The Division of Criminal Matters in Federal Systems: A Critical Assessment of the Ethiopian Federal Approach

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Abstract

The division of criminal and security matters between federal and state governments has been a subject of debate in federations. Different federal systems adopt different approaches, namely unitary, dual, integrated, bottom-up, or state-dominated models. While each has its own merits and demerits, the common ground is that the division is systematic and entrenched in the constitution. In this article, Ethiopia's system is compared to those of the United States, Germany, and India, where the mandate of criminal justice is granted to both levels of government in various magnitudes (and hence devolved in one way or another). In the Ethiopian case, the Constitution divides police and security matters between the federal and state governments, while criminal matters are categorically granted to the federal government, except where some leeway is left to the states. Thus, there is an area of ambiguity. In addition, due to the dual institutional set-up, there are complications around the federal government's move towards adopting a unified criminal code. As a result, inconsistencies exist between the Constitution, the laws made to provide for the regulation of criminal justice, and the practice in actuality. The objective of this study is to appraise the approach adopted by Ethiopia in the areas of the allocation of criminal matters between the federal government and the states. To this end, doctrinal and comparative approaches have been employed as the methodology for the study. This study contends that the Ethiopian federal approach is neither dual nor administrative, when viewed from the angle of the provisions of the Constitution, the relevant statutes, and the practice at federal and state levels. To alleviate such an anomalous approach, it is suggested that the Constitution should provide for either the dual model or administrative/integrated approach through a strong intergovernmental cooperation for the effective operation of the criminal justice system.

Keywords: crime, justice, police, security, power division, federalism, Ethiopia

1. Introduction

Federalism is characterised by many principles that highlight the question of the distribution of powers. Federal systems adopt different yet related approaches of dividing powers between federal and state governments. The common ground is that powers are not haphazardly allocated: principles must guide the allocations, and there must be coherent reasons for them. Although it may not be tenable to argue that all federal systems adhere strictly to these principles, the normative assumptions underlying the allocations may be adduced as a theory explicating them.

As a subtheme of the issue of distribution of powers, criminal and security

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matters are also of interest. With regard to criminal justice administration, the question "which level of government performs what role?" needs to be approached from various perspectives. Different federal and devolved systems treat criminal authority in different ways on account of their national demands and local contexts. Ethiopia, as a federal state, adopts its own approach to allocating criminal matters between the federal government and the states. However, before embarking on a discussion of selected federal polities as regards the division of criminal and security matters, a general overview of the approaches, models, and alternatives pursued by federal systems is useful.

There are four basic approaches to the division of police power in federal and devolved systems (Fiseha, 2022, p. 11). The first is to have a centralised and unitary police power. In countries with a unified police system, the national police force operates across the nation, with there being no need to establish regional or provincial police forces. Nigeria and South Africa are examples of this approach. Article 214(1) of the Nigerian Constitution unequivocally declares that there shall be a police force for Nigeria, known as the Nigeria Police Force, and that no other police force shall be established for the Federation or any part thereof. Here, it is easy to see that it is prohibited to establish regional or provincial police forces alongside the single national one. Though the Constitution does envisage the possibility of opening branches in the states, these are branches of the national force, not independent state police forces (Fiseha, 2022, p. 122).

Similarly, the South African Constitution establishes a unitary police force. It clearly states that the security services of the republic consist of a single defence force, a single police service, and any intelligence services established in terms of the Constitution, and that the national police service shall be structured to function in the national, provincial and, where appropriate, local spheres of government (articles 199(1) and 205). This centralised police system is also recognised by the fact that it is national legislation that specifies the powers and functions of the police system and enables the police service to discharge its responsibilities, taking into account the requirements of the provinces – thus implicitly prohibiting the provincial legislature from taking up such a power at regional level. South Africa, consequently, has a single nationwide police force.

The second approach to the division of police power is an administrative one. This reflects the integrated or administrative or "executive" type of federalism. Here the federal level of government has just about all the constitutional powers necessary to make security legislation, but the administration and enforcement of that legislation tends to fall under the purview of the constituent units. Under this arrangement, the federal government tends to have only very limited enforcement abilities, usually including a federal criminal police, a border police, an immigration police, and a security police dealing with threats against the state (Fiseha, 2022, p. 123).

This approach is evident in German federalism, where the states largely administer and enforce both federal and state law. India's system resembles Germany's, with police power divided between the union and state governments (though both levels are integrated through several mechanisms) (Fiseha, 2022, p. 123). Accordingly, although the principle is that there are union and

state police systems, the senior-level police positions in the states are filled by appointments made through the union government; the recruitment and training of such senior police positions is also undertaken by the union government to ensure standards and uniformity in the police system (Article 355, Indian Constitution, Seventh Schedule).

In the third approach, federations allocate wide police power to states, with only limited powers reserved to the federal government. This is exemplified by the United States of America (USA), where federal police power is limited, with the states having most of the power. As will be discussed in the following section, the USA could also be classified as a dual system given its institutional structure and the fact that federal police power is distributed among several special agencies. Federal law enforcement focuses on inter-state and international crime, while the US Department of Justice regulates other federal law enforcement agencies, such as the Immigration and Naturalization Services, the Federal Bureau of Prisons, the Drug Enforcement Administration, the Federal Bureau of Investigation, and the US Marshals Services (Fiseha, 2022, p. 124).

The fourth approach is that of the so-called dual model, in which there is a clear division of mandates between the federal government and the constituent units (as in the case of Ethiopia), albeit with a significant overlapping of mandates (Fiseha, 2022, p. 124). The logic of the dual model is however very clear. Inasmuch as legislative, executive, and judicial powers are divided between the federal and state governments, police power is, by the same logic, also divided between the two levels of governments (though again with some important overlaps) (Fiseha, 2022, p. 124).

In the division of criminal matters under the Ethiopian federal experiment, different approaches are evident when that division is viewed from the constitutional, statutory, and practical points of view. Thus, there is an incongruence between institutional dualism (the dualist approach), on the one hand, and the monist approach (legislative approach), on the other. While this dualist-monist approach has its roots in the Constitution, a further approach to the division of criminal authority informs the enforcement of criminal justice. Here, criminal matters are vaguely categorised as "federal criminal matters" or "state criminal matters" (hence the "progressive-dichotomisation" approach). As will be explained below, all three approaches are deficient in some ways. Hence, the Ethiopian approach to the division of criminal and security matters is not as systematic as it is in other jurisdictions. This suggests the need for an in-depth inquiry, one followed by pertinent policy recommendations to the concerned bodies.

