism. The Eritrean people in general, and the Muslim lowlanders in particular, shared neither subjective ambitions nor objective attributes with the Ethiopian empire to aspire for federalism. More importantly, the two types of state unions, federation, and empire, are incompatible with each other in that the former is founded on the consent of the member state(s), whereas the latter is based on force and conquest where the center dominates and



controls the dependencies or peripheries (Olivier, 2018: 1199). Basically, the imperial concept rejects the principal tenet of sovereign equality of states that forms the basis of both contemporary international law and all modern federations (Ibid., 1202). With that context in mind, the Ethiopian Emperor Haile Selassie was seeking the blessing of Great Britain and the United States to occupy Eritrea under the guise of “federation”. Although *Abyssinia* lost access to the Red Sea trade routes when the Axumite civilisation crumbled more than 1,300 years earlier, Emperor Haile Selassie continued the mythical and romantic interpretation of history and divine power to maintain and sustain Minelik’s legacy of conquest and annexation of adjacent territories that goes as far as claiming historical ownership of Eritrean Red Sea, which was under the Ottoman empire (1517-1865) and then under Italian colonisation (1890-1941). He was campaigning for a regional conquest under a façade of liberating Eritreans from foreign colonial powers stating that “[t]he Ethiopian Government worked continuously for the liberation of the Eritrean brothers and sisters from alien rule, and also to recover the ancient Ethiopian ports in the interests of the prosperity of the whole Ethiopian population...” (Pankhurst, 1952: 59).

While pursuing the international community, Emperor Haile Selassie sent his agents to Eritrea to recruit and bribe some Christian working class, political elites and priests and provided them material resource to buy their loyalty, while terrorizing and demonizing nationalists, neutral politicians, and anyone who stood in the way of the empire’s ambition for Sea ownership (Johnson, and Johnson, 1981: 183). To that end, on December 2, 1950, at the United Nations’ Fifth Session, the General Assembly drafted and adopted a UN Resolution No. 390 (v) which essentially embodied the proposals of Burma and the Union of South Africa to federate Eritrea with the Ethiopian feudal empire no later than September 15, 1952 (Cumming, 1953: 25). This was contrary to the United Nation’s Charter on the principle of self-determination that was ratified in 1945 into the framework of international law and subsequently enshrined in several international treaties which signifies the legal right of people to determine their own fate in the international order (United Nations Charter arts. 1(2); International Covenant on Civil and Political Rights, 1966, art. 1). However, the UN General Assembly voted to federate an autonomous Eritrea with Ethiopia “under the sovereignty of the Ethiopian crown” for ten years, until the end of November 1962, at which point the Eritrean people would vote in a referendum to choose their future (UN Doc. /RES/390 (V), 2 December 1950). The UN General Assembly made the choice for the Eritrean people. The UN Resolution had fifteen articles, the first seven of which laid out the Federal Act or Constitution of the new Federation in which the General Assembly had also adopted the role of legislator (Ibid). As voluntariness is the foundation of consensual federalism or cooperative federalism to achieve mutually shared objectives of the parties involved, the UN had endeavored to make the process appear as voluntary or coercion-free. But it can be argued that playing the roles of legislature, judiciary, and executive from inception to delivery of the imposed federal arrangement constitutes coercion. Hence, a United Nations Commissioner, Dr. Eduardo Anze

