

Christoph Van der Beken, *Completing the Constitutional Architecture: A Comparative Analysis of Sub-national Constitutions in Ethiopia* (Addis Ababa: Addis Ababa University Press; 2017), pp. 242; Price Birr 62.45.

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The substantive part of the book begins with an introduction followed by ten chapters and ends with concluding remarks. Beginning with a discussion of the academic literature on constitutions of constituent units of federations (variously called as states, provinces, cantons or lander), the introductory part of the book is devoted to foreshadowing the main contents of the nine succeeding chapters.

Chapter 1 of the book entitled *Historico-Political and Legal Background to the Federal and Regional Constitutions* (pp. 9-24) is devoted to the description of the legal and political developments to 1994/95. Although most of the discussion here attempts to summarize the developments between 1991 and 1994/95, the author has taken the liberty to make some statements on the 19th century historical developments in the country. The overly general statements (pp. 9-10) presenting the socio-political history of the country as only resulting from a one-time north-south movement of power and people is misleading. In my view it should have been well-contextualized and referenced as there are various narratives and historical attestations that needed to be reflected alongside the views handed down here.¹

Chapter 2 of the book: *The Federal Constitution: A Model and Frame for the Regional Constitutions* (pp. 25-62), as the title indicates, is an attempt at “a succinct overview” (p.25) of the entire content of the federal Constitution. Thus, the author takes us through the whole Constitution by highlighting salient dispensations from its Preamble to its article 106. A rather short Chapter 3 (pp. 63-68) titled, *Background, Basic Features, and Aspirations of the Regional Constitutions* provides the reader with insights on the genesis of the constitutions of states of the Ethiopian federation and discusses the two rounds of constitution-making that took place in the states. The first round of state constitutions were made roughly between 1993 and 1996, some, thus, predating the federal constitution. The second round constitutions

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¹ It is not possible for me to go into detail to explain the various narratives on the formation of the Ethiopian state and society in this review. I refer the reader to the following literature some of which are rather well known: DONALD N. LEVINE, *GREATER ETHIOPIA: THE EVOLUTION OF A MULTI-ETHNIC SOCIETY* (University of Chicago Press, 1974); TESHALE TIBEBU, *THE MAKING OF MODERN ETHIOPIA, 1896-1974* (Red Sea Press, 1995); GEBRU TAREKE, *ETHIOPIA: POWER AND PROTEST, PEASANT REVOLTS IN THE TWENTIETH CENTURY* (Red Sea Press, 1996); Getachew Assefa, *The Constitutional Right to Self-Determination as a Response to the 'Question of Nationalities' in Ethiopia*, 25(1) INTERNATIONAL JOURNAL ON MINORITY AND GROUP RIGHTS 1(2018).

replaced the first group and were ushered into existence mostly between 2001 and 2004.

The book discusses the “General provisions and fundamental principles” of state constitutions in its Chapter 4 (pp. 69-77). In this Chapter, in addition to pointing out an interesting sort of unsettled or contradictory positions and changes on the state boundaries and borderings as depicted in the states’ constitutions (pp. 69-70), it also describes the fundamental principles of the second chapters of the states’ constitutions. Chapter 5 of the book is devoted to “human rights” where the fundamental rights and freedoms enshrined in the state constitutions are discussed largely descriptively. The author has chosen to call all the rights in chapters three of state constitutions as ‘human rights’ although the textual titles of the chapters do not read as such. Consequently, the author discusses rights such as self-determination up to secession rights as human rights while all state constitutions invariably consider such right as part of ‘democratic rights’. Although my argument here does not emanate from the endorsement of the constitutional categorization of the rights and freedoms into ‘human’ and ‘democratic’ rights made in the federal Constitution (and emulated by all state constitutions), it is my view that this nuance of the Ethiopian constitutional dispensation needed to be pointed out in the book.

I like to add a few more observations on the discussion in Chapter 5 rather very briefly to reflect my positions which mostly are meant to advise a more cautionary reading of the constitutional provisions. First, on the state constitutions’ provisions on the right to movement, the author rightly observes that the latter have placed more rights under the rubric of the right to movement (pp. 81-82) than the analogous provision of the federal Constitution. However, the author overlooks one critical difference in wording introduced in the states’ constitutions. Contrary to the federal Constitution, the state constitutional provisions stipulate that in order to enjoy the rights guaranteed under the ambit of the right to movement an Ethiopian citizen has to be ‘lawfully’ in that regional state. The requirement of lawfulness is only attached to foreign nationals in Ethiopia by the federal Constitution and not to Ethiopian citizens.

Second, while discussing state constitutions’ provisions on ‘the right to participate in government and public works’, (which does not have a counterpart in the federal Constitution) (p. 82), the author did not pay attention to important nuances that exist among the state constitutions in this regard. For example, while constitutions like that of Oromia and Amhara regional states provide that Ethiopian residents of the region who speak the working language of the region has the ‘right to be elected or employed to any public office in the region’, constitutions of Gambella and Beneshangul-Gumuz do not use the term ‘elected’ but rather terms ‘employed’ and ‘assigned’. These terms as the reader can see could give rise to practical challenges. The wording in the Gambella and Beneshangul-Gumuz constitutions could give constitutional basis for disenfranchising the

members of the ethno-national groups that are considered ‘non-owners’ or ‘non-founders’ of the respective regions. The unconstitutionality of such stipulations should be singled out.