While the focus here is on providing a general overview of the approaches taken by various federal systems (both full-fledged federations and quasi-federal or devolved systems), in what follows an attempt will be made to explicate the experiences of selected federal polities with a comparative relevance for the study of the division of criminal and security matters in Ethiopia. The objective of this study is to assess the Ethiopian federal approach to the division of criminal matters by juxtaposing it with the underlying principles and values of federalism and the doctrine of distribution of powers on the one hand and the comparative survey of other federal polities particularly, USA, Germany, and India on the other.

After this introduction, the article has four sections. The first provides some points in relation to the nexus between criminal justice and federalism, while the second explores the experiences of selected federations. The third undertakes an analysis of the division of criminal matters under the Ethiopian federal structure; and the fourth provides some concluding remarks as well as recommendations.

2. The interplay between federalism and criminal justice systems

Federalism has a host of components, one of which is the administration of criminal justice – an area of relevance to the study of the distribution of powers. The discourse on and of criminal-justice authority in federal systems is underpinned by conceptual and theoretical foundations. That is to say, as a part of the criminal justice system in federal systems, the division of police and security matters presupposes the operation of one or more of a spectrum of principles and values in regard to federalism in general and the distribution of powers in particular. The principles taken as fundamental to federalism include the existence of a written and rigid federal constitution, as well as of two or more orders of government, self-rule and shared rule, a constitutional adjudication system, intergovernmental relations, and a division of powers.

With regard to the nexus between the values of federalism and the administration of criminal justice, several key notions need to be emphasised: accommodation of diversity and preservation of unity (Fiseha, 2010); regional autonomy; conflict pluralism and its resolution; peace and prosperity; democracy and liberty; efficiency, innovation and equity (Kincaid, 2011); and division of functions (Davis, 2011). The guiding idea here is that the administration of criminal justice in federal systems should not lie outside of the values and advantages of federalism, as these general values may have a direct impact on the proper, transparent, accountable, effective, and efficient management of criminal justice. In this regard, Fissell (2017) undertook a study of cases resolved by the US Supreme Court in which he identified six generally accepted values of federalism: the maximisation of individual liberty through checks on government power (the principal benefit); experimentation and innovation across jurisdictions; responsiveness to geographical diversity; democratic participation; competition for citizens; and inherent sovereignty.

Whether federalism is working efficiently and effectively can be assessed through a scrutiny of the merits of various mechanisms, including criminal administration at different levels of government. The efficiency of federalism seems to derive from two notions: first, it is more efficient to allow jurisdictions to experiment with different approaches than to impose a uniform rule; and, secondly, localities are better placed than higher levels of government to understand their own problems, as a result of which they can tailor legal solutions to their circumstances more effectively than these other levels (Fissell, 2017). In support of this thinking, Kincaid (2011) notes the following:

> Multiple governments give rise to policy diversity. In the United States, for instance, 38 States permit capital punishment while twelve States prohibit the death penalty. Hence, another common federal system is an agreement to disagree. When agreement cannot be reached on a particular national policy, the constituent

> states may be able to enact different policies that reflect their citizens' preferences. Federalism, therefore, permits policy experimentation. As US Supreme Court Justice Louis Brandeis argued, it is one of the happy accidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory, and try novel social and economic experiments without risk to the rest of the country. Current examples are Oregon and Washington – the only US States that permit physician-assisted suicide (p. xxix).

The claims of local and indigenous knowledge are other factors that justify experimentation in federalism vis-à-vis criminal justice. The argument is that localised legal decision-making is beneficial because it allows for inter-jurisdictional experimentation with respect to the means of achieving shared goals. It places authority in the jurisdiction that has superior knowledge by virtue of its size because decentralised experimentation is seen as more efficient than the imposition of a uniform national rule (Fissell, 2017, p. 35). This is the antithesis of the one-size-fits-all approach.

Federal experimentation is connected to the exercise of self-rule, which lies at the heart of federalism. In other words, the exercise of criminal authority could be manifested in the exercise of self-governance right. The most important feature of the state "laboratory" is the ability to make substantive determinations of what is and is not criminalised in the effort to reduce socially harmful conduct (Fissell, 2017, p. 4).

"Laboratory federalism" also enhances innovation (another value of federalism). Any policy innovation developed by a constituent unit in public affairs and criminal justice administration may be diffused horizontally (to sister states) or upwardly to the federal government. The latter form of policy diffusion is usually designated as an open method of coordination. This is popular in the European Union, as it fosters mutual learning about successful policies and promotes policy transfer by identifying and recommending best practices (Kerber & Eckhart, 2005). Four main mechanisms of policy diffusion have been theoretically identified and empirically tested: learning, economic competition, imitation, and coercion (Shipan & Volden, 2008).

The "morality" version of federalism holds that law-making should reflect a community's moral consensus, and that therefore the more tightly a legal jurisdiction can map onto a moral community, the better (Fissell, 2017, p. 10). In this regard, Powell contends that federalism in criminal law is valuable because of the constantly shifting tension between the evolving aims of the criminal law and changing views of the religious, moral, philosophical, and biological nature of mankind. Similarly, criminalisation should be considered from within the moral outlook of each constituent unit, without however affecting issues that cut across either all or some of them. In Klein's view (2002, p. 1541), value-laden federalism of this kind helps facilitate a community's expression of its morality.

The morality approach to federalism and criminal authority reminds us of the supposed value of federalism in terms of accommodating diversity. As suggested earlier, the accommodation of communal diversity in plural societies is one of the main values of federalism (Kincaid, 2011, p. 242). In general,

morality federalism advocates the idea that a functional criminal legal system should reflect the morality of the society. For instance, while the US Constitution's Supremacy Clause requires that states, at a bare minimum, provide their citizens with rights prescribed by federal law, the states are also free to extend other protections, as well as to operate their criminal justice systems largely free of federal dictate (Logan, 2005).

To shift from the "morality" approach to the democratic point of view, federalism tends to create a smaller or more limited form of government, which may increase the opportunity for citizens' involvement in democratic processes. Such involvement cultivates citizens' knowledge of and proficiency in the practices of democracy, fosters accountability among elected representatives, and enhances voter confidence in the democratic process. In the American case, the country's founders saw federalism as instilling "public spiritedness", since "participation in deliberation over the public good" was more accessible in the states than in a remote central government (Fissell, 2017, p.6). "Participation federalism" is thus based on " the argument that for multiple reasons it is beneficial for citizens in a democracy to be engaged in political processes, and that this is facilitated by smaller units of law-making" (Fissell, 2017, p.7).