Matienzo (Bolivia), was appointed to draft the Eritrean constitution in consultation with the Administering Authority, the Government of Eritrea, and the Eritrean people and to have it adopted by the Eritrean Representative Assembly, approved by the United Nations Commissioner, and ratified by the Emperor of Ethiopia (Ibid., 26). Consequently, the United Nations Commissioner oversaw the election of a Constituent Assembly in accordance with the UN resolution, drafted a constitution, had it ratified by all parties concerned, and witnessed the federation coming into effect on September 15, 1952. So, the autonomous federal unit constituted a democratically elected government (with legislative, executive and judicial powers in domestic affairs including internal police), parliament, and its own flag, free trade unions, and two official local languages (Tigringna and Arabic) to be used in courts, public administration and schools. This was done knowing full well that the imperial laws and the fundamental nature of the empire prohibited everything autonomy entails. Because, nowhere in Ethiopian history can be found any empirical evidence that suggests the existence of any legal instrument, policy principle, or practice that fosters diversity, pluralism, political consensus, politico-economic freedom, ethnolinguistic autonomy, peaceful integration and coexistence between the center and the peripheries. It was all a violence-ridden socioeconomic extraction, religious imposition, ethnic dominance, and forced assimilation into and subordination under a predominantly Amhara-Orthodox-driven colonial empire-building model. Although the Eritrean Assembly was working for the population that elected them, they had neither constitutional protection nor physical security required to pursue the population's best interests, but were driven largely by the emperor via bribes, threats, and fear.

So, it was a "federation" that existed only in the minds of the authors, and it remotely resembles a federation in a contemporary sense. Therefore, the survivability of the cultural, religious, linguistic, economic, and political autonomy of the population and of the democratically elected government operating within an absolutist, assimilationist, ethnocentric, and sacral empire devoid of policy or legal provisions to allow or protect the establishment of a distinct federal government was remarkably predictable. As the political culture was mainly built on the "divine right of king" doctrine, the system of governance is "antithesis of multinational federalism because the former vests all power in the hands of the king in contrast to the federal system, which devolves power not only to lower administrative structures but also to the nations" (Regassa, 2021: 72-73). In the context of a historically framed hierarchal order of the "chosen" *vs.* the "despised" (Ibid., 60), superior *vs.* inferior, dominant *vs.* subjugated, and coercive force *vs.* obedient subject modes of dichotomy and asymmetrical relations, "the federal state" had unrestricted power in principle and practice that it's "not so much the existence of a *de facto* federal-like institution but the absence of the liberal principles of consent", self-rule, shared rule, equal rights, accommodation of diversity, the rule of law, and protection of minorities among other things, which defines the nature of the relationships between the center and the periphery (Araya, 1989: 42). In his writing on federalism and union, Burgess highlights the incompatible nature of a sacral, ethnocentric,



and unitarist empire anchored on central control and domination with a contemporary sense of federation as follows:

- (1) Federation: A federation is a state with a single people which is characterised by the accommodation of the constituent units of the union in the decision-making procedure of the central government on some constitutionally entrenched basis;
- (2) Federation is based on unity and diversity which are formally recognised by the combination of 'self-rule and shared rule' in a written and supreme constitution;
- (3) Self-rule and shared rule are combined in at least two orders of government/governance, each acting directly upon its citizens, in which the constituent units enjoy significant autonomy in matters of local concern but have voluntarily agreed to pool their sovereignty in matters of common concern;
- (4) The federal constitution incorporates a formal allocation of powers and competencies between the central and constituent units with a firm basis in sources of revenue and expenditure which provide the framework for fiscal federalism;
- (5) The constitution of the federation is not unilaterally amendable by any single order of government. It can be amended only by an overwhelming majority of both the central legislative institutions and the legislative institutions of the constituent units of the federation;
- (6) The federation has an umpire in the form of a supreme court to regulate the relations between the central authority and the constituent units, and between the constituent units themselves. It has the unchallengeable legal authority to adjudicate on disputes regarding the constitutionality of respective actions (Burgess, 2000: 268).