My third observation relates to the author’s insightful discussion regarding the apparent mismatch between the federal constitution’s secession clause and those of most state constitutions. In short, except the Southern and Somali state constitutions, the rest constitutions make the right to secession conditional upon the showing that internal self determination rights (right to identity, culture, language, history and self-rule within the federation) are abridged or abrogated or encroached upon and that these problems cannot be remedied within the union. As is know the federal Constitution attaches no substantive condition to the exercise of the right to secession. In dealing with the argument that the constitutions of the states that have attached conditions to the claim of the right to secession might be dubbed as violating the federal Constitution, the author divided up the states into two categories: those that are officially/constitutionally homogeneous, such as Oromia and Afar, and those that are constitutionally heterogeneous such as Beneshangul-Gumuz and Southern Nations, Nationalities and Peoples’ Regional State (SNNPR) (pp. 85-89). The author argues that in the case of constitutionally homogeneous states the conditionality of secession does not violate the federal Constitution because “although [the people in question in such states] have the right to secede unconditionally as per the federal Constitution, it is equally an expression of their sovereignty [engrained in their respective state constitutions] to restrain themselves and express their commitment not to exercise their right unless certain conditions are fulfilled” (p. 87). The author however argues that this does hold when it comes to states that are constitutionally heterogeneous (pp. 87-89). This distinction supplies an interesting food for thought for students and researchers in the field. But I could not buy the argument made incidentally by the author creating distinction between ‘council’ and ‘legislative council’ arguing that only nations/nationalities/peoples with the latter have the right to exercise secession and those with councils can only exercise what he calls ‘internal secession, i.e., the right to found one’s own state as per art 47(2) of the federal Constitution. I do not think that there is any textual basis in the federal Constitution to support this line of argument. Nor was such a distinction from the drafting history of the Constitution.

Chapters 6 and 7 are devoted, respectively, to “Regional Government Institutions” and “Local Government”. In Chapter 6, the author has descriptively analysed the powers and functions of and relationships among the three organs of state governments: the legislature, the executive, and the judiciary. In Chapter 7, nuances of local governments as dealt with in the regional states’ constitutions are analysed. Here, the author has enriched the discussion of the states’ constitutions with relevant laws enacted by the regional states especially regarding urban local governments. The discussion has shown the ambivalence that undergirds the

states' positions on the latter. The state constitutions regulate more extensively the sub-state rural local governments dubbing them as *Woreda* and *Kebele* stratum. On the contrary, they fail to provide for details on urban local self-governments. As the author has shown, they have chosen to deal with matters of urban local self-government by sub-constitutional legislation. It might be necessary to quickly point out here that although all other constitutions state that urban centres shall have their own self-governments or councils, the Oromia state constitution fails to make any mention of urban centres. The author also discussed the quota arrangements for the titular groups stipulated in the urban local government legislation of some regional states (Beneshangul-Gumuz, Oromia and the SNNPR State's) (pp. 185-186). The analysis begs the question as regards the constitutionality and democratic acceptability of the quota arrangements (apart from the justice and fairness questions) as well as their justificatory basis.

The author has provided a brief description of the "policy Principles and Objectives" of state constitutions in Chapter 8 of the book (pp. 191-194). In Chapter 9, titled as "Miscellaneous Provisions", the book describes mainly the state constitutions' provisions on initiation and ratification of state constitutional amendments where he rightly calls our attention to some nuances in the amendment procedures and rules adopted by the states. In Chapter 10 of the book: *Appraising the Use of Regional Constitutional Space* (pp. 206-226), the author attempted to evaluate how far the states have used their constitutions to exercise the self-rule powers devolved on them by the federal Constitution. This is what G. Alan Tarr calls 'sub-national constitutional space'.² The author has shown that the states have made good strides in this regard although more creativity is still lacking. For example, he points out that one area in which the states could be creative is in the design of an impartial institution to interpret state constitutions. The federal Constitution has not made any specific rules regarding what institutions may interpret the states' constitutions. This means that the makers of the states' constitutions could have gone for more suited and neutral institution to interpret their constitutions. The author seems to think that a council of constitutional inquiry with ultimate power to interpret the constitution could be one possibility the states could have adopted. (p. 210). It is regrettable that the states have followed suit with the federal arrangement and went for a body (mostly constitution interpretation commission) with more alignment with the regional legislative and the executive bodies than even the House of the Federation. The author's position is perfectly plausible. My view also is that from where we stand now, we could start by reforming state constitutions to create impartial and independent bodies for constitutional interpretation, perhaps in the form of the German constitutional court or the French Constitutional Council. We could then

²See G. Alan Tarr, Explaining *Sub-national Constitutional Space*, 115(4) PENN STATE LAW REVIEW 1133 (2011).

turn to debate how best to redesign the constitutional interpretation arrangement currently in place in the federal Constitution.

I would like to end by saying that overall the book is a good read. It has brought to light an area of constitutional law that is little known. Scholarship on constitutions of constituent units of federations is limited worldwide and the case of the Ethiopian state constitutions is no exception. The book will be of great relevance to researchers and students of public law in Ethiopia and others who are interested in Ethiopian constitutional law. I hope future revisions of the book will enrich it with more constitutional practice to show whether the state constitutions are relevant in real life or not.

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