As a specific principle of federalism, the distribution of powers should also be considered vis-à-vis the division of criminal matters. The view is widely held that the assignment of powers should not be done haphazardly but rather takes into consideration rationales, factors, and principles. Indeed, the need for dividing powers is theoretically and empirically justified on many grounds. As a rectification mechanism, dividing powers between different levels of government can repair the defects of previous relations between tiers of government. It is also used in conflict management, as is evident in the many post-conflict federal states where powers and resources are divided among groups struggling for equality and justice. Horowitz (1985), for example, notes that the skilful division of authority between regions and the centre has the potential to reduce conflict.

The rationale for the division of powers is made clear in the Tenth Amendment of the US Constitution. Three key principles and rationales inform Tenth Amendment jurisprudence (Partlett, 2019, p. 23). First, there is the claim that the division of powers helps ensure that federalism affords structural protection of individual liberty. In this view, the Constitution divides authority between federal and state governments for the protection of individuals, and does so by reducing the risk of tyranny and abuse by either side. The Supreme Court asserts that the Constitution does not protect the sovereignty of states for the benefit of the states or state governments as abstract political entities. Secondly, the Tenth Amendment is intended to ensure clear political accountability. Thirdly, it prevents Congress from shifting the costs of regulation down to the states. Thus, it is asserted that if Congress enacts a law and requires enforcement by the executive branch, it must appropriate the funds needed to administer the programme.

The division of powers, including over criminal and security matters, is affected by factors of multiple kinds: geographical, historical, economic, ecological, security-related, linguistic, cultural, intellectual, demographic, and

international (Watts, 2008). Watts (2008) adds that the nature of the field or subject determines where it falls under each level of government. Thus, if a matter is essentially national in nature, it should be assigned to the federal government, whereas state governments assume jurisdiction over issues that are regional and local in character. Furthermore, there are norms and precepts that guide the division of powers in general, and these are applicable mutatis mutandis to criminal matters in particular. They include the principles of constitutional entrenchment, subsidiarity, interdependence, and efficiency, as well as the democracy argument and the notion of the finance-follows-function.

3. The division of criminal matters in selected federal polities

This section explores the approaches taken to the division of criminal and security matters in three federal polities: the USA, Germany, and India. The experiences of these polities are juxtaposed with those of Ethiopia in this piece.

3.1 The United States of America

The USA adopts a dual federalism, which entails that the distribution of executive powers mirrors the distribution of legislative powers. This means the federal executive is responsible for administering the programmes and enforcing the laws that are adopted by the federal legislature, while subnational executives are responsible for administering and enforcing the laws enacted by subnational legislatures (Bulmer, 2015, p. 15). As with all such rules, in the dualist approach the tiers of governments are assumed to make, implement, and adjudicate laws and policies over their respective matters and according to the powers granted to each by the Constitution (notwithstanding ancillary principles, such as concurrency, intergovernmental relations, and delegation, which are adopted for bridging the two or more levels of government and ensuring the effective implementation of laws).

Consequently, the federal government may neither issue directives requiring states to address particular problems, nor command the officers of the states or those of their political subdivisions to administer or enforce federal regulatory programmes (Fiseha, 2022, p. 289). While the federal government may be able to induce the states to administer federal programmes by careful use of spending power or in exchange for financial rewards, it cannot compel states to administer such programmes without their consent (Fiseha, 2022, p. 289). However, some scholars argue that the US dualistic approach has been transformed into "marbleised" concurrency, in which states—by virtue of federal permission—have authority to legislate concurrently in a highly interdependent system where all policy fields are now intergovernmental in one way or another (Kincaid, 2017).

The subject of criminal jurisdiction has been widely debated by scholars and practitioners under the rubric of US federal experimentation. As to the US's division of powers, the federal government is conferred with certain enumerated powers, while residual powers remain with the states – criminal justice is one such area reserved to the states. The Constitution vests the federal government with relatively little responsibility for punishing crime, specifying only three infractions that Congress has the authority to punish: counterfeiting the securities and current coin of the United States; piracies and felonies commit-

ted on the high seas; and treason (articles 1(8) and 3(3), US Constitution).[92]

Criminal justice administration was a subject of debate among the framers of the US Constitution. While anti-federalists expressed the fear that the new constitution would permit the national government to supplant the states' responsibility over criminal law, proponents of ratification insisted that the role of the federal government in this area was necessarily limited. Consequently, the ordinary administration of criminal and civil justice was the one transcendent privilege accorded to state governments (Hamilton et al., 2012). Nonetheless, the division of criminal matters under US federalism is no easy task, and especially so when it comes to practice. Congress is, for example, alleged to have exceeded its powers in the name of regulating inter-state commerce (Althouse, 2001).[93] Federal criminal law rests on two constitutional pillars: first, the inter-state commerce clause, and, secondly, criminal offences that arise from the enactment of non-criminal statutes (such as regulatory laws) pursuant to Congress's delegated powers.

As a result, the marked expansion of federal power since the early 1960s has resulted in an expansion of federal criminal law. Three theories have been developed in response to congressional excess in federalising or centralising criminal matters: doctrinal, normative, and dual-sovereignty arguments (Barkow, 2011). It is important to note that these theories are not mutually exclusive by share many common elements and reference points. They are examined separately below.

3.1.1 The doctrinal school of thought

The doctrinal approach to federalism often engages the constitutional perspective as developed by the United States Supreme Court. It focuses on the division of powers between the federal and state governments in resolving controversies arising out of the compartmentalisation of criminal authority. In order to limit the expansive power of Congress in this respect, the Supreme Court has intervened in many cases, overturning judgments in favour of the primary authority of the states in matters of criminal justice administration. The Supreme Court has interpreted the Constitution according to the spirit and text of the doctrine of distribution of powers.

With regard to determining the locus of certain criminal matters in controversial cases, Supreme Court justices have found no guiding consensus. Liberal justices tolerate the added caseload that comes from letting Congress decide when federal torts and crimes should be created. They are willing to do this because they are committed to preserving the congressional power to overcome any poor choices or decisions that the states may make. On the other hand, conservative justices have no conflict: they favour the diversity and

92 See Murray Rojas v the USA, Supreme Court of the United States.

93 Althouse (2001) contends that the inter-state commerce clause has gone through periods in which the interpretation of the doctrine was relaxed. For instance, since 1937, commerce-clause doctrine has allowed Congress to regulate matters that have a "substantial effect" (p. 132) on inter-state commerce, and, until 1995, this doctrine served to accommodate every matter Congress saw fit to regulate. For a brief period between 1976 and 1985, the Supreme Court experimented with a doctrine that excepted "traditional state governmental functions" from this broadly expansive congressional power. Congress could, for example, impose a national minimum wage, but the state as an employer would be able to make some of its own wage decisions free of that federal mandate.

decentralisation of state and local law, and doubt the ability of Congress to do better; so, they believe they can rid the federal courts of additional caseload with no sense of losing anything (Althouse, 2001). According to the conservative majority, such action would transform Congress's limited powers into unlimited powers and enable it to act wherever and whenever it chooses. It would make it especially easy to reach the very areas that tend to be mentioned first when attempting to identify matters traditionally left to the states: education, family, marriage, and street-level violence (Althouse, 2001).