While a great number of Eritreans were seeking Eritrean independence like most post-colonial African countries, Great Britain and the United States had favored the concept of a federation of Eritrea under an emperor who was "the highest law-making authority and the highest judge" who was above all laws to freely exercise unrestricted power without being subject to any parliamentary or judicial oversight. As firm allies of their client state emperor, the United States and Great Britain, not only they have initiated the "federal" arrangement but also utilised international law to legitimatise the process and furnish a legal ground suitable for occupation all under the auspices of the United Nations. Consequently, the multi-ethnic, multilingual, and multi-religious Eritreans, who historically were governed by polycentric customary laws were "federated" under a centralized, homogenizing, and assimilationist feudal imperial state. An imperial state that was driven by the dynastic ethos and by the legal dictums of an exclusionary and authoritative ecclesiastical law to expand the imperial nation-building project with *Amharanised* political culture and identity outside the wishes and welfare of the inhabitants of the territories. As expected, two weeks after the formation of the federation, on September 30, 1952, the Ethiopian feudal empire established a Federal

Supreme Court with appellate jurisdiction from the Supreme Court of Eritrea and the authority to interpret the Federal Act—without the consent of the Eritrean people or even consultation of the new Eritrean government—placing the entire federal arrangement at the whim of this imperial court (Cumming, 1953: 31). In genuine federalism, constitutional change necessitates at least the consent of two levels of government: the federal government and the federal member state. Without consent, neither constitution nor political powers can be altered or removed. As Lahra Smith notes, “a citizen is one who makes laws by which he or she lives, whereas a subject doesn’t have such claim or ability” (Smith, 2013: 3). Smith’s observation underscores that the Eritrean status was drastically relegated from the temporarily assumed citizen to a mere subject of domination who was reduced to fulfill the ambition of the centralised will of a single man veiled behind a “divine power”. Be it out of an utter ineptitude or an innocent aspiration for peaceful coexistence, the Eritrean Assembly accepted the fake federalism and believed that they could resuscitate and operate an arrangement that arrived dead. It didn’t take much for the emperor to bypass the Eritrean local authorities and begin working directly with the local population to dilute the Assembly’s their legitimacy and administrative power, tamper the integrity of the autonomy, and mobilise the public to align with the Christian monarchy.

With the fictional federal arrangement, Eritrea entered into a deep political complication, but also inherited many of Ethiopia’s own problems, including the religious and mythical culture of supremacy, domination, exclusion, discrimination, and violence against non-orthodox groups. The *Ethiopianisation* of Eritrea including the vilification of non-Christians and the superimposition of a monotheistic Orthodox Christianity, which was conceived as a prime criterion of Ethiopian identity. It was employed to create a rift among the ethnolinguistically and religiously diverse Eritreans who coexisted in peace, tolerance, and harmony for generations. So, a federal system that elevates a minority-majority, Christian-Muslim, and Amhara-nonAmhara asymmetrical power relations and political dichotomies through its *primordial* fallacies of common biological and religious descent and *priori* ethnolinguistic homogeneity of the dominant group by suppressing the diversity and the voices of minorities is a blueprint of fascism, racism, and ethnonationalism (Marko, 2019: 138-177), which led to conflict and violence. An empire that tolerated only Orthodox Christianity began spreading a toxic political dictum *aslamay ente negese mharede ember aymfereden* “if a Muslim ruled, he would slaughter, not judge” to mobilise Christians against Muslims but also to legitimatise the historical myth that *only Christians have the moral, cognitive and intellectual capacity to rule and to judge*. The imperial campaign of amplifying Christian supremacy and seeking moral justification for religious inequality had an apparent tactical objective of dividing Muslims and Christians, which had resulted in religious and ethnic violence “between Muslim *Tigre* and their Christian counterparts from *Hamassien* and *Serai*, and between the Muslim *Saho* and their Christian neighbours in *Akelle Guzay*. There were frequent Christian assaults on the Muslim minorities in the highlands, known as “*Jiberti*” (Araya, 1990: 86-87). Although the political strategy of



dividing people, driving fear of the “other,” and forcing them into total dominance and submission had resulted in temporary polarisation and political turbulence, it had also greatly exacerbated grief and resentment towards the Ethiopian empire, which served the indigenous populations as a rallying point to increase political consciousness and galvanise nationalist aspirations.