The rule of interpretation followed by the Supreme Court is that, in the absence of an unequivocal directive by Congress that it intends to disrupt the traditional balance prescribed by the Constitution, federalism demands that courts construe ambiguous criminal statutes in a manner that does not aggrandise federal power.[94]

3.1.2 The normative school of thought

The normative approach is advanced by a number of scholars. Its advocates argue that the question of the division of criminal authority is in fact determined by a variety of factors. The focus is not just on the constitutional question of where power can or must reside, but on the normative question of where power should reside. They tend to emphasise arguments grounded in the political economy of the different governmental institutions that make up the criminal justice system, and analyse the incentives of officials at different levels of government in relation to voter and interest-group demands (Barkow, 2011, p. 14).
In this regard, the normative school of thought could be manifested in many ways. For example, the utilitarian perspective, as a kind of the normative perspective, insists that the best locus of responsibility for criminal enforcement lies with local actors rather than at the federal level. This approach is evident in the assertions by opponents of increased federal involvement in matters traditionally left to local prosecutors. They often look to the question of judicial resources, typically observing that the size and structure of the federal judiciary is not suited for taking on a larger share of criminal matters.

In the normative perspective, states – just as with the federal government – must ask when local prosecutors should retain authority over prosecutions and when a centralised, state-wide prosecutor should assume responsibility for an area of criminal law (or otherwise intervene in a local action) (Barkow, 2011, p. 15). Localism is not to be downplayed in the enunciation of federalism and criminal authority in federal systems. Hence, the normative argument for federalism rests on values such as democratic political participation, increased representation of diverse interests, and innovation. All of these, it is argued, are the hallmarks of localism.

On the basis of the values of federalism (which include the closeness of government bodies to their constituents and the preservation of the ability of local and state governments to experiment in social policy), neither the Constitution nor debates among the Founding Fathers suggests that the federal government

94 See Murray Rojas v the USA, Supreme Court of the United States.

was to have a significant role in prosecuting crimes affecting the local community; moreover, there are sound policy reasons for a limited federal role (such as the fact that most crime is local in nature and that, consequently, it is the local community which bears the brunt of the offence) (Barkow, 2011, p. 17).

3.1.3 The dual-sovereignty doctrine

The dual-sovereignty doctrine reserves to each state the ability to determine independently what shall be an offence against its authority and to punish such offences (Barkow, 2011, p. 17). This doctrine has been propagated mostly by the US *amici curiae*,[95] who advocate for the non-centralisation of the criminal justice system from the perspective of dual sovereignty. The amici make use of the American Conservative Union Foundation to make the public case for their views. The Foundation is a tax-exempt organisation dedicated to promoting conservative solutions to issues facing all Americans irrespective of race, creed, or ideology.

Another supporter of the dual-sovereignty doctrine is the Nolan Centre for Justice, which advocates for criminal-justice policies that are held to improve public safety and government accountability. The Centre opposes the increasing application of federal law to matters it believes are more appropriately addressed by state and local authorities. It argues that the rule of law requires that statutes be construed strictly so as to ensure due process for criminal defendants who face forfeiture of their liberty if convicted.

The proponents of dual sovereignty emphasise the benefits of state sovereignty and the adverse consequences of its absence. Such sovereignty (the argument goes) endows the states with primary authority over matters of criminal justice, enables their citizens to reap the benefits of federalism, safeguards the states' ability to protect their citizens from crime, and affords greater double-jeopardy protections.[96] The dual-sovereignty doctrine ensures that one sovereign can obtain justice for victims where another sovereign's institutional failures (or lack of political will) have prevented this; by dividing powers between two distinct governments, the rights of the people are doubly safeguarded, in that the governments control each other at the same time as each controls itself (Hamilton, 2005). The dual-sovereignty doctrine also fosters coordination among federal, state, and local officials in ways that serve individual liberty. Coordination among sovereigns recognises that the framers of the Constitution designed a system in which the state and federal governments exercise concurrent authority over the people.[97] Coordination between local, state, and federal prosecutors continues to be standard practice between

95 Amici curiae comprise a diverse group of state and local governments, prosecutors, law enforcement personnel, and elected officials, each of whom has an acute interest in ensuring that the long-entrenched dual-sovereignty doctrine remains in force. The group includes the National Association of Counties (NACo), the only national organisation that represents county governments in the United States; the National League of Cities (NLC), which is dedicated to helping city leaders build better communities; the US Conference of Mayors (USCM); the International City/County Management Association (ICMA), a non-profit professional and educational organisation; the International Municipal Lawyers Association (IMLA), which has been an advocate and resource for local government attorneys; the National District Attorneys Association (NDAA); and the National Sheriffs' Association (NSA).
96 See Murray Rojas v the USA, Supreme Court of the United States.
97 Printz v United States, 521 US 898, 919–20 (1997)

the two sets of prosecutors across the country.

By contrast, the adverse consequences of the elimination of dual sovereignty are understood in the following ways. Such elimination could, in the first place, frustrate cooperative federalism and have an outsized impact on local government, for example by inhibiting state efforts to foster liberty through innovation and experimentation. It could also act as an impediment to state and federal cooperative efforts towards a double-jeopardy regime protective of individual liberty; blur the lines between state and federal criminal authority in ways that undermine accountability; and escalate turf wars between states and federal government, potentially depriving states of their historic rights and obligations to maintain peace and order within their confines (Bulmer, 2015).

3.2 Germany

Germany is an example of an administrative or integrated federation. This is one in which powers are divided between the federal government and the Länder in such a way that the former makes laws while the latter implement these in accordance with their regional circumstances. The Basic Law of Germany enumerates exclusive federal powers, set outs concurrent powers, and reserves residual powers to the states so as to make them relatively autonomous (Aronowitz, 1997, p. 1). However, on closer inspection, it would seem doubtful if these residual powers have much meaning in practice, as little scope for legislative activity is left to the states (Fiseha, 2010, p. 291). As far as the self-rule rights are concerned, state actors are limited to the areas of culture, education, electronic media, museums, hospitals, police, and local government; importantly, the rights include the power to adapt federal laws if there is leeway for doing so (Fiseha, 2010, p. 291).

A striking characteristic of the German federation is the interlocking relationship that exists between the federal and state governments, albeit that the tightness of these arrangements has come under criticism (Watts, 2008, p. 35). The only factor compensating for the continual diminution of states' legislative power is availed is through the *Bundesrat*[98] and execution of federal law (Fiseha, 2010, p. 291). As regards the latter, although the federal government has a range of exclusive, concurrent and framework legislative powers, the Länder have a mandatory constitutional responsibility for administering a large proportion of these laws (Fiseha, 2010, p. 291).

With this as its backdrop, the division of criminal justice matters is influenced by the interlocked federal design of the German federal system. Unless constitutionally prohibited to do so, the Länder are entrusted with administering federal laws in their own right, including criminal laws.[99] It is clearly stipulated that if a Land fails to comply with its obligations under the Basic Law (or other federal laws), the federal government, with the consent of the Bundesrat, is allowed to take steps to compel it to comply with its duties (Article 37, Basic Law). As such, administering federal laws and policies is both a power and re-

98 Bundesrat, as a second chamber, plays a pivotal role in influencing the law making and policy formulation processes by representing the Länder at the center. Accordingly, it defends the interest of the Länder to the extent of vetoing any bill that may jeopardize the Länder.
99 Article 83 of the Basic Law provides that the Länder shall execute federal laws in their own right insofar as this Basic Law does not provide or permit otherwise.

sponsibility constitutionally devolved to the Länder – and by implication the federal government cannot take back administrative powers from the Länder.

In the distribution-of-powers regime, criminal law is categorised under concurrent powers (Article 74(1), Basic Law).[100] In this respect, the Länder have the power to legislate so long as (and to the extent that) the federation has not exercised its legislative power by enacting a law (Article 72(1), Basic Law). Moreover, in terms of the federal supremacy clause in the Basic Law, federal law prevails over that of the Länder where there is inconsistency between them. The federal government has an overriding power over criminal legislation for establishing equivalent living conditions throughout the federal territory, as it has in the maintenance of legal or economic unity in the national interest. Although criminal legislative power is centralised in the above context, the administration of criminal justice is devolved to the Länder justice institutions, as it is argued that the administration of justice lies chiefly with the federal states (Findl, 2016). Accordingly, while the Penal Code and the Code of Criminal Procedure are federal codes (making their application consistent nationwide), the administration of the criminal justice system (police, courts and correctional institutions) covers all matters left to the individual states (Aronowitz, 1997).

The federal government provides guidelines for the Länder with regard to the implementation of criminal laws. It is because of this kind of provision that Aronowitz maintains that federal laws establish a framework for the individual Länder (for example, in the way that federal law concerning the correctional system and its administration serves as a model for the Länder) (Aronowitz, 1997). The Länder may adopt their internal laws dealing with the correctional system subject to the federal supremacy clause, while those Länder that have not adopted their own correctional laws use the federal law as their guideline in the administration of criminal justice (Aronowitz, 1997).[101] In addition, special state laws exist to govern the regulation of police matters as well as the prosecution of cases. As for police powers and structures, Germany has an extremely limited federal police force, as basically all police functions are the responsibility of the state police departments (Aronowitz, 1997).[102] The criminal jurisdiction of the police in terms of prevention and investigation is exercised autonomously, and is divided across local levels.

As to the structure of courts in Germany, there are four levels that deal with criminal matters: local courts, regional courts, higher regional courts, and the Federal High Court. The local courts have jurisdiction in all criminal matters in which a punishment of no more than three year's imprisonment can be im-

100 Article74(1) of the Basic Law provides that the concurrent powers exercised by the federal government and the Länder shall extend to civil law, criminal law, court organisation and procedures (except for the correctional law of pre-trial detention), the legal profession, notaries, and the provision of legal advice.

101 Aronowitz argues that Germany's Federal Constitutional Court, the highest court on constitutional matters, has held that the states have limited sovereign powers that are not in fact derived from the powers of the Constitution.

102 The federal police consist of the railway police; the federal border police and a special federal anti-terrorist group; the police of the administrative departments of the federal parliament; customs officers and the customs investigative branch (under the jurisdiction of the federal minister of finance); and the federal crime investigation office. Each of the Länder has the following police components: uniformed police, including special emergency units such as those for crowd or riot control, as well as marine police units responsible for policing rivers, harbours and coastal areas; detective branches or criminal police; and a police academy.

posed. Regional courts (that is, courts of first instance) may serve as a court of general appeal along with the higher regional courts. Regional higher courts receive appeals from both local courts and regional courts, in addition to exercising first-instance jurisdiction in relation to some criminal matters. The Federal High Court hears appeals on questions of law. The Federal Constitutional Court is the highest court in the land and considers only cases involving violations of constitutional law. It serves both as a court of first instance and as a court of appeal.

A number of criminal matters which inherently would be adjudicated by federal courts can be delegated to the Länder courts with the consent of the Bundesrat (Article 96(5), Basic Law). These include genocide; crimes against humanity under international criminal law; war crimes and other acts tending to and undertaken with the intent to disturb the peaceful relations between nations; and matters of state security. In the German criminal justice administration, all prisons are administered at the state level. Germany has neither federal nor private prisons (Aronowitz, 1997).

3.3 India

India is a multinational federation. In its distribution of powers, the Indian Constitution provides for three lists: the Union List (97 subjects), the State List (66 subjects), and the Concurrent List (47 subjects). With regard to the allocation of criminal matters, Indian criminal justice has four subsystems: the legislature (parliament); enforcement (police); adjudication (courts); and corrections (prisons, community facilities) (Raghavan, 1997). Criminal matters are divided between the union government and the states. In addition, there are areas where one or another of the other orders of government has an exclusive power, while some other modalities fall under the concurrent jurisdiction.

In this regard, the criminal authority of the union government is considered as either general or specific. Generally, it exercises an exclusive jurisdiction over offences against laws with respect to any of the matters in the Union List (Article 246(93), Seventh Schedule). But it has been conferred with a power over specific crimes such as piracies and crimes committed on the high seas or in the air, and offences against the law of nations committed on land or the high seas or in the air (Article 246(21), Seventh Schedule). Similarly, the states are empowered to exercise exclusive criminal jurisdiction over offences against laws with respect to any of the matters in the State List, but they are also granted some powers in relation to the administration of criminal justice on issues related to police, prisons, reformatories, borstal institutions and other institutions of a like nature, and persons detained therein, and arrangements with other states for the use of prisons and other institutions. These are important institutions for the enforcement of criminal laws within the states.