While emphasizing on *Amharnizing* Eritrean schools and replacing native teachers with Amharic-speaking Ethiopians (mostly from the Amhara ethnic group) in order to dilute the sociocultural, political, and linguistic diversity, the emperor banned the Eritrean flag, eliminated the press, trade unions, political parties, and instituted Amharic as the official language in violation of the Eritrean constitution before the 10-year grace period had expired. On paper and in principle all matters related to education, labour, tax, public services, social security, exploration and management of natural resources as well as regulation of the industry, internal commerce, trades and professions, and various branches of law (criminal law, civil law, commercial law, etc.) among other elements were within the legal jurisdiction of the autonomous unit (The 1952 Eritrean Const. art. 5 and 6). However, in addition to the number of school teachers assigned by the center, 20% of government workers came from Amhara ethnic groups and occupied the navy, the air force, and the army almost exclusively. Additionally, more than 22% of the remaining employees who managed the social and financial sectors were brought from third countries, despite the fact that unemployment among Eritreans had significantly increased (CIA, 1964; Johnson, and Johnson, 1981). Moreover, the emperor had blocked any foreign investment in Eritrea, including the FIAT car assembly plant, in order to weaken the economic prospects of an autonomous Eritrea. This was done while extracting and diverting away 80.6% of the unit’s revenue and resources to the center and dismantling several industries to relocate to Addis Ababa, “a policy reminiscent of the British period when the Protectorate administration had removed Italian docks and factories and sold them off to foreign buyers” (Ibid). Although the purpose of this devious political exercise was designed to destroy and disintegrate a peaceful autonomy, the exploitative and manipulative economic practice of the empire fits Motyl’s description of imperial economic monopoly: “a hierarchically organised political system with a hub-like structure—a rimless wheel – within which a core elite and a state dominate peripheral elites and societies by serving as intermediaries for their significant interactions and by channeling resource flows from the periphery to the core” (Motyl, 2001: 4).

In the end, Haile Selassie unilaterally decided to abolish the Federation and annex Eritrea in December 1962 after surrounding the parliament with his forces pressuring the Eritrean Assembly to accept the abrogation of Eritrea’s federal status (Johnson, and Johnson, 1981: 83-84). According to UN Commissioner Eduardo Anze Matienzo, the Federal Act was the product of the UN, so the organisation ought to at the very least act as a guarantor of the federal agreement or assign guarantors to ensure Ethiopia upholds its commitments to respect the integrity of the autonomy and protect the collective rights, welfare, dignity, and liberties of the local population pursuant to the

resolution. In his report, he wrote: “[If] it were either to amend or interpret the Federal Act, only the General Assembly as the author of that instrument would be competent to take a decision. Similarly, if the Federal Act were violated, the General Assembly could seize the matter” (United Nations General Assembly, 1952) However, neither the United Nations nor the Allied Powers opposed the annexation. On the contrary, the American counselor to the Ethiopian imperial government, John Spencer, had signaled what the end goal of the federal initiative was and how the UN should react: “if at some time the Eritrean Assembly and Ethiopia should agree to terminate that agreement, the federation itself would be automatically dissolved without any possible recourse or objection by the United Nations” (Spencer, 1983: 236-237). What was even more astonishing was that the US was one of the biggest military aid donors to the emperor in the years following the annexation (Araya, 1989: 46).