Apart from the forms of division above, the Constitution provides for the concurrent criminal jurisdiction of both levels of government over criminal law (penal code) and criminal procedure code. These codes were in force at the commencement of the Constitution. The administration of justice and the constituting and organising of courts are also powers granted concurrently to both tiers of government.
In the three common list-approach, the division of powers rests on the notion that the union government is empowered to make laws over matters that con-

cern the common interests of the union as a whole, whereas the states are authorised to have mandates over matters of purely local interest, such as public order, police, public health and sanitation, local government, and education (Nayaran Rao, 1950, p. 43).

Although the Constitution is generous in sharing criminal matters between the union and the states, the power of the states is at risk in the face of various centralising tendencies. First of all, Parliament has the power to make laws on any matter (Article 246(4), Constitution of India). Secondly, when a proclamation of emergency is in force, Parliament has the power to make laws for the whole or any part of the territory of India on any of the matters in the State List (Article 250(1), Constitution of India). Thirdly, the Constitution contains a federal-supremacy clause, albeit qualified by the stipulation that in some situations state law is not subject to federal supersession (Article 254(2), Constitution of India). Nayaran (1950) claims that this is a novel provision not present in any other federal constitution. It affords the union government an opportunity to examine the need felt by any state to legislate in a manner repugnant to union legislation and to validate the repugnancy if there is sufficient justification for it in the light of the local conditions prevailing in that state. However, this clause does not preclude Parliament from enacting any law at any time with respect to the same (Article 254(2), Constitution of India).

Finally, residual power is vested in the union government. That is why Watts (2008) maintains that – given the vast, populous and diverse nature of India and natural concerns about the threat of insecurity and disintegration – the constituent assembly concluded that the soundest framework was that provided by "a federation with a strong Centre" (p. 36).

4. The division of criminal matters under Ethiopian federalism

Taking into account constitutional, statutory, and practical considerations, the allocation of criminal and security matters under Ethiopian federalism takes three main approaches: dualist, monist, and progressive dichotomisation. Each is discussed below.

4.1 The dualist approach

The dualist approach focuses on the institutional-structural arrangement set out in the Constitution of the Federal Democratic Republic of Ethiopia (FDRE). The latter establishes a dual federalism in which the federal government and states have their respective legislatures, executives, and judiciaries (Article 50(2), FDRE Constitution). While the House of Peoples' Representatives is the highest authority of the federal government and responsible to the people as a whole, the state council is the highest organ of state authority and responsible to the people of the state. The state council has the power of legislation on matters falling under state jurisdiction, whereas the House of Peoples' Representatives has the power of legislation in all matters assigned by the Constitution to federal jurisdiction (Article 55(1), FDRE Constitution). The state administration is the highest organ of executive power, while the highest executive powers of the federal government are vested in the Prime Minister and Council of Ministers. As for judicial powers, it is clearly provid-

ed that the state's judicial power is vested in its courts, with the supreme federal judicial authority vested in the Federal Supreme Court. The latter has the highest, and final, judicial power over federal matters; state supreme courts have the highest and final judicial power over state matters.

Structural dualism has a significant bearing as well on police and security institutions. The power to regulate the national defence, public security, and federal police forces is within the federal jurisdiction. States in turn have the power to establish a state administration that advances self-government and a democratic order based on the rule of law; to protect the federal constitution; to enact and execute the state constitution and other laws; to establish and administer a state police force; and to maintain public order and peace within the state (Article 52(2), FDRE Constitution).

The dualist structure (as designed by the FDRE Constitution) has been challenged on two grounds (Gurmessa, 2022). The first lies in the fact that the state constitutions unequivocally impose upon the states the duty to execute federal laws, but this is not stipulated by the FDRE Constitution (except, perhaps, under the idea of delegation). Secondly, some federal laws (such as those on criminal matters) cannot be wholly administrated by the federal institutions alone under the dual approach. Consequently, the involvement of state agencies is necessitated.

4.2 The monist approach

In the monist view, criminal legislative power is vested in the federal government.[103] To this end, the federal government has enacted a plethora of criminal laws to date, for example the FDRE Criminal Code (Proclamation No. 414/2004), as well as other pieces of legislation which primarily or incidentally deal with penalty issues, and the FDRE Criminal Justice Policy itself (FDRE Criminal Justice Policy, 2011). Hence, the power of legislating criminal matters and criminal justice policy is centralised, as a result of which there is little room for accommodation of diversity in respect of informal criminal justice system (Degefa, 2013, p. 154). Some have thus reached the conclusion that criminal law belongs to the federal government and is hence understood as federal law (Redae, 2014, p. 56).

The monist approach is not exempt from criticism. One counterargument emphasises the principles of federalism and pertinent constitutional provisions. In support of this view, Assefa (2020) contends that the criminal legislative power of the House of Peoples' Representatives under Article 55(5) of the FDRE Constitution is not unlimited and should be harmonised with Article 51 of the same, which requires the federal government to discharge its obligations and achieve the objectives set out therein. Kassa (2012) also castigates the centralised criminal legislation:

> The [Criminal] Code's over-inclusiveness was not envisaged under Art.55(5) of the Constitution. It creates confusion as to the

103 Article 55(5) of the FDRE Constitution provides that the House of Peoples' Representatives shall enact a penal code. The states may, however, enact penal laws on matters not specifically covered by federal penal legislation.

> judicial power of the federal and state courts to try cases arising from, and calls for interpretation and application of, the 2004 Criminal Code. Had the Federal law-making body been careful and selective in enacting the 2004 Criminal Code, the Code would have included provisions dealing only with matters listed under Art.51. In that case, only Federal courts would have judicial power to deal with cases arising from the Code, and the state councils would have passed their own penal laws covering other matters, which would have resulted in state courts having judicial power to deal with cases arising from these penal laws (p. 282).

In consonance with this line of argument, Fiseha (2010) maintains that although the federal parliament, by virtue of Article 55(5), exhausts the field, leaving no room for the states, this is not merely a paper power left for states: this is demonstrated by the fact that states often include in their legislation specific offences which are not covered by the federal penal code. In fact, there are many occasions when states have exercised their marginal power to enact criminal matters in their laws with limited scope (Amenu, 2016).

4.3 Progressive dichotomisation

The progressive-dichotomisation approach developed from the enforcement of criminal laws, especially in the areas of execution (prevention, investigation, prosecution, and prison administration) and adjudication. It is a response to dualist institutional structures and the monist approach to the legislative competence of criminal matters. Although the federal government is vested with the power of making criminal laws, it may not administer these through its own agencies at the exclusion of those of the states. Consequently, laws made by the federal government for governing criminal justice administration demonstrate that there are criminal matters which are enforced primarily by the federal justice sectors (hence termed "federal criminal matters") on the assumption that the rest are to be implemented by state justice institutions (termed "state criminal matters").

It might prove difficult to dichotomise with any precision the once-centralised legislative aspect of the criminal matters into federal and state matters. Federal and state laws dealing with the allocation of criminal jurisdictions in their police appear to have split the monolithic criminal law into federal and state criminal matters. The federal police assume only a few criminal matters (Article 6(1)–(4), Proclamation No. 720/2011).[104] State police exercise executive jurisdiction over criminal matters that contravene and endanger the (state) constitutional system; they (state police) are also concerned with the prevention of criminal acts and traffic incidents; the prevention of criminal

104 Article 6(1)–(4) of Proclamation No. 720/2011) (the Federal Police Commission Reestablishment Proclamation) provides for the criminal executive jurisdiction of federal police in two ways: general and particular. Generally, what falls under the control of Federal Police Commission includes the prevention and investigation of any threat and acts of crime against the Constitution and the constitutional order, security of the government and the state, and human rights; crimes falling under the jurisdiction of the federal courts; and execution of orders and decisions given by courts. In particular, what falls under the jurisdiction of federal police includes counterfeiting currencies and payment instruments; crimes relating to information network and computer systems; and crimes relating to human trafficking, abduction, trafficking in narcotic and psychotropic substances, and the hijacking of aircrafts or ships, as well as organised robbery, terrorism, and violence.

acts against the interests of the (state) government and its organisations; the investigation of crimes that fall under the jurisdiction of the regional courts; and activities concerned with corruption and revenue and tax crimes (Proclamation No. 213/2018). This approach assumes "all state criminal matters" (Gurmessa, 2021).

The division of criminal matters in terms of prosecutorial power follows the same pattern. While the federal prosecutorial authority is hinged on the federal courts' criminal jurisdiction (Article 6(3a), Federal Attorney General Proclamation No. 943/2016), that of the state prosecution corresponds with the state courts' jurisdiction.[105] Progressive dichotomisation in the execution of criminal matters is also evidenced from a baseline study by the Ministry of Capacity-Building's Justice Reform Programme. There, it is contended that the Public Prosecution Service, under the Ministry of Justice, prosecutes federal crimes before federal and state courts. The federal police, under the Ministry of Federal Affairs, are responsible for the investigation of federal crimes at federal and state levels. The state police investigate state crimes and co-operate with the federal police. The Federal Prison Commission is responsible for the management and administration of prisons and the rehabilitation of convicts. At the level of the states, the Regional Prison Commission fulfils this role (FDRE, 2005, p. 47).

Moreover, criminal adjudication is also informed by the progressive-dichotomisation approach. Federal courts are vested only with specific crimes mentioned in the federal courts' proclamation and other legislation which defines the jurisdiction of federal courts. The criminal jurisdiction of federal courts is contemplated in two ways: general and specific. By virtue of a general approach, the federal courts exercise jurisdiction over crimes which arise under the Constitution, federal law, and international treaties; parties specified in federal law; and places specified in the Constitution or federal law (Article 3(1), Proclamation No. 1234/2021). In the specific approach, some of these fall under the jurisdiction of the federal courts (Article 4, Proclamation No. 1234/2021).

Similarly, state laws define the jurisdiction of their courts over criminal matters. For example, in terms of the Oromia State Court's proclamation, the courts shall exercise criminal jurisdiction over any matter not exclusively reserved to the federal courts by the FDRE Constitution; cases arising under the regional constitution or the regional laws; cases arising inside, or persons or properties situated in, the boundary of the region; matters falling, by virtue of procedural and other laws, under the jurisdiction of the regional courts and cases arising in the boundary of the region; and federal matters in accordance with Article 78(2) of the FDRE Constitution.

While these are within the general jurisdiction of the state courts, the latter have adjudicative authority over crimes committed in connection with the interests of the region in Finfinnee (Article 24(2)–(4), Proclamation No. 216/2018 [the Oromia National Regional State Court's Proclamation]). Accordingly, this relates to crimes committed by or against the officials or employees of the re-

105 See, for example, Article 7(9) of the Oromia Attorney General Establishment Proclamation No. 214/2018.

gional government in connection with their official duties; crimes committed against the property of the regional government or those committed in the premise or on the fence of the offices of the regional government; criminal matters the commission of which have commenced in the boundary of the region but completed in Finfinnee, or with the suspects hiding in the City.

There are theoretical and practical pitfalls in the progressive dichotomisation of criminal matters in the enforcement regime. First, there is the question: where does federal criminal jurisdiction end and state criminal jurisdiction begin? This is difficult to answer, and is complicated by the constitutional principle that the federal government, which has its own executive agencies for administering its laws, is empowered to make criminal law. There is also the question of the mandate, or the genesis of the criminal authority, of the state justice sectors. As already noted, a plethora of criminal matters are omitted from the jurisdiction of federal justice institutions. Moreover, the laws which deal with these matters do not provide for the transfer or delegation of the remaining criminal matters to the states. The key question is thus whether the state justice institutions exercise their powers inherently or by delegation. Secondly, if the federal government organises its justice agencies in the regions (as it did in 2003 by establishing federal courts in five regional states) and claws back authority over criminal matters from the states on the grounds that a criminal law is a federal law, then what would be the fate of the state institutions? Although this is both highly theoretical and, in practice, unaffordable for the federal government, it has partial practical and logical significance in undermining state criminal jurisdiction. On the flip side of the argument, there is the issue of self-rule or self-governance: this is enshrined in the Constitution in relation to criminal justice administration.

Thirdly, a number of budgetary issues are raised by the administration of criminal laws and justice policy by the states. The Constitution empowers the federal government to delegate some of its powers to the states (and hence undertake downward delegation) (Article 50(9) read with articles 51, 78, 79, and 80, FDRE Constitution). Delegation in turn brings in the budgetary question. As far as criminal law enforcement is concerned, for the states to claim budget from the federal government, it is necessary first of all to identify which criminal matters are delegated downwards and which are not. In this regard, there are inconsistencies between the FDRE and state constitutions. While the former sets out a funded mandate, the latter opts for the adoption of an unfunded mandate.