Therefore, although the authors and designers of the initiative never intended for Eritrea to establish true federalism, it is possible to argue that the annexation of Eritrea violated international law. It is also possible to demonstrate that supporters of international accords like the United States and Britain had little regard for Eritrea’s rights when they supported Ethiopia (in exchange for which the US received the *Kagnew* communications base in Asmara, Eritrea’s capital) (Johnson, and Johnson, 1981: 183) and endorsed the annexation. It’s worth noting that the annexation took place on the secondary anniversary of the United Nations Declaration on the Granting of Independence to Colonial Countries and Peoples. The declaration was the decision of the United Nations General Assembly affirming independence for countries and peoples who were under colonial rules which states that “All peoples have the right to self-determination; by virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development.” (UN General Assembly, 1960). Therefore, illegally revoking an autonomy that was crafted and recognised by international law marked the beginning of a 30-year armed struggle, which resulted in the demise of the imperial feudal system. In 1974, Ethiopian armed forces known as the *Derg* (the committee) led by a military colonel, *Mengistu Haile Mariam*, overthrew the emperor and assumed power declaring a “Democratic Republic of Ethiopia”. It gave the impression that the revolution had intended to build a democratic state “on the ashes of the archaic empire,” but it has practically “perfected the tradition of authoritarianism in the modern setting,” (Araya, 1989: 43) with a new benefactor: the Soviet Union. Although the collapse of the sacral monarchy marked the end of the “divine king rights” doctrine and the beginning of the secularisation of the judiciary, a powerful and highly centralised Leninist and Amhara-dominated regime has created a State that was “matched only by Nature and God in unpredictability and power,” (Aspen, 2022: 63) where the head of the state was the supreme judge of the land that embodied the emperor’s central power consolidation and absolute judicial authority. He perceived that the war in Eritrea was a civil war between *And Hizb* (one people) in an ethnically, religiously and politically homogenizing rhetoric. He swore to continue the emperor’s war, massacres, and forced assimilation, and integration, and did so with impunity for



17 years until he was defeated by the Eritrean People's Liberation Front (EPLF). That ended the decades-long bloodshed and resulted in Eritrea's *de facto* independence.

4. Conclusion

Federal systems can be established only if every participating sovereign unit in the system possesses a shared set of goals, interests, and aspirations and are each represented by elected officials who are willing to cooperate with and acknowledge their respective authorities to maintain the equilibrium between “self-rule and shared rule”. However, the Ethiopian imperial state institutions, the unelected politicians, and the “godly anointed” emperor who is not accountable to humans and cannot be questioned by human subjects (i.e., only accountable to God) had no federal supreme constitution to limit their coercive powers. Indeed, they had misaligned interests, conflicting objectives, and incompatible ethnocritical ideology devoid of ethnolinguistic, religious and political pluralism and political decentralisation that federal governance entails. Federalism is as good as the intentions of those implementing it, just like any other system of institutions or practises (Hueglin and Fenna, 2006: 357). Hence, the federal arrangement was a trap with no practical exit clause or legal instrument for the autonomy to assert any constitutional rights against the “federal government”. There was neither an international guarantor nor a supreme federal constitution to uphold the legal integrity of the federation and to prevent a potential breach of the Federal Act or avoid the accretion of power to the “federal government”. Therefore, it is fair to conclude that the federal arrangement was a legal ruse and political *cul-de-sac* designed to mask the true intention of the initiative-forced annexation, integration, and assimilation of post-colonial Eritrea into a regional empire.

Notes on Contributor

Dr. Bahlbi Y. Malk is a senior research scholar and international development practitioner who works at the intersection of migration, (mis)governance, human (in)security, human rights, capacity building, post-war recovery and development, with a particular emphasis on fragile and conflict-affected societies in Africa. He earned his undergraduate degree in Sociology and Social Anthropology from the University of Asmara. He subsequently pursued graduate and postgraduate studies in International Development Studies and Post-war Recovery Studies at Dalhousie University and the University of York. Building upon his earlier academic pursuits, he went on to receive a Ph.D. in Law and Politics from the University of Graz, Faculty of Law. With an interdisciplinary background, he often transcends academic boundaries, operating at the intersections of diverse fields, with a primary interest in the domains of critical security studies, critical refugee studies, and human security studies. Dr. Malk considers himself a product of the global south and north, enabling him to integrate academic and policy perspectives derived from both contexts.

Conflict of Interest

The author hereby declares that no competing financial interest exists for this manuscript.

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