Fourth, the constitutional judicial delegation from the federal high and first instance courts to the state supreme and high courts, respectively, triggers the question of how state woreda courts exercise criminal jurisdiction, as this is absent from the delegation sphere. In addition, what poses a problem is the assumption that a criminal law belongs to the federal government, whereas in fact the state woreda (first instance) courts exercise criminal adjudicative authority.

Finally, there is the issue of accountability. What happens if there is a breakdown or failure of the criminal justice administration in a state? One of the rationales for the distribution of powers in a federal state is the democracy argument, especially with regard to ensuring accountability. As long as there

is no clear relationship between the federal and state justice institutions in the regime of the criminal justice system, how can the people hold officials or particular bodies accountable? Can the federal government attribute to the state the failure of criminal justice? These are some of the difficulties that may obscure the criminal jurisdiction of the states under progressive dichotomisation, which is understood as a trade-off between the dualist structural set-up and monist criminal legislation and policy.

5. Conclusion

Federal and devolved systems adopt different approaches to dividing criminal and security matters between federal and state governments. As with any other field, the division of criminal matters is guided by principles, influenced by various factors, and necessary for achieving certain goals (as holds true for the distribution of powers in general). The principles are those of constitutional entrenchment; the subsidiarity principle; interdependence; the argument from democracy; the efficiency argument; and the principle of finance-follows-function. There is considerable interplay between the principles and values of federalism and criminal justice administration. Self-rule and shared rule, regional autonomy, accommodation of diversity and preservation of unity, experimentation, mobility, liberty, innovation, morality, and democratic participation are just some of the many values.

A survey of police power in federal systems suggests four alternatives as regards the division of criminal and security matters. Systems can opt for a unitary arrangement; a legislative-executive split; and state-dominated or dual-sovereignty approaches, which could be represented, respectively, by South Africa, Nigeria, Germany, the USA, and Ethiopia. While this is a broad view of the approaches to the division of criminal matters, only three jurisdictions were selected for in-depth comparative discussion in this article: the USA, Germany, and India. Each of these has a different relevance to the study of the Ethiopian situation.

The USA, as a dual federation, is characterised by the conferral of police power to the states by enumerating very few criminal matters as falling exclusively under the purview of the federal government. However, the practice demonstrates that, by using the inter-state commerce clause, Congress appears to have exceeded its limited and enumerated power and centralised criminal matters. As a result, three schools of thought have been developed by the Supreme Court, scholars and amici curiae: doctrinal, normative, and dual sovereignty. This thinking has sought to curb and restrain endless congressional transgressions, given that each of these schools seeks to retain hitherto constitutionally devolved criminal justice by doing away with centralisation. In Germany, the criminal authority of the Länder emanates from two major sources: inherent administrative power and the concurrency of the criminal code and criminal procedure, subject to the working rules of the concurrent powers. Hence, criminal-law legislative activity is centralised and its administration is devolved.

As regards the division of criminal matters in India, several approaches have been adopted. The first is a dispersive one in which both the federal government and the states are empowered to determine offences on matters exclusively granted to

them under the Union List and State List. The second approach pertains to cases where criminal matters are explicitly enumerated as falling under the federal government. The third concerns the concurrency of the legislative and administrative aspects of the criminal justice. As such, the criminal code and criminal procedure code are understood as concurrent powers of both orders of government. The concurrency of administration of criminal justice is also manifested in regard to execution (prevention, investigation, prosecution, and prison administration) and adjudication.

A number of points emerge from this analysis. To begin with, in all of these federal polities, criminal authority is devolved in one way or another. In USA, criminal justice is devolved in both its legislative and executive aspects; in Germany, it is legislatively centralised but devolved in executive and adjudicative aspects; and in India, it is both legislatively and administratively devolved yet subject to centralised tendencies which are inherent in the constitution related to the federal overarching and concurrent rules. Secondly, the power of the states in the criminal justice is explicitly recognised in the constitutions. Thirdly, despite practical challenges to the principles, clear approaches have been adopted in relation to the division of criminal matters given the federal structure designed by each constitution of the federal polity.

When compared with these federal systems, the division of criminal matters in Ethiopia is, in some respects, peculiar. Structurally, there is a dual design of institutions that are strictly beholden with making, executing, and adjudicating the federal and state laws, respectively. Paradoxically, the Constitution adopts a monist approach to the criminal legislative jurisdiction, but in a way which empowers only the federal government. In this regard, even though the Constitution envisages a de jure centralised criminal justice policy and legislation, the practice reveals a de facto decentralised administration thereof. This results in the lack of any systematic division of criminal matters in the federal set-up. Such contradictory schemes promote progressive dichotomisation in the enforcement of criminal laws by the federal and state justice institutions.

This approach in turn may pose theoretical and practical difficulties in the regime of criminal justice administration. Some of these drawbacks pertain to questions related to the genesis of the state criminal jurisdiction (whether original or delegated), budgets, judicial delegation vis-à-vis state first instance courts, and ensuring accountability in time of breakdown of the criminal justice system.

Unlike the other federal polities, the approach to the division of criminal and security matters in Ethiopia, viewed from the constitutional, statutory, and practical perspectives, highlights the deficit of clear and sufficient theoretical and empirical scholarship. Neither the pitfalls created by the Constitution and statutes nor the practical challenges created by this have as yet been approached from academic and professional viewpoints. Even worse is the lack of precedent handed down by the House of Federation, the ultimate constitutional arbiter, in relation to the controversies connected with the mandate of criminal justice under the federal architecture.
While the problems in this regard may be attributed to many causes, the Constitution itself is certainly one of them. Thus, it may be recommended that

the Constitution should stipulate either a centralised legislative approach with devolved administrative power, or a dual approach with strong intergovernmental cooperation or clear mandate. The latter has much to do with constitutionalising the progressive dichotomisation. With that tendency, federal laws which define the criminal jurisdiction of justice sectors should contemplate how state justice institutions would exercise the rest of the criminal matters that are not specified as falling under the federal realm.

Policy-makers should also take into consideration the principles and values of federalism in general, and the principles and factors of the distribution of powers in particular, when dealing with the division of criminal matters between the federal government and the states once the Constitution is amended or the specific provision concerning the subject is interpreted by the House of Federation.

As to the concurrency of the criminal legislative mandate, the regional authority in this respect should not be dependent upon the discretion of the federal government; rather, it should have constitutional entrenchment. Moreover, as this study is based on the doctrinal and theoretical method, prospective researchers are advised to further the debate by extending and deepening empirical research on this subject.

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